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I N T E R L O C U T O R Y D E C I S I O N
of 2 October 2003

Case Number: T 0208/01 - 3.3.3

Application Number: 90304243.0

Publication Number: 0407004

IPC: C08F 299/06

Language of the proceedings: EN

Title of invention:
Radiation-curable matrix material, optical fiber ribbons containing same; and process for preparing said optical fiber ribbons

Patentee:
Borden Chemical, Inc.

Opponents:
ALCATEL ALSHOM CIE. GEN. D'ELECTRICITE
DSM N.V. Patent Department

Headword:
-

Relevant legal provisions:
EPC Art. 54, 123(2)

Keyword:
"Main request - novelty (no)"

Decisions cited:
T 0863/96, T 0323/97, T 0507/99

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0208/01 - 3.3.3

I N T E R L O C U T O R Y D E C I S I O N
of the Technical Board of Appeal 3.3.3
of 2 October 2003

Appellant I: (Proprietor of the patent)
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Respondent: (Opponent 1)
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 5 December 2000 concerning maintenance of European patent No. 0407004 in amended form.

Composition of the Board:

Chairman: R. Young
Members: C. Idez
R. Moufang

Summary of Facts and Submissions

I. The grant of the European patent No. 0 407 004 in the name of Borden, Inc. (later Borden Chemical, Inc. (a New Jersey corporation)) in respect of European patent application No. 90 304 243.0 filed on 20 April 1990 and claiming priority of the US patent application No. 371 833 filed on 27 June 1989 was announced on 14 August 1996 (Bulletin 1996/33) on the basis of 34 claims.

Independent Claims 1, 14, 26 and 33 read as follows:

"1. A liquid radiation-curable matrix material for coating an inked substrate and/or embedding and securing therein a plurality of coated and inked optical fibers in a desired configuration, comprising:

(a) from 35 percent to 98 percent by weight of an aliphatic polyether-based urethane acrylate;
(b) from 0.5 percent to 35 percent by weight of a monomer having a plurality of acrylate or methacrylate moieties per monomer molecule and selected from trimethylolpropane triacrylate; trimethylolpropane trimethacrylate; pentaerythritol triacrylate; pentaerythritol trimethacrylate; pentaerythritol tetracrylate; pentaerythritol tetramethacrylate; trimethylolpropane propoxylate triacrylate; trimethylolpropane propoxylate trimethacrylate; trimethylolpropane ethoxylate triacrylate; trimethylolpropane ethoxylate trimethacrylate; glycerol propoxytriacrylate; glycerol

propoxytrimethacrylate; dipentaerythritol monohydroxy pentaacrylate; dipentaerythritol monohydroxy pentamethacrylate; C_6-C_{12} hydrocarbon diol diacrylates; C_6-C_{12} hydrocarbon diol dimethacrylates; and mixtures thereof;
(c) from 0.5 percent to 20 percent by weight of a component selected from an acrylate or methacrylate monomer having an alkyl moiety comprising from 7 to 18 carbon atoms, C_{14} to C_{15} hydrocarbon diol diacrylates; C_{14} to C_{15} hydrocarbon diol dimethacrylates; caprolactone acrylate; caprolactone methacrylate, and mixtures thereof; and
(d) from 0 percent to 10 percent by weight of a photoinitiator
all of said percentages by weight being based on the total weight of (a), (b), (c) and (d).

14. An optical fiber ribbon assembly comprising:

a plurality of optical fibers disposed in an arrangement in which the fibers are held in a fixed relationship; and the radiation-curable matrix material of any one of claims 1 to 13 bonding said fibers in said arrangement,
said matrix material having sufficient adhesion to said fibers to remain adhered thereto during use but being easily strippable therefrom.

26. A process for preparing an optical fiber ribbon comprising:
mechanically arranging optical fibers in a generally parallel arrangement;

applying about said fibers the matrix material of claims 1 to 13; and
curing said matrix material, thereby securing said fibers in said arrangement.

33. A process for adjusting the adhesive bond of a cured, radiation-curable matrix material, to coated and inked glass optical fibers to which said cured matrix material is bonded, wherein

said optical fibers are coated with a coating comprising a cured acrylate-containing or a cured metnacrylate (sic)-containing coating composition, said coated fibers are colored by the application over their respective coatings of inks of different respective colors, for individual fiber identification, and
said matrix material comprises a radiation-curable matrix material of claims 1 to 13,
said process comprising incorporating in said uncured matrix material a component which comprises a polyester based aliphatic urethane acrylate oligomer."

Dependent Claim 2 read as follows:

" A radiation curable matrix material according to claim 1, wherein said polyether-based urethane acrylate is silicone-modified."

Claims 3 to 13, 15 to 25, 27 to 32, and 34 were dependent claims.

II. Two Notices of Opposition were filed against the patent, as follows:

(i) by Alcatel Alsthom Compagnie Générale d'Electricité (Opponent I), on 14 May 1997, on the grounds of lack of novelty and lack of inventive step (Article 100(a) EPC), and

(ii) by DSM N.V (Opponent II), on 14 May 1997, on the grounds of lack of novelty and lack of inventive step inventive step (Article 100(a) EPC), and of Article 100(b) EPC. The objection under Article 100(b) EPC was, however, withdrawn at the oral proceedings of 23 November 2000.

The objections were supported *inter alia* by the following documents:

D1: JP-A-1-153 710 (English translation);

D2: EP-A-0 114 982;

D3: EP-A-0 157 396;

D4: JP-A-63 281 109 (English translation);

D5: EP-A-0 194 891;

D6: JP-A-63-275 619 (English translation);

D9a: Technical Data Sheet of Cablelite 950-700, dated September 1988;

D9b: Technical Data Sheet of Desolite 3036-114E; dated September 1983; and

D12: EP-A-0 270 854.

III. By a decision announced orally on 23 November 2000, and issued in writing on 5 December 2000, the Opposition Division held that the grounds of opposition did not prejudice the maintenance of the patent in amended form. The decision was based on the following requests of the Patent Proprietor:

(i) A main request consisting of the set of Claims 1 to 34 as granted,

(ii) A first auxiliary request consisting of a set of Claims 1 to 34, filed during the oral proceedings of 23 November 2000; and

(iii) A second auxiliary request consisting of a set of Claims 1 to 32, also filed at the oral proceedings of 23 November 2000.

The first auxiliary request differed in substance from the main request in that the proviso that "when component (b) is a C_6-C_{12} hydrocarbon diol diacrylate or methacrylate compound component (c) is not 7-18C alkyl acrylate or methacrylate" had been incorporated in independent Claim 1 and that Claim 2 had been drafted as an independent claim incorporating the features of granted Claim 1 and of granted Claim 2.

The second auxiliary request differed from the main request in that in Claim 1 the component (a) had been

restricted to "an aliphatic polyether-based silicone-modified urethane acrylate", i.e. the features of granted Claim 2 had been incorporated in Claim 1 and the remaining claims had been renumbered accordingly.

The decision stated that comparative Example 3 of document D6 described a material as defined in Claim 1 of the patent in suit, and that the intended use of the material of Claim 1 could not establish the novelty of said material. Consequently, the main request was refused.

Concerning the first auxiliary request, the decision held that Claim 1 thereof did not meet the requirements of Article 123(2) EPC since the proviso had no basis in the application as filed or in document D6.

The decision stated that the subject-matter of Claim 1 of the second auxiliary request was novel, since none of the documents cited by the parties described a composition comprising an aliphatic polyether-based silicone-modified urethane acrylate in combination with compounds (b) and (c) as defined in Claim 1.

Concerning inventive step, document D1, which dealt with matrix material for optical fibers, was considered as the closest state of the art. Starting from D1, the technical problem was seen as the provision of a radiation curable matrix material for inked optical fibers, said matrix material being resistant to breakout failure, i.e. to the removal of the ink from coated, coloured fibre when the matrix material is stripped. The matrix material should be moisture and solvent resistant and non yellowing and should exhibit

thermal, oxidative and hydrolytic stability, ease of stripping, fast cure and resistance to failure during cabling.

The decision stated that D1 did not mention the problem of breakout failure. It also held that, even if the composition of the products Cabelite 950-700 and Cabelite 950-701 would have been known before the priority date of the patent in suit and even if it would have been known that these components might solve a partial problem of the patent in suit, this would not suggest to combine such component with components (b) and (c) as defined in Claim 1 to solve the technical problem.

The decision further stated that the other documents cited did not deal with matrix compositions.

Thus, the Opposition Division came to the conclusion that the subject-matter of the second auxiliary request involved an inventive step.

IV. Notices of Appeal were filed on 15 February 2001 by both the Appellant I (Patent Proprietor) and the Appellant II (Opponent II). The prescribed fees were paid on the same day by Appellant I and Appellant II.

V. With the Statement of Grounds of Appeal filed on 12 April 2001, Appellant I maintained its main request and its first auxiliary request. It submitted a set of 78 claims representing a second auxiliary request, and made the second auxiliary request presented at the oral proceedings before the Opposition Division its third auxiliary request.

The Appellant I argued essentially as follows:

(i) Concerning the main request:

(1) The composition according to Comparative Example 3 of D6 contained 23,1% by weight of diluting monomer. This amount was greater than the maximum permitted amount of component (c) of the composition.

(2) The Polymer A-2 used in Comparative Example 3 contained unreacted hydroxy groups and was not an aliphatic polyether based urethane acrylate.

(3) The intended use in Claim 1 did have a limiting effect on the claim and the material must have inherent properties which were required for this use. It was clear that adhesion and stripping properties were dependent on the amount of component (c). Compositions which contained components other than or in addition to those specified in Claim 1 might not meet this requirement.

(4) Thus, Claim 1 of the main request was not anticipated by comparative Example 3 of D6.

(ii) Concerning the first auxiliary request:

(1) The overlap between Comparative Example 3 of D6 and the invention claimed in granted Claim 1 was accidental since there was no

indication that the composition of comparative Example 3 of D6 had any properties which would have made it useful as a matrix material having strippability.

(2) Thus, the amendment made in Claim 1 was admissible.

(iii) Concerning the second auxiliary request:

(1) The claims were fairly based on and supported by the application as originally filed and furthermore were believed not to infringe Article 123(3) EPC.

(2) The claims related to an invention which was neither anticipated nor rendered obvious by the prior art documents in the proceedings.

(iv) The third auxiliary request corresponded to the request found allowable by the Opposition Division.

VI. The arguments submitted by Appellant II in the Statement of Grounds of Appeal filed on 13 April 2001 may be summarized as follows:

(i) The Opposition Division was wrong in its conclusion concerning inventive step of the second auxiliary request submitted at the oral proceedings of 23 November 2000.

(ii) Document D1 clearly suggested using silicone modified polyether polyol in the manufacture of an aliphatic silicone-modified polyether urethane acrylate.

(iii) The only objective problem to be solved in view of D1 was the improvement of breakout properties.

(iv) It was however known from document D12 that matrix materials could be made from a UV-curable silicon acrylate and that silicon acrylate improved the break out properties.

(v) It was further known that the commercial product Cabelite 950-700, which was based on an aliphatic polyether silicone urethane acrylate, exhibited good breakout properties.

(vi) Thus, the skilled person would have chosen within the teaching of D1, a silicone modified polyether urethane acrylate based on an aliphatic isocyanate to solve the technical problem.

(vii) The same reasoning would apply to D6, since this document also mentioned the use of polyether siloxane in the manufacture of the urethane oligomer.

VII. In response to the arguments presented by Appellant I in the Statement of Grounds of Appeal, Appellant II, in its letter dated 2 November 2001, argued essentially as follows:

(i) Concerning the main request:

(1) The polymer A-2 used in D6 was clearly an aliphatic polyether based urethane acrylate.

(2) According to Claim 1 of the main request, the amount of components (a), (b), (c), and (d) weight was based on components on the sum of (a) + (b) + (c) + (d).

(3) The amounts of components (a), (b), (c) and (d) in Comparative Example 3 of D6 were within the claimed ranges.

(4) The intended use could not confer novelty. The properties were the inherent result of the composition. Thus, the composition of D6 would have the same properties.

(5) Furthermore working Example 2 of D6 and the disclosure of D1 were novelty destroying.

(ii) Concerning the first auxiliary request:

(1) The amendment in Claim 1 was not based on D6 or on the application as filed.

(2) D6 belonged to the same field as the contested patent.

(iii) Concerning the second auxiliary request:

The claims of this request did not comply with the EPC, in particular because they lacked conciseness and the subject-matter of certain of them also lacked inventive step.

VIII. With its letter dated 5 November 2001, Appellant I filed observations in response to the Grounds of Appeal provided by Appellant II. It argued essentially as follows:

(i) Document D1 did not address the problem of breakout failure. It dealt with a different problem, i.e. how to reduce the friction coefficient between fiber bundles.

(ii) Document D12 did not refer to aliphatic polyether based silicone urethane coating as defined in the patent in suit.

(iii) On the basis of the information contained in the Cabelite products sheets (cf. D9), the skilled person would not be led to consider that the Cabelite material might be useful in the compositions of D1.

IX. In a communication dated 6 June 2003 and annexed to a summons to Oral Proceedings to be held on the 2 October 2003, the Board presented its provisional view concerning the main request and the three auxiliary requests as submitted by Appellant I with the Statement of Grounds of Appeal.

X. With its letter dated 27 June 2003, the Respondent (Opponent I) informed the Board that it would not attend the Oral Proceedings scheduled for the 2 October 2003.

XI. Oral proceedings were held on 2 October 2003.

(i) The arguments presented by Appellant I at the Oral Proceedings may be summarized as follows:

(1) Concerning the main request:

(1.1) The matrix material should be hard and resilient. Although the term "comprising" was used in the language of Claim 1 for defining the matrix material, these requirements excluded the presence of components which might degrade these properties. In that respect, Comparative Example 3 of D3 contained an amount of diluting acrylate monomer which was outside the range defined for component (c) in Claim 1 of the main request. This would influence the hardness and the resiliency of the composition.

(1.2) The indication of the intended use of the composition had indeed a limiting effect on the subject-matter of Claim 1.

(1.3) The term "tape fibers coating" used in D6 (cf. page 1, lines 21 to 23; page 2, lines 3 to 5), had the same meaning as matrix material. Thus, D6 also referred to a matrix material.

(1.4) It was further clear from D6 that the hard material which might be used as matrix material should exhibit a specific behaviour in terms of change of its Young's modulus with the temperature in the ranges -40°C to 25°C and 25°C to 60°C (cf. page 2, line 20 to page 3, line 4).

(1.5) It was no longer contested that the Polymer A-2 used in Comparative Example 3 of D6 would fall under the definition of component (a) of Claim 1 of the main request. It was, however, evident from Table 1 of D6 that the material of Comparative Example 3 would not be suitable as a matrix material, since it did not fulfil the requirements set out in D6 for the Young's modulus for such use.

(1.6) It thus followed, that Comparative Example 3 of D6 could not destroy the novelty of the subject-matter of Claim 1 of the main request.

(2) Concerning the first auxiliary request:

(2.1) It was conceded that the proviso incorporated in Claim 1 was broader in scope than that was disclosed in Comparative Example of D6.

(2.2) It aimed, however, to avoid an overlap between the subject-matter of Claim 1 and D6.

(2.3) Thus, the proviso should be considered as a disclaimer.

(ii) The Appellant II argued essentially as follows:

(1) Comparative Example 3 of D6 was indeed novelty destroying for the subject-matter of Claim 1 of the main request.

(2) The respective amounts of Polymer A-2 (i.e. an aliphatic polyether-based urethane acrylate), of tricyclodecane dimethanol diacrylate, of isobornyl acrylate and of 1-hydroxycyclohexyl phenyl ketone in this Example were within the ranges defined for components (a), (b), (c) and (d) in Claim 1 of the main request.

(3) This composition would therefore also be suitable as a matrix material.

(4) The proviso incorporated in Claim 1 of the first auxiliary request had no basis in the application as filed.

(5) It did not meet the requirements for an allowable disclaimer, since, on the one hand, it did not excise the exact content of Comparative Example 3 of D6 and since, on the other hand, D6 belonged to the same technical field as the patent in suit.

XII. The Appellant I requested that the decision under appeal be set aside, and the patent be maintained as granted (main request), or alternatively on the basis of the first auxiliary request as submitted during the oral proceedings of 23 November 2000, or on the basis of the second auxiliary request as submitted with the Statement of Grounds of Appeal, or on the basis of the third auxiliary request as submitted with the Statement of Grounds of Appeal.

The Appellant II requested that the decision under appeal be set aside and that the patent be revoked.

Reasons for the Decision

1. The appeals are admissible.

Main request

2. The main request corresponds to the main request on which the decision of the Opposition Division was based, and which was refused by the Opposition Division on the

grounds of lack of novelty of the subject-matter of Claim 1 in view of Comparative Example 3 of D6. Thus, the question boils down as to whether the decision of the Opposition Division was correct in that respect.

3. *Novelty*

3.1 Document D6 deals with compositions for optical fiber coatings and specifically with hard material compositions which can be used as tape fibers coating i.e. as matrix material (cf. D6; page 2, lines 2 to 4). The compositions for the hard material are radiation curable and exhibit as cured material a sufficient hardness and flexibility, i.e. a high Young's modulus and a high elongation (cf. page 2, lines 5 to 10). In its Comparative Example 3, document D6 discloses a liquid radiation curable composition comprising:

45 g of Polymer A-2 (an aliphatic polyether based urethane acrylate), i.e. a compound falling under the definition of the component (a) according to Claim 1 of the main request,

25 g of tricyclodecane dimethanol diacrylate, i.e. a compound falling under the definition of component (b) according to Claim 1 of the main request;

12 g of isorbornyl acrylate, i.e. a compound falling under the definition of component (c) according to Claim 1 of the main request, and

3 g of 1-hydroxycyclohexyl phenyl ketone, i.e. a compound falling under the definition of component (d) according to Claim 1 of the main request.

3.2 It must therefore be concluded that D6 discloses a liquid radiation curable composition comprising:

52,94 wt% of component (a),
29,41 wt% of component (b),
14,12 wt% of component (c) and
3,53 wt% of component (d) the percentages being based on the sums of (a), (b), (c) and (d); and
that this composition falls under the scope of the composition defined in Claim 1.

3.3 While it is true that a claim to a composition for a particular use (i.e. in the present case as a matrix material) should be construed as meaning a composition, which is in fact suitable for the stated use, a known composition which is in a form in which it is in fact suitable for the stated use, would deprive the claim of novelty.

3.4 In the present case, it is immediately evident that the composition disclosed in comparative Example 3 of D6 is in a form in which it is suitable for the stated use, since it is in liquid form and radiation curable.

3.5 The argument of the Appellant I that the composition of Comparative Example 3 comprises in addition a further acrylate monomer (i.e. dicyclopentenyl acrylate) and that this would lead to a composition not having the requested hardness and resiliency to be used as a matrix material cannot be pertinent for the assessment

of the novelty of the subject-matter of Claim 1, since the term "comprising" used in the language of Claim l does not exclude the possibility that other components be present in the composition, and since Claim 1 contains no requirement in terms of hardness and of resiliency.

3.6 The same conclusion applies for the further argument of the Appellant I that the composition of Comparative Example 3 is not suitable as matrix material, since it does not fulfil the requirements set out on page 3, lines 1 to 4 of D6 in terms of temperature dependency of the Young's modulus of the hard material for such application, for the following reasons:

3.6.1 It is clear from D6 (cf. page 2, line 27) that the criteria set out on page 3, lines 1 to 4 represent particularly preferred requirements to be met by the hard material. Thus, the fact that the composition of Comparative Example 3 does not fulfil this high quality standard does not mean that it cannot be at all used for matrix compositions with less stringent requirements in terms of temperature dependency of the Young's modulus.

It is further clear that the aim of the Comparative Examples of D6 is indeed precisely to bring to the light the improvements achieved in matrix materials by the compositions prepared according to D6 in comparison to those of the prior art at the time of D6.

3.6.2 In this connection, the composition of Comparative Example 3 of D6 exhibits a Young's modulus at 23°C and an elongation of the same order as some of the most

preferred compositions of D6 (cf. Table 1; Examples 2 and 4, Comparative Example 3), so that it is clear that it will fulfil the requirements in terms of hardness and flexibility for a suitable, admittedly less highly performing, matrix material (cf. D6, page 2, lines 9 to 10).

3.6.3 Furthermore, it is noted by the Board that the cured matrix material according to the patent in suit should merely exhibit a modulus of at least 6.9 MPA at 23°C (cf. page 6, lines 38 to 39 of the patent in suit)), while the material of Comparative Example 3 shows a modulus of 530 MPA at 23°C, i.e. well above the value mentioned in the patent in suit. Consequently, there can be no doubt that the composition of comparative Example 3 of D6 will fulfil the requirements set out in the patent in suit in terms of Young's modulus for a suitable matrix material.

3.7 It thus follows from the above that Comparative Example 3 of D6 destroys the novelty of the subject-matter of Claim 1 of the main request (Article 54(1)(2) EPC), and that, by way of consequence, the main request as a whole must be refused.

First auxiliary request

4. *Article 123(2) EPC*

4.1 Claim 1 of the first auxiliary request differs from Claim 1 as granted in that the proviso that "when component (b) is a C_6-C_{12} hydrocarbon diol diacrylate or methacrylate component (c) is not 7-18C alkyl acrylate or methacrylate" has been incorporated therein.

4.2 It is further clear in view of the arguments presented by the Appellant I that this proviso is intended to exclude overlapping disclosure in document D6, which belongs to the state of the art according to Article 54(2) EPC. Thus, this proviso amounts to a negative feature excluding specifically defined embodiments from the scope of Claim 1, i.e. to a "disclaimer".

4.3 In this connection, the Boards of Appeal have in the past allowed under Article 123(2) EPC the introduction of a disclaimer having no support in the application as filed which is precisely defined and limited to the prior art disclosure into a claim in order to make the claimed subject-matter novel by delimiting it against this prior art disclosure, provided this disclosure is an "accidental" anticipation (cf. e.g. T 863/96 of 4 February 1999, not published in OJ EPO).

4.4 However, the hitherto established practice and jurisprudence on disclaimers have now been fundamentally and very generally called into question in the decision T 323/97 (OJ EPO 2002, 476). After having considered the existing jurisprudence on the requirements for the allowability of disclaimers, it was held in this decision that an amendment to a patent by the introduction of a negative technical feature into a claim resulting in the exclusion of certain embodiments was, regardless of the name "disclaimer" nonetheless an amendment governed by Article 123(2) EPC. This meant that the amended claim had to find support in the application as filed (point 2.2 of the reasons).

4.5 The Board is further aware that Board 3.3.5 has referred in case T 507/99 of 20 December 2002 (OJ EPO, 2003, 225) the following questions to the Enlarged Board of Appeal (referral G 1/03):

1. Is an amendment to a claim by the introduction of a disclaimer unallowable under Article 123(2) EPC for the sole reason that neither the disclaimer nor the subject-matter excluded by it from the scope of the claim have a basis in the application as filed?

2. If the answer to question 1 is no, which criteria are to be applied in order to determine whether or not a disclaimer is allowable?

   (a) In particular, is it of relevance whether the claim is to be delimited against a state of the art according to Article 54(3) EPC or against a state of the art according to Article 54(2) EPC?

   (b) Is it necessary that the subject-matter excluded by the disclaimer be strictly confined to that disclosed in a particular piece of prior art?

   (c) Is it of relevance whether the disclaimer is needed to make the claimed subject-matter novel over the prior art?

   (d) Is the criterion applicable that the disclosure must be accidental, as established by prior jurisprudence, and, if

yes, when is a disclosure to be regarded as being accidental, or

(e) is the approach to be applied that a disclaimer which is confined to disclaiming the prior art and has not been disclosed in the application as filed is allowable under Article 123(2) EPC, but that the examination of the subject-matter claimed for the presence of an inventive step has then to be carried out as if the disclaimer did not exist?

4.6 Although it might be established in the present case:

(i) that the disclaimer incorporated in Claim 1 has no support in the application as originally filed,

(ii) that the disclaimer is so broadly defined that it disclaims much more than the specific content of the Comparative Example 3 of D6, out of the considerable number of compositions encompassed by Claim 1; and that

(iii) Comparative Example 3 of D6 does not represent an accidental anticipation, since document D6 belongs to the same technical field (matrix material for optical fibers) as the patent in suit,

so that the disclaimer made in Claim 1 would have met neither the requirements set out in T 863/96 nor those set out in T 323/97 for such amendment,

the Board, in view, in particular, of the questions 1, 2(b) and 2(c) referred to the Enlarged Board of Appeal in the decision T 507/99 by the Board 3.3.5 has to come the conclusion that the question whether or not the disclaimer incorporated in Claim 1 of the first auxiliary request meets the requirements of Article 123(2) EPC cannot be decided until the decision of the Enlarged Board of Appeal in the case G 1/03 is known.

4.7 Consequently, the proceedings will be continued in writing and the next procedural step will be taken by the Board after the decision of the Enlarged Board of Appeal in case G 1/03 is known.

Order

For these reasons it is decided that:

1. The main request of Appellant I is refused.

2. The proceedings will be continued in writing.

The Registrar: The Chairman:

E. Görgmaier R. Young