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D E C I S I O N
of 15 October 2002

Case Number: T 1042/01 - 3.2.6

Application Number: 94901121.7

Publication Number: 0674562

IPC: B23C 3/00

Language of the proceedings: EN

Title of invention:

A method and a tool for producing holes in fibre reinforced composites by moving the tool eccentrically

Patentee:

Novator Aktiebolag

Opponent:

Aerospatiale Matra Airbus

Headword:

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Relevant legal provisions:

EPC Art. 114(2)

R. 72(2)

Keyword:

"Appeal admissible (yes); New facts and evidence relating to prior use making an entirely fresh factual case on appeal (disregarded pursuant to Article 114(2) EPC)"
"Request to hear witness (dismissed)"

Decisions cited:

G 0009/91, G 0010/91, T 0389/95

Catchword:

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Case Number: T 1042/01 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 15 October 2002

Appellant: Aerospatiale Matra Airbus
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Respondent: Novator Aktiebolag
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 26 July 2001
rejecting the opposition filed against European
patent No. 0 674 562 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: H. Meinders
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. By a decision of 25 June 2001, sent to the parties on 26 July 2001, the Opposition Division rejected the opposition against European patent 0 674 562.

II. The wording of claim 1 as granted is as follows:

"Method for producing a hole in a workpiece consisting of a fibre-reinforced composite material (1), the central axis of which hole passes through a predetermined point on the surface of the workpiece and is oriented in a certain determined direction in relation to the longitudinal directions of the fibres in the immediate vicinity of said point, wherein at least one cutting tool (3) with a wear-resistant surface (4) is positioned eccentrically in relation to the aforementioned central axis, and wherein the material is machined simultaneously in both an axial and a radial sense by causing the tool to describe an axial motion and to rotate not only about its own axis (5), but also eccentrically about the central axis, and wherein the axis of rotation (5) of the tool is essentially orthogonal in relation to the longitudinal directions of the fibres in the immediate vicinity of the aforementioned point, and wherein the diameter of the tool is substantially smaller than the diameter of the hole that is produced."

III. In the opposition proceedings the following documents were relied upon by the opponent for arguing lack of inventive step of the subject-matter of claims 1 to 10 of the patent in suit raised as sole ground of opposition:

- E1: EP-A-0 178 072
- E2: Part of the brochure "Tête de rectification planétaire à moteur électrique incorporé", marked by hand: "commercialisée depuis 1971"
- E3: D. Gay, "Matériaux composites", 1989
- E4: Part of the brochure "A300 STRUCTURAL REPAIR MANUAL", excerpts June 1978 and March 1984
- E5: FR-A-2 684 583
- E6: Brochure SHW Publication No. 102f, July 1965
- E7: Part of brochure "Tête de rectification planétaire à moteur électrique incorporé", undated
- E8: Part of Publication "Pratique des matériaux industrielles", September 1990, December 1990.

The patentee introduced the following documents in the opposition proceedings:

- D9: R.A. Garrett, "Effect of defects on aircraft composite structures", McDonnell Aircraft Co., undated
- D10: J.J. Pengra, R.E. Wood, "The influence of hole quality on graphite epoxy composite laminates", Lockheed-California Co., 1980
- D11: S.-C. Lin, J.-M. Shen, "Drilling unidirectional glass fibre reinforced composite materials at high speed", Journal of Composite Materials, Vol. 33,

No 9/1999.

IV. An appeal was filed and the appeal fee was paid by the opponent on 24 September 2001. The statement of grounds of appeal was received by the EPO on 26 November 2001.

The statement of grounds of appeal contained the objection of lack of inventive step of the subject-matter of claims 1 to 10 of the patent in suit as sole ground of opposition, supplemented by the following documents:

E12 to E25 and E30 to E34 being documents relating to a number of different alleged prior uses consisting of the sale, by the company "Le Creneau Industriel", of machines allegedly capable of milling by helicoidal interpolation to a number of firms and the alleged public use of those machines in these firms for helicoidal milling of holes in fibre-reinforced composite materials.

As patent documents the following were filed:

E26: GB-A-2 084 057

E27: US-A-5 076 740

E28: FR-A-2 590 191

E29: DE-A-4 010 075.

In the statement of grounds of appeal reference was also made to documents E3 and E4, as well as to video tapes, relating to the above-mentioned prior uses. Of the latter, however, no copies were supplied with the

grounds of appeal. The testimony of witnesses in respect of these prior uses was offered as well.

V. With the annex to the summons to oral proceedings dated 8 July 2002 the Board expressed its preliminary opinion that the appeal appeared to be admissible and that the legal framework set with the opposition appeared to have been maintained on appeal. However, the introduction of a completely new line of argumentation based on lack of inventive step in respect of the newly filed prior uses appeared to change the factual framework of the opposition entirely. The Board declared its intention to disregard these facts and evidence pursuant to Article 114(2) EPC. While referring to decision T 389/95 (not published in OJ EPO) it noted that as a consequence the appeal would be without substantive merit and would have to be dismissed.

VI. By a letter of 28 August 2002 the Appellant notified the Board that it would bring along to the oral proceedings the witnesses indicated in the statement of grounds of appeal. By a letter of 6 September 2002 the Appellant supplied the videotapes it had referred to in its statement of grounds of appeal and requested to hear one of the proposed witnesses because of "indispensable confirmation of highly relevant facts and evidence in support of the appeal".

The Board replied in a letter of 16 September 2002 that in view of its preliminary opinion it did not intend to hear the witness, therefore had not taken a decision to that effect and that in any case the time limits for summoning the witness pursuant to Rule 72(2) EPC were to be observed.

Oral proceedings took place on 15 October 2002.

VII. The Appellant argued essentially as follows:

The appeal was not introducing a completely new factual framework as it also referred to documents (E3 and E4) which had been introduced in opposition. The new facts and evidence should be admitted on appeal as they related to public prior uses which were *prima facie* highly relevant for the subject-matter of the claims of the patent in suit. In that respect it requested the Board to adjourn the oral proceedings such that a hearing of its witness, summoned in due time as required by Rule 72(2) EPC, could take place. The witness would be able not only to confirm the prior uses as alleged, but also to supplement these with information concerning the machines sold, the types of material milled as well as to confirm the highly pertinent nature of these prior uses.

In considering the relevance of the facts and evidence submitted on appeal the Board should examine the evidence submitted in support of the prior uses as a **whole** and not each of the prior uses **individually**. The declaration of Mr Basso (E12) and Mr Kets (E34) was considered sufficient proof that the machines for milling by helicoidal interpolation had actually been sold, delivered and used according to the method of claim 1. Unless there was information to the contrary it should be assumed that these machines were not kept away from the public and that thus the operations performed on these machines were public. Also from the other evidence supplied it was clear that holes were to be drilled by these machines while performing the method as claimed in claim 1. Clients normally sent

drawings such as E13 to "Le Creneau Industriel" so as to show which kind of product they intended to produce by milling via helicoidal interpolation and to receive the necessary programming for the numerical control of the machine supplied by that company.

The videos should be admitted as evidence in these appeal proceedings because they clearly showed a number of the machines for drilling by helicoidal interpolation as had been the subject of the prior uses brought forward on appeal. The recording date prior to the priority date of the patent in suit could be deduced from the fact that on the same tape a recording was made of a Sukhoi aircraft presented at the "Le Bourget" air show of 1989.

The reason for the lateness of filing the facts and evidence relating to the prior uses lay in the fact that although in the opposition proceedings it suspected that such evidence had to be available somewhere, the opposition period had not been sufficiently long to find and collect such material. Only just after the opposition division took the decision did it receive the necessary evidence, which was then filed in appeal.

On the basis of this new evidence it was clear that the subject-matter of claim 1 lacked inventive step over the method as performed in these prior uses. It therefore requested revocation of the patent.

VIII. The Respondent objected to the complete change in the factual framework of the opposition as made on appeal. Firstly there was no excuse for the late filing of the facts and evidence relating to the prior uses; no

opponent was limited to only the opposition period to search for useful material. After publication of the application there had been ample time for the opponent to collect such material, all the more so since the main claim had not been amended in substance during the examination proceedings.

Secondly, the facts and evidence produced on appeal were not of such a highly pertinent nature as required by the Enlarged Board of Appeal in its decisions G 9/91 and 10/91 (OJ EPO 1993, 408, 420), so as to warrant admittance in the appeal proceedings. For none of the allegedly sold milling machines was it immediately evident that the method as claimed 1 had actually been performed, let alone on fibre-reinforced composite material, before the priority date of the patent in suit. Closer scrutiny of these prior uses revealed that in every one of them a number of important features were missing or that questions remained unresolved. If such machines were actually sold and produced for the claimed purpose as declared by Mr Basso (E12), it was at least unusual that no brochures, product descriptions, machining instructions, etc. were available. For instance, the text "Micasilicone" had been added to the faxed drawing E13, without it being clear that the addition bore the same date as the fax. Further, according to E34, the claimed method of drilling had been applied at "Strativer" to fibre-reinforced composite material to be supplied to Eurocopter, Aérospatiale and Dassault. In view of the fact that these companies are all involved in defense contracts it could hardly be imagined that the actual production was accessible to the public.

There was also no acceptable excuse for the late

filing, only one month before the oral proceedings, of the videotapes. These should have been filed together with the appeal, if at all. The quality of these videotapes was poor. If there was a recording of a Sukhoi aircraft on the tape subsequent to the recording of the drilling machines of "Le Creneau Industriel" , this could not prove anything as any videotape could be re-recorded in such a way.

All in all, the pertinence of the evidence presented as a whole could not be assessed and the prior uses, therefore, could not be considered sufficiently substantiated to prove the alleged facts. Thus dismissal of the appeal was requested. In case the Board considered admitting the facts and evidence submitted with the appeal, it requested remittal to the first instance for considering it and an apportionment of the costs unnecessarily incurred for the oral proceedings before the Board.

Reasons for the Decision

1. Admissibility of the appeal

- 1.1 In the statement of grounds of appeal entirely new evidence was filed (E12-E34) relating to alleged sales of helicoidal interpolation milling machines by the firm "Le Creneau Industriel" and to alleged performance of the method according to claim 1 by these machines. These alleged prior uses had not been mentioned in the preceding opposition proceedings. They were submitted in order to support the ground of opposition of lack of inventive step, which was also raised in the original opposition. Thus the legal framework of the opposition

has been maintained.

The present submission of new facts and evidence is, however, after expiry of the opposition period and therefore counts as late filed. Pursuant to Article 114(2) EPC their admissibility in the appeal proceedings depends upon the discretion of the Board.

- 1.2 The issue of the change in the factual framework of the preceding opposition proceedings as raised by the Respondent is one of fact to be determined objectively as part of the substantive examination of the appeal. Such an examination can by its nature only take place after the appeal has been considered admissible (see also T 389/95, *supra*).

For the purposes of admissibility of the appeal all formal conditions, in particular those of Article 108 EPC are met.

2. *Admissibility of the video tapes*

- 2.1 Two video recordings allegedly showing a number of milling machines as sold by "Le Creneau Industriel" while performing the method claimed in claim 1 of the patent in suit were indicated as means of evidence in the statement of grounds of appeal. Actual copies thereof were, however, only filed with letter of 6 September 2002, i.e. approximately one month before the oral proceedings before the Board, which is more than 9 months after the filing of the statement of grounds of appeal in which filing of these tapes was announced.

- 2.2 According to the principles developed by the Enlarged

Board of Appeal in its decisions G 9/91 and 10/91 (*supra*) the later evidence is supplied, the more evident should be its relevance so as to lead to their formal introduction into the appeal proceedings.

If a party offers videotapes as evidence of a number of prior uses at a very late stage in the proceedings and these tapes each have a duration of more than two hours, as in the present case, this party should at least indicate on which specific locations on the videotape the relevant features of which prior use can be observed, so as to allow the Board to assess their *prima facie* relevance, without having to have recourse to time-consuming investigations of its own motion. The Appellant failed to do so, be it in the statement of grounds of appeal or in the letter of 6 September 2002 accompanying the videotapes.

2.3 The Appellant further argued that the recordings were made before the priority date of the patent in suit, as they also included images of a Sukhoi aircraft presented at the "Le Bourget" air show of 1989. The Board considers that, even if that were the case, this evidence is unsuitable as proof of the alleged facts in the absence of further convincing evidence, because different consecutive scenes on a camcorder tape do not necessarily imply that they were recorded on the same day or within a short period of time.

2.4 The Appellant further argued that on the tapes a Mr Pascal Joan could be recognised, an employee of "Le Creneau Industriel", who had left that firm in 1999. However, Mr Joan has not been proposed as witness to testify to the date of recording the video, the technical features of the machines filmed or the

circumstances of these prior uses.

2.5 For the above reasons the Appellant has not put the Board in a position to assess the evidential value of these videotapes, let alone to determine whether their contents are "prima facie highly relevant" as is necessary to admit them at such a late stage in the proceedings. The videotapes are therefore disregarded pursuant to Article 114(2) EPC.

3. *Consideration of the facts and evidence as submitted with the statement of grounds of appeal*

3.1 In its statement of grounds of appeal the Appellant discussed a large number of documents (E12 to E25 and E30 to E34) filed four days after that statement, relating to the alleged sale of a number of milling machines by the company "Le Creneau Industriel" to 5 different companies and to the use to which these machines were allegedly put, as being relevant for the assessment of inventive step of the subject-matter of claim 1.

Late filed documents E26 to E29 submitted with the grounds of appeal were cited only as further evidence in respect of lack of inventive step of the subject-matter of the dependent claims and need not be further considered in view of the outcome of this appeal.

3.2 It was not disputed that neither the documents E12 to E25 and E30 to E34, nor the alleged prior uses themselves, had been relied upon in the opposition proceedings. The Appellant gave as reason for the late filing of this evidence the fact that the opposition period had not been sufficiently long to find and

collect the necessary material.

Although under certain circumstances late-filed facts and evidence may be admitted as late as in appeal proceedings, it has to be pointed out that such proceedings are clearly not intended to extend the 9-month opposition period of Article 99 EPC. Therefore, in line with the case law of the Boards of Appeal, the reasons for the late filing should be examined to ensure that the Appellant acted in good faith and that the delay in filing the facts and evidence was not due to failure on the part of the Appellant.

When considering the documents E12 to E25 and E30 to E34, the Board finds no indication why these documents could not have been filed earlier, namely in the ongoing opposition proceedings. This is all the more so since the Appellant, according to its statement in the oral proceedings before the Board, was already at an early stage of the opposition proceedings aware of the suitability of the milling machines of "Le Creneau Industriel" for helicoidal milling of holes, i.e. of the alleged highly relevant nature of these machines and the type of milling they could perform. Thus it cannot be excluded that negligence on the part of the Appellant caused the delay.

- 3.3 Further, an opponent is not limited to the 9-month opposition period to prepare his case against a patent. The mention of the grant of the patent took place on 13 January 1999, the communication expressing the intention to grant the patent was, however, already issued in March 1998. Thus the Appellant could have been aware of the subject-matter of the claims to be granted already 10 months earlier.

Thus, considering the documents in question and the absence of credible reasons why these difficulties existed only during the opposition proceedings but were no longer present when filing the appeal, the Board concludes that there is no excuse for the late filing of the facts and evidence relating to the alleged prior uses.

- 3.4 Considering now the alleged prior uses in substance, the Appellant argued in its statement of grounds of appeal that the integral collection of evidence in respect of these prior uses provided sufficient indication that the machines allegedly sold possessed all the technical features to not only make them **capable** of performing the method as claimed in claim 1, but that in fact **they had been publicly used** as claimed, prior to the priority date of the patent in suit. It submitted that except for the use of a wear resistant surface on the cutting tool all features of claim 1, including those related to the orientation of the fibres orthogonal to the axis of rotation of the tool and to the axis of the hole, had been available to the public. Using wear resistant tools, however, was well-known to the skilled person in this field, as was also recognised in the patent in suit.

The Board can only conclude from these submissions that the argumentation relied upon is not a further development of the case as brought forward in opposition and based upon documents E1 to E11. Instead of filling in gaps in the argumentation or in the evidence as have become evident from the decision under appeal, rather an entirely new factual framework for the opposition is set up in the grounds of appeal, consisting of an entirely new complex of facts and

evidence.

- 3.5 The appellant countered that the factual framework was not entirely new as it had referred, in the statement of grounds of appeal, to documents E3 and E4 of the opposition proceedings.

Such a formal reference to documents already presented in the opposition proceedings are in the Board's opinion not suitable to support the argument as these documents do not form the substantive basis for the inventive step objections made in the statement of grounds of appeal, but are only used as **auxiliary** support for the argument that if a hole is made in panels consisting of layers of fibre-composite material, generally the axis of rotation of the tool making the hole would be perpendicular to the longitudinal direction of the fibres and the axis of the hole itself would pass through the surface of the pane and have a particular direction in respect of the longitudinal direction of the fibers, as claimed in claim 1.

- 3.6 In considering late filed facts and evidence forming a fresh factual basis to the opposition in appeal the Board concurs with the approach chosen by Board 3.5.2 in decision T 389/95 (*supra*, see point 2.14 of the Reasons), stating: "facts, evidence and arguments constituting an entirely fresh factual case on appeal should normally be disregarded pursuant to Article 114(2) EPC unless convergence of the debate is guaranteed, e.g. by a manifestly unanswerable challenge to the validity of the opposed patent, necessarily resulting in restriction or revocation of the patent. Furthermore the conclusiveness of the challenge should

normally be manifest from the statement of grounds of appeal."

In respect of the plurality of prior uses the Appellant argued in essence that the Board should assess the relevance of the mass of evidence **as a whole** and not of each alleged prior sale and/or -use individually.

- 3.7 The Board considers such a basis for the examination of alleged facts and evidence to be wrong, as it does not do justice to the principles developed by the Boards of Appeal in connection with claims of prior use (see Case Law Boards of Appeal, fourth edition, 2001, Chapter VII.C-8.6.1). For such a claim to be considered by a Board it has to be substantiated, i.e. it should be presented in such a way that it is readily apparent how the prior use occurred. Details should be given of **what** was made available to the public, **where**, **when**, **how** and by **whom**. In the present case this can only be done properly when each prior use is taken **individually**.

Thus, already the necessary convergence of the debate is not guaranteed by the manner in which the Appellant has presented its facts and evidence.

- 3.8 In fact the Appellant expects the Board to sift through the facts and evidence presented so as to determine what are the relevant details for each of the different prior uses.

However, that is not the duty of the Boards of Appeal, as is clear from decision G 9/91 (*supra*, point 18 of the Reasons) indicating that the judicial appeal proceedings are less investigative than the administrative opposition proceedings. Moreover, the

appellant's expectation goes against the principle that opposition proceedings are *inter-partes* proceedings in which it is primarily the party's responsibility to present its case in a complete and consistent manner.

3.9 In application of these principles, the Board has limited its examination of the question whether the facts, evidence and arguments as presented with the statement of grounds of appeal are "*prima facie* so highly relevant" that validity of the patent is manifestly at stake to the following two prior uses as they appear to be the only ones for which some evidence of a **public disclosure** of the method as claimed in claim 1 was produced and which were discussed during the oral proceedings before the Board because of their potential relevance.

3.10 *Prior use Techni-Plastic/Technibois*

3.10.1 The Appellant argued that "Le Creneau Industriel" had sold, prior to the priority date of the patent in suit, a milling machine with a numerical control NUM 750 as evidenced by the invoice E18 dated 31 July 1987 and the payment sheet E19, to the company Techni-Plastic/Technibois. Such a machine was capable of milling by helicoidal interpolation, as shown in manual E15 ("NUM 750/760F, manuel de programmation"). With fax E13 Techni-Plastic/Technibois had sent to "Le Creneau Industriel" a drawing of a workpiece designated "Micasilicone" in which 11 holes of diameter 34 mm were to be milled with a tool of diameter 19 mm. Micasilicone was a fibre-reinforced composite material. In E14 "Le Creneau Industriel" had written a program how to helically mill such holes, which meant that the skilled person would know how to program such a

numerically controlled machine to achieve the desired result and thus to perform the method as claimed. Techni-Plastic/Technibois had used the method of helicoidal drilling since 1987, as evidenced by E16.

- 3.10.2 For this prior use to be considered "prima facie highly relevant" the Board considers it necessary that there are sufficient indications that the method as claimed in claim 1 has actually taken place before the priority date of the patent in suit **and** that the method has as such been accessible to the public.

In that respect there remain a number of unanswered questions:

Firstly, there has been no explanation for the fact that the cover page of the fax E13 shows a later reception time than the allegedly accompanying page showing the product to be machined. Also, no answer was provided by the Appellant in respect of the date on which the handwritten amendments/modifications such as the indication "Micasilicone" were made and whether these had been made by Techni-Plastic/Technibois or by "Le Creneau Industriel". In this respect it has to be noted that the Respondent mentioned these deficiencies in its response to the appeal of 6 June 2002. However, no further evidence was presented by the Appellant to dispel the doubts regarding this prior use as also expressed by the Respondent. Thus these documents do not provide the legal certainty which is necessary for proving an alleged prior use.

Secondly, the helicoidal interpolation as shown in the manual E15 ("NUM 750/60F") does not concern the drilling of holes with a mill rotating on its own axis, but rather relates to making a helical groove on the outside of cylinders. In view of the remark at the bottom of the first page of this manual it is not even clear whether the NC control system as present in the machine sold according to E18 and E19 actually could perform milling by helical interpolation.

Thirdly, there is no evidence whatsoever that the specific program E14 has actually been carried out by Techni-Plastic/Technibois and, if at all, that it was carried out in the presence of members of the public or with the possibility of the public being present. For instance, no employees of this firm or members of the public have been offered as witnesses to that effect. The declaration E12 of Mr Basso, manager of "Le Creneau Industriel", stating that the machine(s) sold to Techni-Plastic/Technibois milled holes by helicoidal interpolation in fibre-reinforced composite materials, cannot help in this respect, as it does not cover the aspect of public accessibility.

Finally, the declaration of Mr Dumillier (E16) cannot add anything further, as it only concerns a program for helicoidal descent, without offering further indications as to the materials actually worked upon, whether holes were milled and whether any presence of the public had been possible.

3.11 *Prior use "Strativer"*

- 3.11.1 According to the Appellant's evidence E30 to E34, an NC milling machine with the capability of helicoidal

interpolation was ordered by and delivered to the company "Strativer" before the priority date of the patent in suit. According to E34 since 1990 an NC milling machine had been used by "Strativer" in helicoidal drilling of holes in composite honeycomb panes covered with a sheet of "nomex" or of carbon fibres to be delivered to the companies Eurocopter, Aérospatiale and Dassault.

3.11.2 Firstly, no evidence has been presented or proposed providing the link between the machine sold and delivered and the actual production method used for making the holes in the honeycomb panels.

Secondly, there is no further evidence presented or proposed as to the possibility for the public to have had access to this particular production method at "Strativer". The fact that such panels were delivered to companies which all mainly operate in the defence sector implies, in the opinion of the Board, that the public would not have had access to their production.

The Appellant could not supply the Board with further information regarding these two specific questions.

3.12 The Appellant requested to hear Mr Pietrika, the technical director of "Le Creneau Industriel", as witness to confirm these prior uses in their integrality. As, however, the details of the prior uses have not individually been specified by the Appellant, the Board is not put in a position to determine to which facts the witness should testify.

3.13 The Appellant further offered this witness to provide **supplementary** information regarding the machines sold,

the types of material drilled and the dates of the different sales, thus its testimony would be an indispensable **supplement** to the declarations and other means of evidence already brought forward.

The Board notes in this respect that it is a general principle of procedural law that a witness is heard so as to confirm what a party alleges, but is not there to take over the responsibility for the case by having to fill in gaps in the facts, evidence and arguments as presented up to then on behalf of that party. Further, it is also not the Board's duty to investigate the alleged prior uses beyond the alleged facts, as already stated in point 3.8 *supra*.

The request to hear the witness is therefore refused.

- 3.14 In view of the above the Board comes to the conclusion that consideration of the alleged prior uses in the form as presented would not lead to convergence of the debate. The facts and evidence filed in support of them do not present a manifestly unanswerable challenge to the maintenance of the patent and are therefore disregarded pursuant to Article 114(2) EPC.
- 3.15 The two documents E3 and E4 briefly referred to in the statement of grounds of appeal have been cited merely for the fact that the orientation of fibres in panels made of fibre-reinforced composite materials consisting of superposed layers is generally parallel to the surfaces of such panels. On their own they are of no particular relevance to the subject-matter of claim 1.
- 3.16 The consequence of the above is that the appeal has lost its entire factual and evidential basis and is

therefore not founded.

Order

For these reasons it is decided:

The appeal is dismissed.

The Registrar:

The President:

M. Patin

P. Alting van Geusau