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Datasheet for the decision of 12 March 2008

Case Number: T 0248/07 - 3.4.02

Application Number: 99870041.3

Publication Number: 1037047

IPC: G01N 33/36

Language of the proceedings: EN

Title of invention:
Method and apparatus for the detection of foreign materials in moving textile materials

Patentee:
Belgian Monitoring Systems bvba (BMS)

Opponent:
Uster Technologies AG
Oerlikon Textile GmbH & Co. KG

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0248/07 - 3.4.02

D E C I S I O N
of the Technical Board of Appeal 3.4.02
of 12 March 2008

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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 29 December 2006 concerning maintenance of European patent No. 1037047 in amended form.**

Composition of the Board:

Chairman: A. Klein
Members: F. Maaswinkel
C. Rennie-Smith

Summary of Facts and Submissions

I. The appellant (opponent 1, Uster Technologies AG) lodged an appeal, received on 6 February 2007, against the interlocutory decision of the opposition division, dispatched on 29 December 2006, on the amended form in which the European patent No. 01 037 047 (application No. 99870041.3) could be maintained. The fee for the appeal was paid on 6 February 2007. The statement setting out the grounds of appeal was received on 20 April 2007.

Neither the respondent (proprietor of the patent) nor opponent 2 (Oerlikon Textile GmbH & Co. KG) filed an appeal, the latter thus being a party as of right pursuant to Article 107 EPC in the appeal proceedings.

II. Two oppositions had been filed against the patent as a whole, on the basis of Articles 100(a) and (b) EPC. The objection under Article 100(a) EPC was substantiated by the grounds that the subject-matter of the patent was not patentable within the terms of Articles 52(1), 54 and 56 EPC.

The Opposition Division held that the patent in amended form according to the proprietor's auxiliary request met the requirements of the EPC, having regard *inter alia* to the following documents:

(E1) US-A-2 189 352
(E2) DE-C1-397 737.

III. With the statement of grounds of appeal the appellant (opponent 1) filed *inter alia* the following new

documents on which it based its objections pertaining to lack of novelty and inventive step of the amended set of claims upheld by the opposition division:

(E16) US-A-4 685 569
(E17) US-A-5 054325
(E19') Abstract of JP-A-57 135 347
(E20) DE-A-2 508 601
(E21) WO-A-95/29396
(E22) EP-A-0 553 446
(E23) CH-A-674 379.

IV. With a letter dated 12 February 2008 the respondent filed new sets of amended claims consisting of a main request and a first to seventh auxiliary requests.

V. At the auxiliary requests of both the appellant and the respondent oral proceedings were held on 12 March 2008. During the oral proceedings the respondent requested that the claims of the former first auxiliary request should be considered as its main request.

IV. The appellant requested that the decision under appeal be set aside and that the patent be revoked.

The respondent requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request filed during the oral proceedings.

V. The wording of claim 1 of the respondent's main request reads as follows:

"A method for detecting occasional foreign materials in a moving textile material (5), the textile material being moving threads, yarns or slivers, the foreign material being foreign fibre, comprising the steps of:

generating relative motion between the textile material (5) and a triboelectric probe (41);

measuring triboelectric signals (24) picked up by the probe (41) from the moving textile material (5);

comparing the measured triboelectric signals with a value representative of the moving textile material (5) without foreign fibre; and

determining from the result of the comparison whether a foreign fibre is present in the moving textile material (5)."

The wording of claim 6 reads as follows:

"An apparatus (40) for detecting occasional foreign fibres in a moving textile material (5), the textile material (5) being moving threads, yarns or slivers, the apparatus comprising:

a triboelectric probe (41) for picking up triboelectric signals (24) from the moving textile material (5);

an extraction circuit (44) for extracting a signal level from the measured triboelectric signals (24) to provide a base noise value representative of the moving textile material (5) without foreign fibre,

a comparator (45) having inputs for the output of the probe (45) and for the base noise value and for at least one pre-set difference value, and adapted for comparing the output of the probe with the base noise value and being adapted to provide a signal of

detection of a foreign fibre present in the textile material (5)."

Claims 2 to 5 and 7 to 14 are dependent claims.

VI. The arguments of the appellant (opponent 1) and of the party as of right (opponent 2) may be summarised as follows.

With respect to the issue of inventive step, document E21 can be considered as the closest prior art. This document discloses a method for detecting occasional foreign fibre materials (see page 22, lines 26 and 27) in a moving textile material, in which a relative motion is generated between the textile material and a probe (moving yarn 201 and optical detector 205, see Figure 1 and page 28, lines 12 to 21). The signals received by the detector are compared with a value representative of the textile material without foreign fibre (page 20, line 22 to page 21, line 16). The subject-matter of claim 1 differs from this known method in that it employs triboelectric signals picked up by a triboelectric probe from the textile material, whereas the method of E21 employs an optical detector. It is inherent in optical detection methods that foreign fibre material having the same colour appearance as the yarn, and therefore having the same spectral reflectance, cannot be detected, which is disadvantageous. The objective problem underlying this difference in detection methods may therefore be seen in further developing the method known from document E21 with the aim that foreign fibre materials with the same colour appearance as the yarn are also detectable. The skilled person immediately recognises that this aim cannot be

achieved with an optical detection method. He will therefore look for an alternative measurement technique known from and applied in the field of textile material compositions. This will lead him to document E2, which relates to the determination of the composition of textile materials (see Title). It is recognised that this document is a quite old document, but this does not preclude the skilled person in his searching for alternative detection techniques. According to page 2, lines 7 to 34, document E2 is concerned with the detection of the presence of vegetal or synthetic fibres in wool or silk materials, which is also the objective problem underlying the patent in suit. According to E2, page 3, line 23 et seq., the triboelectric properties of such foreign fibres differ from those of wool and silk and these may hence be detected by triboelectric methods. In order to solve the problem of detection of foreign fibres in a textile material of similar colour appearance the skilled person will therefore modify the optical detection applied in the method of E21 by using instead a triboelectric detection method, thereby arriving at the subject-matter of claim 1 without an inventive step being involved. Since documents E22 and E23 disclose, similarly to E21, optical detection of occasional foreign material in a textile material, the above conclusion also follows from the obvious combination of the teachings of documents E22 and E2 or, alternatively, E23 and E2.

The subject-matter of claim 1 also follows in an obvious way from the combination of the teachings of documents E20 and E17. Document E20, considered as the closest prior art, discloses a method of continuous monitoring of moisture in insulating materials, for

instance textile materials. The material is moved relatively to an antenna receiving triboelectric signals from the material. The measured signals are compared with a value representative of the moving textile material and the moisture value in the material is displayed. The subject-matter in claim 1 differs from the method in E20 in the features that the material to be detected is occasional foreign fibre material. The objective problem addressed in claim 1 is to develop further the triboelectric detection method of E20 in order to detect occasional foreign fibres in textile materials. To solve this problem the skilled person would consult the prior art for information as to whether a triboelectric measurement as known from E20 would also enable detection of occasional foreign material in a moving material. He would find the required information in document E17 which discloses the application of the triboelectric measurement method to detect single, occasional foreign particles in a flow (column 1, line 46). Though the explicit example in E17 concerns a fluid flow, the skilled person recognises that the teaching of this document can be applied to any flow of material, including a moving flow of textile material, for instance staple fibre. The disclosure in document E17 prompts the skilled person to apply the method of document E20 additionally to detect occasional foreign fibre material in textile material, thereby arriving at the method defined in claim 1.

Finally the subject-matter of claim 1 is obvious in view of the combination of the disclosures in documents E2 and E16. According to document E2, page 2, lines 9 to 20, the object of this document is the detection of

the presence of synthetic fibres or of a finishing applied to a textile material. In particular the composition of the textile material, viz. the ratio of synthetic materials to wool or silk, is of interest (page 3, lines 30 to 35) and this is detected via a triboelectric measurement. In document E2 this measurement is carried out on still textile material, using an electroscope. In order to improve this method and increase the measurement speed the skilled person would consider modifying the measurement method of E2 by implementing the teaching of document E16 which firstly is based on the same triboelectric measurement principle (column 2, lines 2 to 8), rendering its implementation in the process of E2 obvious, and which, in addition, not only solves the problem of measuring a moving material, but furthermore allows the detection of occasional foreign fibre materials such as pieces of plastics bags, braids, bands etc. (see E16, column 1, lines 24 to 34). Therefore in modifying the triboelectric detection process of document E2 by implementing the teaching of document E16 the skilled person would arrive at the subject-matter of claim 1 in an obvious way.

The subject-matter of claim 6 does not involve an inventive step in view of the combination of documents E21, to be considered as the closest prior art, and E2. As set out before, E21 discloses a method and an apparatus for detecting occasional foreign fibre material in a moving textile material. The only difference between the apparatus known from E21 and that defined in claim 6 is the type of probe, which in claim 6 is triboelectric whereas the apparatus of E21 uses an optical detector, which addresses the objective

problem of detection of occasional foreign fibres having the same colour appearance as the moving textile material. For the same reasons as discussed before in the context of method claim 1 the skilled person would be motivated by the teaching of E2 to employ a triboelectric detector in the apparatus of E21 and thereby arrive at the subject-matter of claim 1 in an obvious way.

In addition to the above objections the appellant argued that, contrary to the provisions of Rule 43 EPC, the independent claims had been cast in the one-part form. In fact, document E16 anticipated the subject-matter of former claim 1 maintained by the opposition division, and the only difference in present claim 1 over the disclosure in E16 was by the newly added features of former claim 2. Therefore this difference should be reflected by casting the claim in the appropriate two-part form.

VII. The arguments of the respondent (patent proprietor) may be summarised as follows.

The objection concerning the two-part of claim 1 is unfounded since none of the newly cited documents are closer than the prior art acknowledged in paragraph [0002] of the patent specification and therefore, in the proprietor's opinion, the two-part form is not appropriate.

With respect to the inventive step objection in view of E21 in combination with E2, document E21 discloses an optical measurement method for distinguishing differently coloured contaminants and/or foreign bodies

in fibre(s) or yarn including differently coloured foreign fibres. As explained in paragraph [0002] of the patent, with optical methods it is difficult to distinguish foreign materials from fibre yarn if the colour and/or light absorbency of both the foreign and the virgin fibre are very similar, in particular in case of thin polypropylene white strips in cotton, see paragraph [0014]. As soon as the skilled person becomes aware that such occasional foreign fibre materials cannot successfully be detected by optical methods and that these cannot be easily improved, he may search for other solutions to this problem. It is stressed that in such a case there is no related technical field where he would naturally find a solution, i.e. the technical field for finding a solution is completely open. In other words, the objective problem poses an invitation to a general research project for which the skilled person would have to consult the complete prior art technical literature. The assertion by the appellant, that the skilled person would turn toward E2, and thus come to the invention as described in claim 1, is unsound: E2 is a document which dates back to the year 1924 and describes a potentiometric technique using an electroscope to detect a static voltage for determining the composition of a textile material. Determining the composition of a material is different from detecting an occasional foreign fibre in the material. With the method of E2 it is not possible to distinguish occasional foreign fibres, because in this method the average value of the charge of a textile material in order to characterise its composition is measured. This does not allow the detection of occasional foreign fibres which is based on the detection of a peak in the triboelectric signal, which is not addressed in E2.

Furthermore, contacting a textile material with the head of a charged electroscope is not the use of a triboelectric probe on moving textile material as recited in claim 1. When contacting the head of a charged electroscope with the textile material, charges will flow from the head to the textile material so as to discharge the head at a rate depending on the conductance of the textile material. A triboelectric probe, on the contrary, measures the amount of charges generated by friction between two materials, in particular for the present invention e.g. between a moving textile material and the probe itself. Therefore, combining the teaching of E21 with that of E2 will not lead to the features of claim 1. Neither of the prior art documents E21 and E2 disclose, or point in the direction of, using a triboelectric probe for determining the presence of foreign fibres in textile material. Therefore claim 1 is inventive over a combination of E21 and E2. An analogous reasoning holds for the combination of documents E22 and E2 and of documents E23 and E2.

As to the combination of documents E20 and E17, it is submitted that neither of these documents can be considered to be closest prior art. Neither E20 nor E17 relate to detection of foreign fibres in textile material. Hence to select these documents is an ex post facto reasoning only possible with the knowledge of the invention. E20 relates to the determination of moisture content in insulating material, e.g. textile material. Moisture content is a general property of textile material, and not a foreign material, even less a foreign fibre material. With the method disclosed in E17 no foreign fibres can be detected. Document E17 relates

to characterisation of a fluid flow with suspended solid particles by way of collision measurements. E17 teaches that the impact of a particle in a fluid flow, the particle impacting on a probe, can be detected. This, however, has no relevance to triboelectric detection of fibres in textile material. As neither of these documents E20 and E17 relate to the subject-matter of claim 1, i.e. the detection of foreign fibres, these cannot be used as a starting point for an inventive step attack, and in any case, a combination of their teachings would not result in the subject-matter of claim 1.

Finally, the inventive step argument based on a combination of documents E2 and E16 is not consistent with the established case law of the problem and solution approach. Apart from the fact that E2 was published in 1924 and therefore, if only for that reason, a doubtful starting point as the closest prior art, this document does not relate to the detection of occasional foreign material in a textile material, the textile material is not moving, and the foreign material is not foreign fibres. Therefore it does not even achieve anything of the first feature of the claimed method and it is not appropriate as the closest prior art document for the issue of inventive step.

Apparatus claim 6 involves an inventive step over the combination of the teachings of documents E21 and E2 essentially for the same reason as method claim 1: if the skilled person finds that the optical detection apparatus of E21 cannot detect occasional foreign fibre materials in a moving textile material, he would have to discard the principle applied there and to start

completely anew in developing a solution. There is no reason why in this process he would have considered E2, a document from 1924, not relating to the detection of occasional foreign fibre material in a textile material but to the composition of such a textile material, and wherein charge detection with an electroscope of the still, and not moving, material is carried out. Furthermore claim 6 defines further apparatus features (extraction circuit, comparator) which are defined in more detail in the claim, and which are not known from either document E21 or E2.

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

2.1 Claim 1 comprises the features of the combined claims 1 and 2 of the request upheld by the opposition division. Similarly claim 6 is a combination of former claims 7 and 8. The description has been adapted to reflect the new claim wording.

2.2 Neither in the grounds of appeal, nor during the oral proceedings before the board did the opponents raise objections under Article 123(2) or (3) EPC against the documents comprising the present main request. The board also finds the amendments allowable.

2.3 During the oral proceedings the appellant objected that the independent claims had been cast in the one-part form, contrary to the provisions of Rule 43 EPC. It

argued that the subject-matter of former claim 1 maintained by the opposition division was anticipated by the disclosure in document E16, and that the only difference in claim 1 over the disclosure in that document lay in the newly added features of former claim 2. Therefore this should be reflected by casting the claim in the two-part form, whereby the characterising portion should contain these features of former claim 2.

2.4 In this respect it is noted that the requirement of Rule 43(1), second sentence, reads "*wherever appropriate*". In the Guidelines, Part C, Chapter III-2.3.2 it is explained that the purpose of the two-part form is to allow the reader to see clearly which features necessary for the definition of the claimed subject-matter are, in combination, part of the prior art. In this paragraph it is added, that if this is sufficiently clear from the indication of the prior art made in the description, in order to meet the requirements of Rule 42(1)(b), the two-part form is not mandatory.

2.5 The part of the patent specification discussing the technical background (paragraphs [0002] to [0006]) acknowledges two patent documents (WO98/33061 and EP-A-652432, referred to in the opposition proceedings as documents E5 and E6, respectively) which disclose optical methods for detecting foreign fibres in moving textile materials, i.e. the type now specified in the amended independent claims, namely threads, yarns or slivers. Similar optical methods are also disclosed in the E21, E22 and E23, which documents, according to the appellant, could be considered as disclosing the

closest prior art. Therefore, in the opinion of the board, the relevant prior art is fairly acknowledged in the patent specification and there is no reason to insist on a two-part form. The board also notes that the two-part form of the independent claims as proposed by the appellant does not appear appropriate since it would be based on document E16, which discloses a method of detecting pieces of insulating materials admixed in small pieces of loosely distributed conductive particles and does not constitute the closest prior art for the reasons which will be set out hereunder.

3. *Patentability - Novelty*

3.1 During the appeal proceedings, novelty of the subject-matter of the claims was not in dispute between the parties.

4. *Inventive step*

4.1 *Closest prior art*

4.1.1 During the oral proceedings the appellant referred to the documents E21 (or similarly, E22 and E23), E20 and E2 as closest prior art, viz. as a starting point for its argument that the subject-matter of the claims was not inventive. In addition the appellant made reference to document E16 the contents of which, in its opinion, should have been reflected by casting the independent claims in the two-part form by placing the corresponding features known from this document in the preamble of the independent claims. The respondent did not identify one particular document in the proceedings

as the closest prior art. However, in paragraph [0002] of the patent specification documents WO98/33061 (E5) and EP-A-652432 (E6) had been acknowledged to disclose "methods of detecting foreign fibres in moving textile materials", wherein such foreign fibres occur occasionally.

4.1.2 As is established by the case law of the boards of appeal, the closest prior art is a document which is directed to a similar purpose or effect as the invention or at least belongs to the same or a closely related technical field as the invention. Generally it should correspond to a similar use and require the minimum of structural and functional modifications to arrive at the claimed invention. The documents E5 and E6 acknowledged in paragraph [0002] as well as E21, E22 and E23 relate to the problem and the detection of occasional foreign fibre materials in moving textile materials, where this textile material comprises threads, yarns or slivers. Therefore these documents stem from the same technical field as the patent (textile machinery) and try to solve the same technical problem. With respect to the further documents, E20 discloses equipment for continuous monitoring and regulating of the moisture content of insulating materials, in particular in paper-making machines. Therefore it is a document from a more remote technical field (paper-making) and it does not address the problem of detecting occasional foreign fibre materials. Document E2 discloses an apparatus for determining the composition of a (still) sample of textile material. Although it stems from the technical field of textile materials it does not address the problem of detecting occasional foreign fibre materials in a moving textile

material. Document E16 addresses the detection of occasional foreign fibre materials admixed in small pieces of conductive materials such as pulp and paper-making materials. The technical field of interest is therefore paper-making technology, rather than textile machinery, and the material treated is constituted by loosely distributed particles, not coherent structures like threads, yarns or slivers.

4.1.3 Therefore, in the opinion of the board, document E21 is regarded as disclosing the closest prior art.

4.2 The subject-matter of Claim 1 differs from the detection method in E21 in that a triboelectric probe is employed for the detection of the occasional foreign material, whereas document E21 relies on an optical detection scheme (see figure 1: light source 120, plural optical detectors 108, 109, 110 with optical filters 102, 103, 104 for transmitting the reflected light from the yarn 101 to the detectors in different spectral bands). The underlying problem of this different detecting principle may be seen in providing a method and an apparatus for the detection of occasional foreign fibre materials in moving textile materials being comprised of threads, yarns or slivers even when the foreign material is optically almost identical to that of the virgin fibre (paragraph [0005] of the patent specification). It is noted that the difficulty of detecting a foreign fibre having a similar reflectance spectrum as the textile material using optical probes is known in the prior art: document E23 discloses on page 2, lines 60 to 63 that in case the foreign fibre and the textile material have the same response in two optical detectors with

respective colour filters, the detection threshold can be lowered by using three or four detectors sensitive to different spectral regions. Document E6 discloses in column 7, lines 5 to 18 that, by employing infrared optical detectors (Si-Ge, Si-PbS or Si-PbSe) in addition to visible optical detectors, foreign material can be detected whose visible colour appearance corresponds to that of the textile material. Finally document E6 discloses on page 7, lines 3 to 16 that other foreign fibres, for instance polypropylene, can be distinguished from the textile material by using ultraviolet and near-infrared detectors. Therefore it appears that the problem of detecting occasional foreign fibres having the same colour appearance as the textile material was known in the prior art and that solutions for detecting such fibres using optical detectors with extended spectral response were equally known. It follows that the objective technical problem must be seen as providing an alternative detector to the optical detectors known from the prior art (E5, E6, E21, E22, E23). Clearly, since in all fields of technology the skilled person always strives to develop alternative solutions, the formulation of this technical problem in itself is not inventive. It must therefore be analysed whether the particular solution defined in the independent claims involves an inventive step.

4.3 The appellant has argued that, in consulting the prior art for an alternative solution to that from document E21, the skilled person would find this in document E2. The board does not share this view: E2 is not concerned with the detection of occasional foreign fibres in a moving textile material which is a dynamic measurement

("occasional" = every now and then; "moving" = in a running machine). Furthermore this document E2 addresses obtaining information about the composition of a textile material: according E2, see page 2, line 121 to page 3, line 7, the electroscope only gives an "approximate indication" ("wenigstens annähernd") of the percentage of foreign material in textile material, therefore the result of this measurement is only an indication of the integrated, average amount of foreign material, obtained with a static measurement. Apart from the fact that document E2 does not disclose detecting occasional foreign fibres in a moving textile material, it is not conceivable how such detection with a static electroscope could be successfully carried out for detecting such occasional foreign fibres in a moving textile material. In addition, as pointed out by the respondent, document E2 is a publication from the year 1924, some seventy years before the priority date of E1 and that of the patent, which would make its consideration by the skilled person even less probable. Therefore it cannot be seen why the skilled person, starting from the disclosure in document E21, would have considered the contents of document E2 to be relevant and, in any case, would not have arrived at the invention as defined in the independent claims. The above assessment similarly applies to a combination of documents E22 or E23 with E2.

4.4 As a second line of argument the appellant had put forward the combination of documents E20 and E17. In this case it was the appellant's position that document E20 would represent the closest prior art. As already set out in point 4.1.2 supra, the board is not convinced that document E20 can constitute the closest

prior art, since its field of technology (paper-making) is rather remote from the field of textile machinery. Furthermore its subject is not the detection of occasional foreign fibres, but the monitoring of the degree of moisture in a dielectric material, in particular a web of paper. Therefore in the process of searching for an alternative method to that in E21 for detecting occasional foreign fibres in a moving textile material, the skilled person would not have given any attention to document E20. Moreover, since document E17 does not give any information on the detection of occasional foreign fibres in a moving textile material even an -improbable- combination of the teachings of documents E20 and E17 would not result in the subject-matter of claims 1 or 6.

4.5 Furthermore it was argued that the method and apparatus defined in the independent claims would result in an obvious way from a combination of the disclosures in E2 and E16, E2 then being the closest prior art. Again, as explained in points 4.1.2 and 4.3, the board does not find that document E2 constitutes the closest prior art. While this document does come from the field of textile technology, it is only concerned with obtaining an indication of the composition of still textile samples or the relative amount of foreign materials in the sample. Therefore, if the skilled person were to look for an alternative detection method to that in document E21, he would not have found any relevant information in document E2, since by virtue of its measuring principle (an electroscope making a relative, static measurement on a still textile sample) it is not conceivable that this could replace the measurement equipment in E21, which is based on a dynamic (optical)

detection of occasional foreign fibre in a moving textile material.

4.6 Finally during the appeal procedure reference was made to document E16, which, in the opinion of the appellant, anticipated the subject-matter of former claim 1, as maintained by the opposition division. Whether this objection actually did apply to claim 1 in that form may be left undecided: as observed in point 4.1.2 supra, document E16 is a document from the field of paper-making technology and is concerned with the detection of occasional foreign fibres in small pieces of electrically conductive loosely distributed materials such as pulp and raw materials for paper-making. The method of E16 relies on the phenomenon that occasional (plastics) fibres can be detected because these are of electrically insulating material as opposed to the conductive (pulp or paper-making raw) material and show different surface potentials when transported on a conveyor belt. These surface potentials may result from friction between the loosely distributed plastics fibres and the pulp and, according to E16, these are advantageously amplified by applying a corona discharge (column 2, lines 2 to 9), subsequently to be measured by an electric probe. In document E16 there is no disclosure or hint that this method from the field of paper-making technology would be suitable or could be applied to detect occasional foreign fibres in a coherent moving textile material, consisting of threads, yarns or slivers. Furthermore, none of the other documents in the proceedings includes any hint to use document E16.

5. Since independent claim 6 defines the same features of claim 1 in terms of apparatus features, which features are further detailed in the claim, the subject-matter of this claim is also not derivable in an obvious way from the prior art. These claims, and claims 2 to 5 and 7 to 14 as appended thereto, therefore meet the requirements of Articles 52(1) and 56 EPC.

6. Accordingly, taking into consideration the amendments made to the patent, the patent and the invention to which it relates meet the requirements of the Convention. The patent as so amended can therefore be maintained (Article 102(3) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to maintain the patent on the basis of:

   – claims: 1 to 14 of the main request; and page 2 of the description as filed during the oral proceedings;
   – pages 3 to 8 of the description and the drawings as granted.

The Registrar: The Chairman:

M. Kiehl A. G. Klein