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**Datasheet for the decision
of 27 January 2011**

Case Number: T 1005/08 - 3.2.07

Application Number: 01915422.8

Publication Number: 1335854

IPC: B65B 9/04

Language of the proceedings: EN

Title of invention:

Process for the production of blister packs

Patent Proprietor:

Packaging Imolese S.P.A.

Opponent:

STRAWMAN LIMITED

Headword:

-

Relevant legal provisions:

EPC Art. 100(b), 100(c)

RPBA Art. 15(3)

EPC R. 115(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Oral proceedings without the duly summoned appellant
(point 1.1)"

"Sufficiency of disclosure - no, it is not defined how
function defined in claims will be achieved (points 3.3.1 -
3.3.4)"

"Support in original application - no in relation with
amendments to the description (page 2) during examination
(point 1.5)"

Decisions cited:

-

Catchword:

-



Case Number: T 1005/08 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 27 January 2011

Appellant: Packaging Imolese S.P.A.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 19 March 2008
revoking European patent No. 1335854 pursuant
to Article 101(2) and 101(3)(b) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
E. Dufrasne

Summary of Facts and Submissions

I. The present appeal is from the decision of the opposition division to revoke European patent No. 1 335 854, concerning a process for the production of blister packs, due to insufficiency of disclosure (Article 100(b) EPC).

An appeal was filed against this decision by the patent proprietor (appellant).

II. The appellant requested in writing that the decision under appeal be set aside and that the patent be maintained as granted (main request) or, in the alternative, as amended on the basis of the first auxiliary request, filed with letter dated 8 October 2007, or of one of the second and third auxiliary requests, filed with letter dated 20 December 2007, or of one of the fourth to seventh auxiliary requests, filed with letter dated 29 November 2010.

Further, correction of the minutes of the oral proceedings before the opposition division as well as reimbursement of the appeal fee were requested.

The respondent (opponent) requested the appeal to be dismissed or, in case the ground of opposition according to Article 100(b) EPC is considered as not well founded, remittal to the opposition division for further prosecution.

III. With letter of 10 January 2011 the appellant informed the Board that it would not attend the oral proceedings to be held on 27 January 2011.

IV. Claims

Claim 1 according to the main request (claim 1 as granted) is directed (in the following with letters attached to the features by the Board) to a

- (a) "Process for the production of plastic blister packs (13)
- (b) for containing liquid perfumes to be used as progressive-release deodorants

characterized in that

- (c) the polyvinyl alcohol (PVAL) used for the top part of the blister pack (13)
- (d) is subjected to a thermal treatment in a furnace, wherein
- (e) PVAL rolls (6) placed in the furnace
- (f) are subjected to temperatures starting out from the ambient temperature up to 80-98°C
- (g) for a time period that varies from a minimum of 30 h to a maximum of 200 h".

Claim 1 according to the first auxiliary request differs from claim 1 according to the main request in that in features (c) and (e) instead of "PVAL" it is referred to "PVAL/PE/EVA".

Claim 1 according to the second auxiliary request is directed to a "Plastic blister pack (13) for containing liquid perfumes to be used as progressive-release deodorants, characterized in that the PVAL/PE/EVA film used for the top part of the blister pack (13) is subjected to a thermal treatment in a furnace, wherein the PVAL/PE/EVA rolls (6) placed in the furnace are subjected to temperatures starting out from the ambient temperature up to 80-98°C for a time period that varies from a minimum of 30 h to a maximum of 200 h".

Claim 1 according to the third auxiliary request differs from claim 1 according to the second auxiliary request in that the feature is added that "PE/PP/PA is used for the lower part of the blister pack".

Claim 1 according to the fourth auxiliary request differs from claim 1 according to the first auxiliary request in that the feature "the PVAL/PE/EVA film used for the top part of the blister pack (13) is subjected to a thermal treatment in a furnace" is amended to "the materials used for the top part of the blister pack (13) are compounded and comprised of PVAL/PE/EVA and that the polyvinyl alcohol (PVAL) used for the top part of the blister pack (13) is subjected to a thermal treatment in a furnace" and in that the feature "PVAL/PE/EVA rolls (6) placed in the furnace are subjected to temperatures starting out ..." is amended to "PVAL rolls (6) placed in the furnace are subjected to temperatures starting out ...".

Claim 1 according to the fifth auxiliary request differs from claim 1 according to the fourth auxiliary request in that the feature is added that "the

materials used for the lower part of the blister pack (13) are compounded and comprised of PE/PP/PA".

Claim 1 according to the sixth auxiliary request differs from claim 1 according to the second auxiliary request in that the feature "the PVAL/PE/EVA film used for the top part of the blister pack (13) is subjected to a thermal treatment in a furnace" is amended to "the materials used for the top part of the blister pack (13) are compounded and comprised of PVAL/PE/EVA and that the polyvinyl alcohol (PVAL) used for the top part of the blister pack (13) is subjected to a thermal treatment in a surface" and in that the feature "wherein the PVAL/PE/EVA rolls (6) placed in the furnace are subjected to temperatures starting out ..." is amended to "wherein the PVAL rolls (6) placed in the furnace are subjected to temperatures starting out ...".

Claim 1 according to the seventh auxiliary request differs from claim 1 according to the sixth auxiliary request in that the feature is added that "the materials used for the lower part of the blister pack (13) are compounded and comprised of PE/PP/PA".

- V. In its notice of opposition and in support of the ground of opposition according to Article 100(b) EPC (lack of sufficiency of disclosure) the opponent had argued that it is not clear whether the alleged invention is concerned with the delamination properties of the weld between the pack and the PVAL lid of the blister pack, or with the delamination of PVAL film from some other film together constituting a laminate compound.

VI. According to the impugned decision the patent in suit does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

To arrive at this result the opposition division concluded (reasons, point 3) that it would not be possible for the skilled man to perform the process as defined by claim 1 of the patent as granted and to solve the problem of delamination since essential features which are necessary to help solve the problem of preventing delamination are missing.

VII. In its annex to the summons to oral proceedings dated 4 August 2010 (in the following: annex) the Board indicated *inter alia* that it seems to be questionable whether the impugned decision's consideration of the problem to be solved (delamination) and the effect to be obtained is justified in connection with the issue of sufficiency of disclosure, in view of the process as defined by claim 1 which does not comprise a reference to such an effect to be obtained.

It further appeared to the Board that considerations concerning the problem underlying the process according to claim 1 and the question whether an effect is obtained when producing plastic blister packs by this process are issues which normally are treated as part of the examination of inventive step.

The same appeared to apply to the view expressed by the opposition division, that an "essential feature for the successful performance of the invention is not disclosed anywhere in the original specification, as

filed" and that "it would not be possible for the skilled man to perform the process of claim 1 and to solve the problem of delamination in all cases" (cf. the sentences bridging pages 4 and 5, 5 and 6 and page 6, point 4 of the impugned decision's reasons).

The Board further indicated that since no such effect or corresponding functional feature is defined in claim 1, the question concerning sufficiency of disclosure appears to be limited to the question of whether or not the person skilled in the art is, based on the disclosure of the patent in suit and his general technical knowledge, in a position to carry out the process as defined by claim 1.

In this respect the Board expressed its preliminary opinion that none of the features as defined in claim 1 poses a problem.

In the further processing of this case examination of inventive step could then be carried out based on the understanding of the process according to claim 1 as indicated before with respect to the issue of sufficiency of disclosure.

In this respect the Board further added that, although it is mentioned in the patent in suit that the temperature and the time period of the thermal treatment (as conditions for this treatment defined by features (d) - (g)) depend on various parameters of which the age of the material, the storage conditions and the atmospheric conditions at the time of use are referred to (page 2, lines 57 - 58), it appeared that in the patent in suit it is not indicated how, or in

which direction, the conditions for thermal treatment need to be set based on particular values for the parameters indicated or on other parameters not referred to in the patent in suit which might likewise be essential.

The Board further indicated that a reference to materials which may be procured easily on the market (patent in suit, page 2, lines 47, 48; grounds of appeal, page 12, paragraph 2) does not appear to provide further information concerning the particular type(s) of material to be subjected to thermal treatment according to features (c) and (d) and that this appears to apply likewise with respect to the known material referred to in the grounds of appeal (cf. page 10, first paragraph).

Concerning the allegation of the appellant (grounds of appeal, pages 1 - 3) according to which the first instance proceedings are tainted with a substantial procedural violation infringing its right to be heard, which justifies reimbursement of the appeal fee, the Board indicated that the allegation appeared as not being well founded.

The request for correction of the minutes of the oral proceedings before the opposition division could not be acceded to as the Board had no competence in the matter.

Concerning the further course of the appeal proceedings the Board indicated that in case the ground of opposition according to Article 100(b) EPC is found as not leading to the revocation of the patent, the case

should be remitted to the opposition division for further prosecution.

It further indicated in this respect that if the parties agreed, a corresponding decision, in which sufficiency of disclosure is established (and therefore the decision under appeal is set aside), the case is remitted for further prosecution and the request for reimbursement of the appeal fee is rejected, could be arrived at without oral proceedings being necessary.

VIII. The submissions of the appellant filed after receipt of the summons to oral proceedings and the annex which are relevant for the present decision can be summarised as follows:

- (a) The preliminary opinion of the Board, namely that the process according to claim 1 is disclosed in a manner sufficiently clear and complete to be carried out by a person skilled in the art is agreed to.
- (b) Depending on the respondent's approval of the Board's proposal a decision with which the case is remitted could be taken without oral proceedings being necessary.
- (c) Irrespective of the manner in which the proceedings develop it is requested to set aside the decision and to maintain the patent on the basis of the requests as filed.

- (d) For the requests for correction of the minutes in the opposition proceedings and for reimbursement of the appeal fee no further arguments were given.

IX. The submissions of the respondent filed after the receipt of the summons to the oral proceedings and the annex and made at the oral proceedings which are relevant for the present decision can be summarised as follows:

- (a) Irrespective of the preliminary opinion of the Board the impugned decision according to which the patent has been revoked on the ground of lack of sufficiency is considered as being correct. This applies likewise with respect to all requests on file. Consequently the proposal expressed in the communication of the Board to remit the case is not consented to. In the oral proceedings, which will be attended, it is hoped to convince the Board of the correctness of the decision under appeal.
- (b) Claim 1 according to the main request, comprising the feature according to which the blister packs are for containing liquid perfumes to be used as progressive-release deodorants, thus defines a function or an effect which needs to be taken into account in the examination concerning sufficiency of disclosure.
- (c) Considering the various parameters which have to be selected in order to produce blister packs having this effect the patent in suit does not disclose a single example concerning how a blister

pack according to claim 1 is produced. It furthermore does not disclose, not even in more general terms, how the various parameters have to be set to obtain a blister pack achieving the defined function. This suffices to show that the insufficiency objection according to Article 100(b) EPC is well founded. The missing information requires a research program to be conducted in order to be able to produce plastic blister packs as defined by claim 1 of the main request.

- (d) The respondent has shown that a number of possible solutions do not work, the appellant, however did not discharge its burden of proof since it has not shown that a plastic blister pack as defined by claim 1 can be produced without undue burden.

- (e) What applies for the process according to claim 1 of the main request applies likewise for the processes and the blister packs as defined by the claims 1 of the auxiliary requests. In all of these claims the function is defined that the blister pack with the top part is for containing liquid perfumes to be used as progressive-release deodorants. None of the amendments carried out provides further information on how this function can be achieved.

Reasons for the decision

1. *Procedural aspects*

1.1 Oral proceedings before the Board were held on 27 January 2011 without the duly summoned appellant (Rule 115(2) EPC and Article 15(3) RPBA) who had declared that it would not attend the oral proceedings (cf. point 3 above), who is therefore considered to rely on its case as presented in the written proceedings.

1.2 The requests for correction of the minutes of the oral proceedings before the opposition division and for reimbursement of the appeal fee have been dealt with in the annex to the summons in the following form:

"9. Concerning the allegation of the appellant (grounds of appeal, pages 1 - 3) according to which the first instance proceedings are tainted with a substantial procedural violation infringing its right to be heard, which justifies reimbursement of the appeal fee, for the Board it appears to be necessary to consider the following aspects.

9.1 The order in which the requests are dealt with appears to be immaterial in this respect.

9.2 The allegation according to which the claims (correctly: claim 1) according to the first auxiliary request have not been dealt with by the opposition division is, as acknowledged in the grounds of appeal, not supported by the minutes issued by the opposition division. The minutes, however, do mention that it has

been indicated by the chairman that the finding of insufficiency of disclosure has, as relating to the patent as such, been considered as concerning not only the main request but also all auxiliary requests and as being irreparable (minutes, page 5, last paragraph). The minutes in this respect appear as being supported by the course of events referred to in the respondent's reply in appeal (cf. pages 18 - 20, paragraph "6 PROCEDURAL VIOLATION").

Concerning the request for correction of the minutes of the oral proceedings before the opposition division (grounds of appeal, page 2, paragraph 3) the Board can only indicate that according to the consistent jurisprudence of the boards of appeal it is in principle the department before which oral proceedings have been held (in the present case the opposition division) which is competent to correct its minutes of the oral proceedings.

At present the Board has no information that the opposition division has been requested to correct the minutes, nor that the minutes have been corrected by it.

9.3 Concerning the request for reimbursement of the appeal fee (Rule 103 EPC): for the reasons indicated above the facts available at present do not appear to allow the conclusion that the appellant did not have the opportunity to comment on the ground of appeal according to Article 100(b) EPC with respect to claim 1 according to the first auxiliary request (cf. also the paragraph bridging pages 19, 20 of the reply), i.e. do not appear to establish a substantial procedural violation by the opposition division."

No counter arguments having been produced by the appellant the Board sees no reason to depart from this. The requests for correction of the minutes and for reimbursement of the appeal fee are therefore rejected.

- 1.3 The requests referred to in the appellant's letter of 29 November 2010 can be read to its advantage as constituting two sets of requests. The first set comprises a main request (patent as granted), a first auxiliary request filed with letter dated 8 October 2007, a second and third auxiliary request filed with letter dated 20 December 2007 and fourth to seventh auxiliary requests filed with letter dated 29 November 2010. The second set of requests comprises in addition to each of the requests according to the first set of requests an amended page 2 of the description as filed with letter dated 30 March 2006.
- 1.4 The decision under appeal and the initial requests of the appellant all concerned claim sets including the above mentioned amended page 2. The Board as a consequence will have to compare the first set of requests with the original grounds of opposition
- 1.5 Concerning all requests of the above mentioned first set the Board considers that the original ground of opposition according to Article 100(c) EPC applies (cf. form 2300.2 section VI (c) and section 7 ADDED SUBJECT MATTER of the notice of opposition). The deletion of "/PE/EVA" from "PVAL/PE/EVA" in the original description resulting in only "PVAL" as the material used in the compound in the relevant passage of page 2

of the patent results in the disclosure of a new technical feature.

Thus irrespective of possible other obstacles against the requests of the first set of requests this entire set of requests fails in view of the original ground of opposition according to Article 100(c) EPC.

The Board considers this ground not as a new ground of opposition since it formed part of the original opposition and has become relevant again due to the change in the requests introduced with letter of 29 November 2010. In view of the result of the impugned decision (ground of opposition according to Article 100(b) EPC considered as being well founded) there was no need to also address in the impugned decision any of the other grounds of opposition present in the notice of opposition.

- 1.6 Consequently the following concerns only the requests according to the second set. The amended page 2 of the description as filed with letter dated 30 March 2006 which forms part of each one of these requests is considered as satisfying the requirement of Article 123(2) EPC and overcomes the original ground of opposition of Article 100(c) EPC. In view of the result of the present decision, namely that with respect to claims 1 according to all requests of the second set the ground of opposition according to Article 100(b) EPC is well founded, this point requires no further discussion.

2. *Subject-matter of claim 1 according to the main request*

2.1 Claim 1 according to the main request is directed to a process for the production of plastic blister packs (feature (a)) for containing liquid perfumes to be used as progressive-release deodorants (feature (b)).

According to feature (c) polyvinyl alcohol (PVAL) is used for the top part of the blister pack. According to features (d) - (g) this polyvinyl alcohol (PVAL) is subjected to a thermal treatment.

2.2 The Board follows the view expressed by the respondent at the oral proceedings that feature (b) needs to be considered as a functional feature.

Claim 1 thus defines a process for the production of plastic blister packs (feature (a) which must fulfil or enable the **function** that liquid perfumes contained therein can be used as progressive-release deodorants. This function concerns, as indicated by the respondent, the type of liquid perfumes as well as - more importantly - the top part of the blister pack (feature (c)); cf. point 3.2 below.

2.3 The Board is aware that in view of the effect of solving the problem of delamination, which in the impugned decision has been considered as an important aspect with respect to the conclusion of lack of sufficiency of disclosure, it gave its provisional opinion in the annex to the summons that no such effect or corresponding functional feature is mentioned in claim 1 (cf. annex, points 5.1 - 5.4).

Neither in the impugned decision, nor the grounds of appeal nor the response to the latter the function defined by feature (b) was given any direct consideration relating to the ground of opposition according to Article 100(b) EPC.

For these reasons and considering furthermore the required impartiality of the Boards of Appeal in *inter partes* appeal proceedings there was thus no need for the Board to address functional feature (b) in the annex to the summons.

2.4 Considering the fact that in the grounds of appeal the appellant considered feature (b) as being important for the interpretation of claim 1 (grounds of appeal of 28 July 2008, page 4, last paragraph; page 5, first paragraph; pages 6 - 9 including the paragraphs bridging pages 5 and 6 and 9 and 10) it can but be concluded that the appellant was well aware of the fact that claim 1 comprises by virtue of this feature (b) a functional feature.

2.5 Considering the importance given to the functional feature concerning the problem of delamination with respect to sufficiency of disclosure in the annex (cf. points 5.2 - 5.4) as well as in the impugned decision (reasons, point 3) the appellant must have been aware of the importance of functional features concerning the question of sufficiency of disclosure. In this respect the annex to the summons (cf. points 5.4 and 5.6) clearly indicated that it is the process as defined in claim 1 and the manner in which this process is to be understood which is important in this respect.

2.6 With letter of 9 December 2010 the respondent made it clear that it could not accept the Board's proposal to remit. It indicated that in its opinion the opposition division was right to revoke the patent for lack of sufficiency and that it intended to attend the oral proceedings to convince the Board of its position on this matter.

For the appellant it thus must have been clear that the question of functional features, in connection with sufficiency of disclosure, was likely to be addressed at the oral proceedings. Despite this the appellant decided to not attend the oral proceedings, as communicated with letter of 10 January 2011.

By virtue of Article 15(3) RPBA a Board, once oral proceedings have been appointed, shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned, who may then be treated as relying only on its written case. The explanatory notes to this Article (see CA/133/02 of 12 November 2002) state: "This provision does not contradict the principle of the right to be heard pursuant to Article 113(1) EPC since that Article only affords the opportunity to be heard and, by absenting itself from the oral proceedings, a party gives up that opportunity".

At the oral proceedings the Board therefore could hear the respondent's case with respect to functional feature (b), in connection with sufficiency of disclosure, and decide on the issue at those oral proceedings.

3. *Sufficiency of disclosure - claim 1 according to the main request*

3.1 The ground of opposition according to Article 100(b) EPC applies in case the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

According to the case law of the Boards of Appeal the invention referred to in Article 100(b) EPC is the one defined by the claims.

3.2 *The invention as defined by claim 1*

3.2.1 Concerning the invention as defined by claim 1 it needs to be taken into account that, as indicated above (cf. point 2.2), claim 1 according to the main request (and indeed according to all requests) comprises with feature (b) a functional feature defining that the plastic blister packs of claim 1 are for containing liquid perfumes to be used as progressive-release deodorants.

3.2.2 As referred to in the grounds of appeal (cf. e.g. the paragraph bridging pages 5 and 6), it is the top part of the blister pack which, cooperating with the liquid perfume to be used as progressive-release deodorant, needs to be such that the function defined by feature (b) is achieved.

Concerning the top part of the blister pack claim 1 defines that polyvinyl alcohol is used for it (feature (c)).

Concerning this top part claim 1 further defines that it is subjected to a thermal treatment as defined by features (d) to (g).

- 3.2.3 Beyond that claim 1 does not contain a further definition relating to the structure or properties of the top part of the blister pack or to the type or properties of the liquid perfume. In particular there is also no information given on how, considering its thermal treatment, this affects the polyvinyl alcohol (PVAL) used for the top part in achieving the function according to feature (b).

The grounds of appeal (cf. the paragraph bridging pages 5 and 6) explain the reason for the thermal treatment as lying in the prevention of delamination of the PVAL from the permeable plastic material forming the top part together with the PVAL. Be that as it may, its influence on the function defined by feature (b) is nowhere discussed in the patent in suit. That it will have such an influence is evident, as it affects the PVAL and its connection to the permeable plastic material, which needs to be freed to allow the progressive release.

- 3.2.4 The remainder of the patent in suit likewise does not give information concerning the structure and properties of the top part and of the liquid perfumes to be used as progressive-release deodorants such that the function according to feature (b) is achieved.

3.3 *Sufficiency of disclosure*

3.3.1 Due to the lack of information concerning the manner in which the function defined by feature (b) can be obtained the Board considers the assumption of the respondent as being correct, according to which the person skilled in the art is not given enough information to enable a blister pack as defined by claim 1 to be produced.

3.3.2 The Board wishes to emphasise in this connection that this lack of information has already been referred to in the annex to the summons (cf. point 6.2), at that time with respect to the examination of inventive step.

It is important to note that the patent in suit does not disclose any example concerning the blister pack and the liquid perfume to be contained in it, nor any information concerning the structure and material properties of the top part of the blister pack beyond the general reference to the large group of chemical compositions referred to as polyvinyl alcohol (PVAL). It furthermore does not provide any information concerning the thermal treatment of the top part going beyond the very broad range concerning the temperature to be applied and the duration of this treatment (features (f) and (g)).

For completeness sake: the above mentioned lack of information exists irrespective of whether the top part is considered as being made of a single PVAL film or of a compound consisting of laminated films (cf. the paragraph bridging pages 5 and 6 of the grounds of

appeal, referring to the delamination of the PVAL from an other film).

- 3.3.3 As a result the Board does not see the conclusion of the respondent being at fault, according to which, due to the lack of information as indicated above, it amounts to a research program having to be performed by the skilled person to execute the process as defined by claim 1, including the resulting function of feature (b).

More precisely, for the parameters concerning e.g. the structure and material properties of the top part, of the liquid perfume and of the thermal treatment the top part is subjected to, neither starting values nor a direction in which these parameters should be varied in order to achieve the function defined by feature (b) (e.g. by conducting routine experiments) are given. Thus any attempt to perform the claimed process goes beyond routine experimentation and thus amounts to an undue burden for the skilled person.

- 3.3.4 The invention as defined by claim 1 according to the main request is thus not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC).

4. *Claims 1 according to the first to seventh auxiliary request*

The claims 1 according to the first to seventh auxiliary requests are amended as indicated in point IV above.

The amendments neither concern the function defined by feature (b) since this feature remains unamended in these claims nor do they result in a further definition of the polyvinyl alcohol (PVAL) used for the top part according to feature (c) so that more information is not given on how the function according to feature (b) can be achieved. As a consequence the deficiency due to missing information as referred to above with respect to claim 1 according to the main request (cf. points 3.3.1 - 3.3.3) is not remedied by the amendments of the claims 1 according to the auxiliary requests. The further disclosure of the patent in suit (cf. point 3.2.4 above) cannot help here either.

Consequently the lack of sufficient disclosure referred to above with respect to claim 1 according to the main request exists in corresponding manner with respect to the inventions as defined by the claims 1 according to the first to seventh auxiliary requests.

Due to the nature of the missing information which is required for the execution of the invention (cf. points 3.3.1 - 3.3.3 above) this applies irrespective of whether these claims concern method claims (main request, first, fourth and fifth auxiliary requests) or product claims (second, third, sixth and seventh auxiliary requests).

Consequently the inventions as defined by claims 1 according to the first to seventh auxiliary requests are not disclosed in a manner sufficiently clear and complete for them to be carried out by a person skilled in the art (Article 100(b) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders