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**Datasheet for the decision
of 25 January 2011**

Case Number: T 1878/08 - 3.3.10

Application Number: 92308922.1

Publication Number: 0536940

IPC: C09K 5/04

Language of the proceedings: EN

Title of invention:

Working fluids

Patentee:

The Lubrizol Corporation

Opponent:

Nippon Oil Co. Ltd.

E.I. DU PONT DE NEMOURS AND COMPANY

Headword:

Working fluids/LUBRIZOL

Relevant legal provisions:

EPC Art. 100(c), 123(2)(3)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Main request, auxiliary requests 1 and 2: extension of
subject-matter (yes)"

"Auxiliary requests 3 to 11: extension of protection conferred
(yes)"

Decisions cited:

G 0001/93, T 0789/89

Catchword:

-



Case Number: T 1878/08 - 3.3.10

D E C I S I O N
of the Technical Board of Appeal 3.3.10
of 25 January 2011

Appellant: The Lubrizol Corporation
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 22 July 2008
revoking European patent No. 0536940 pursuant
to Article 103(1)(b) EPC.

Composition of the Board:

Chairman: P. Gryczka
Members: C. Komenda
F. Blumer

Summary of Facts and Submissions

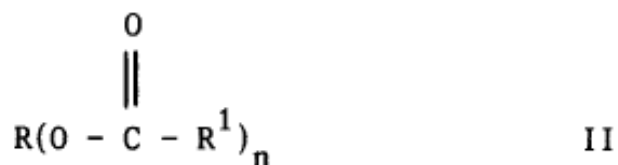
- I. The Appellant (Patentee) lodged an appeal on 20 September 2008 against the decision of the Opposition Division sent by post on 22 July 2008 which revoked the European patent No. 536 940.

The European patent was granted on the basis of 15 claims, independent claim 1 of which read as follows:

"1. A working fluid composition comprising:

(A) a heat transfer fluid comprising a mixture of at least two hydrofluoroalkanes selected from the group consisting of difluoromethane, 1,1,1,2-tetrafluoroethane and pentafluoroethane; and

(B) a sufficient amount of a lubricant to provide for lubrication of a compressor wherein the lubricant is at least partially soluble in each component of the heat transfer fluid and comprises one or more compounds of general formula:



wherein

R is the hydrocarbon radical remaining after removing the hydroxyl groups from pentaerythritol, dipentaerythritol, tripentaerythritol, trimethylol ethane, trimethylol propane or neopentyl glycol or the hydroxyl containing hydrocarbon radical remaining after removing a proportion of the hydroxyl groups from

pentaerythritol, dipentaerythritol, tripentaerythritol, trimethylol ethane, trimethylol propane or neopentyl glycol; each R¹ is, independently, H, a straight chain (linear) aliphatic hydrocarbyl group, a branched aliphatic hydrocarbyl group, or an aliphatic hydrocarbyl group (linear or branched) containing a carboxylic acid or carboxylic acid ester substituent, provided that at least one R¹ group is a linear aliphatic hydrocarbyl group or a branched aliphatic hydrocarbyl group; and n is an integer."

- II. Notice of Opposition had been filed by Respondent/Opponent I and Respondent/Opponent II requesting revocation of the patent as granted in its entirety on the grounds of *inter alia* extending the subject-matter of the patent in suit beyond the content of the application as filed (Article 100(c) EPC).

- III. The Opposition Division held that the amendments made to the patent as granted extended the subject-matter of the patent in suit beyond the content of the application as filed. More particularly, it found that the feature relating to the amount of the lubricant as being "a sufficient amount of a lubricant to provide for lubrication of a compressor" in granted claim 1 was not disclosed in the application as filed. Lubrication of a compressor was mentioned only in relation to a particular working fluid of the prior art which, consequently, did not form part of the claimed invention.

- IV. During the oral proceedings held on 25 January 2011 before the Board the Appellant filed auxiliary requests 1 to 11. These requests were based on various

sets of requests which had already been filed during the written procedure and were handed in as individual printouts with a revised numbering to clearly indicate the sequence in which they should be treated.

Claim 1 of auxiliary request 1 differed from claim 1 as granted in that at the beginning of claim 1 the wording "A working fluid composition" was replaced by the wording "A working fluid composition for a compression cycle heat transfer device".

Claim 1 of auxiliary request 2 differed from claim 1 as granted in that at the beginning of claim 1 the wording "A working fluid composition" was replaced by the wording "A compression cycle heat transfer device containing a working fluid composition".

Claim 1 of auxiliary request 3 differed from claim 1 as granted in that the wording of feature (B) relating to "a sufficient amount of a lubricant to provide for lubrication of a compressor" was replaced by the wording "sufficient to provide lubrication of a lubricant".

Claim 1 of auxiliary request 4 was based on the wording of claim 1 of auxiliary request 1 wherein the wording of feature (B) relating to "a sufficient amount of a lubricant to provide for lubrication of a compressor" was replaced by the wording "sufficient to provide lubrication of a lubricant".

Claim 1 of auxiliary request 5 was based on the wording of claim 1 of auxiliary request 2, wherein the wording of feature (B) relating to "a sufficient amount of a

lubricant to provide for lubrication of a compressor" was replaced by the wording "sufficient to provide lubrication of a lubricant".

Claim 1 of auxiliary request 6 differed from claim 1 as granted in that feature (A) was specified as comprising "based on the total weight of the composition, not more than 99% by weight of" a heat transfer fluid and that component (B) comprised "based on the total weight of the composition, at least 1% by weight" of a lubricant.

Claim 1 of auxiliary request 7 was based on the wording of claim 1 of auxiliary request 6 wherein the wording "A working fluid composition" at the beginning of the claim was replaced by the wording "A working fluid composition for a compression cycle heat transfer device".

Claim 1 of auxiliary request 8 was based on the wording of claim 1 of auxiliary request 6, wherein at the beginning of the claim the wording "A working fluid composition" was replaced by the wording "A compression cycle heat transfer device containing a working fluid composition".

Claim 1 of auxiliary request 9 differed from claim 1 as granted in that feature (A) was specified as comprising "based on the total weight of the composition, from 50% to 99% by weight of" a heat transfer fluid and that component (B) comprised "based on the total weight of the composition, from 1 to 50% by weight" of a lubricant.

Claim 1 of auxiliary request 10 was based on the wording of claim 1 of auxiliary request 9 wherein the wording "A working fluid composition" at the beginning of the claim was replaced by the wording "A working fluid composition for a compression cycle heat transfer device".

Claim 1 of auxiliary request 11 was based on the wording of claim 1 of auxiliary request 9, wherein the wording "A working fluid composition" at the beginning of the claim was replaced by the wording "A compression cycle heat transfer device containing a working fluid composition".

- V. The Appellant stated that the amendment made to claim 1 during the examination phase, which related to the amount of the lubricant being sufficient to provide for lubrication of a compressor was not explicitly mentioned in the application as filed. However, the working fluid compositions of the patent in suit were developed as replacements for conventional working fluids, which used mineral oils to lubricate the compressor. Therefore, the skilled man when reading the application as filed would have implicitly taken the information that in the claimed working fluid compositions the lubricant had to be present in an amount sufficient to provide for lubrication of the compressor. Since the claimed working fluid compositions were used in heat transfer devices of the compression type the skilled man would also have realized that the lubricant was intended to lubricate the compressor, as the compressor was the only part in standard compression type heat transfer devices that needed lubrication. Therefore, the wording used in

granted claim 1 "a sufficient amount of a lubricant to provide for lubrication of a compressor" had the same technical meaning as the wording "sufficient to provide lubrication of a lubricant" used in claim 1 of the application as filed and was, therefore, not open to an objection under Article 100(c) EPC.

With regard to auxiliary request 1 he stated that claim 1 as amended now referred to "a working fluid for a compression cycle heat transfer device". This clearly indicated that the claimed working fluid had to be suitable for use in a heat transfer device of the compression type, and therefore, it had to contain the lubricant in an amount sufficient to lubricate the compressor. The same amendment was made to claim 1 of auxiliary requests 1, 4, 6 and 10.

The subject-matter of claim 1 of auxiliary request 2 was amended such that it was directed to a compression cycle heat transfer device containing the claimed working fluid. In order to be suitable for use in the claimed device, the working fluid had to contain the lubricant in an amount sufficient to lubricate the compressor. The same argumentation applied to claim 1 of auxiliary requests 5, 8 and 11, which contained the same amendment.

With regard to auxiliary requests 3, 4 and 5 the reintroduction of the original wording "sufficient to provide lubrication of a lubricant" represented merely an alternative wording of granted claim 1 without altering the scope thereof and without offending against Article 123(3) EPC.

With regard to auxiliary requests 6 to 11 he stated that the now claimed lower limit of the lubricant in the claimed working fluid compositions of at least 1 percent by weight constituted a clear restriction of the scope of granted claim 1, since the amount of lubricant being sufficient to lubricate a compressor could be even less than 1 percent by weight.

- VI. The Respondent stated that the feature relating to "a sufficient amount of a lubricant to provide for lubrication of a compressor" in granted claim 1 extended beyond the content of the application as filed, since the application as filed did not disclose that the working fluid composition had to contain the lubricant in an amount sufficient to lubricate a compressor. The passage on page 2, line 16 referred to by the Appellant concerned the description of the prior art and did, consequently, not form part of the claimed invention. Further he argued that the heat transfer devices of the compression cycle type contained further moving parts, such as valves and pumps, that needed lubrication too. There existed even compressors that did not need any lubrication. Therefore, the application as filed did neither contain explicit, nor implicit information that the amount of lubricant had to be sufficient to lubricate a compressor. The same argumentation applied to Auxiliary requests 1 and 2 which still contained this feature.

In view of Auxiliary requests 3 to 5 he stated that replacing the feature "a sufficient amount of a lubricant to provide for lubrication of a compressor" by the original wording "sufficient to provide lubrication of a lubricant" offended against Article

123(3) EPC, since the original wording comprised any amount which was sufficient to lubricate any part of the heat transfer device, whereas the wording in granted claim 1 was restricted to only those amounts which were sufficient to lubricate a compressor. With regard to Auxiliary requests 6 to 11 he stated that replacing the wording "a sufficient amount of a lubricant to provide for lubrication of a compressor" by particular amounts taken from the description offended against Article 123(3) EPC, since there was no indication that the claimed lower limit of 1 percent by weight of lubricant was always sufficient to lubricate a compressor, as the amounts to lubricate the compressor were dependent on the composition of the working fluid and on the design of the heat transfer device used and could be significantly higher than 1 percent by weight.

- VII. Former Respondent/Opponent II has withdrawn his opposition with letter dated 3 December 2010 and is, therefore, no longer considered as party to the proceedings.
- VIII. The Appellant requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or, subsidiarily, on the basis of any of the auxiliary requests 1 to 11, all as filed during oral proceedings before the Board.
- The Respondent requested that the appeal be dismissed.
- IX. At the end of the oral proceedings the decision of the Board was announced.

Reasons for the Decision

1. The appeal is admissible.
2. When, as here, the Opposition Division has revoked the patent the withdrawal of the opposition in the appeal proceedings by the Respondent/Opponent II has no direct procedural significance other than that the Respondent/Opponent II is no longer considered as party to the proceedings (see T 789/89, OJ EPO 1994, 482).

Main Request

3. *Article 100(c) and 123(2) EPC*
- 3.1 In order to determine whether or not an amendment adds subject-matter extending beyond the content of the application as filed, it has to be examined whether technical information has been introduced which a skilled person would not have directly and unambiguously derived from the application as filed, either explicitly or implicitly.
- 3.2 In the decision under appeal, the Opposition Division found that the feature "a sufficient amount of a lubricant to provide for lubrication of a compressor" had no support in the application as filed. Thus, this feature will hereinafter be examined for its basis in the application as filed.
- 3.3 Claim 1 as granted is directed to a working fluid composition comprising a mixture of at least two hydrofluoroalkanes and a lubricant. During examination

proceedings the amount of lubricant, which according to the original wording had to be "sufficient to provide lubrication" has been amended to "a sufficient amount of a lubricant to provide for lubrication of a compressor".

- 3.4 This feature is not explicitly disclosed in the application as filed, as conceded by the Appellant. He submitted, however, that this feature was implicitly disclosed, citing in particular page 2, line 16 and page 20, lines 29 to 30.

The passage on page 2 relates to conventional working fluids on basis of fluoroalkanes, which use mineral oil to ensure proper lubrication of the compressor and the passage on page 20 discloses that the working fluid compositions of the patent in suit are suitable for use in all types of compression cycle heat transfer devices. Even though the claimed working fluid compositions were replacing the conventional working fluids a skilled man when selecting an amount of lubricant sufficient to provide lubrication would not necessarily have selected the amount of lubricant to be sufficient to provide lubrication of a compressor, since, as stated on page 1, paragraph 2 of the application the heat transfer devices of the mechanical compression type comprise moving parts other than the compressor, such as pumps or valves, which also need lubrication. Further, as conceded by the Appellant, there existed compressors that do not even need any internal lubrication. Therefore, a skilled person, when reading the application would not have derived directly and unambiguously the information that an amount of lubricant "sufficient to provide lubrication", as in

the original wording of claim 1, was necessarily "a sufficient amount to provide for lubrication of a compressor". Consequently, the feature relating to "a sufficient amount of a lubricant to provide for lubrication of a compressor" constituted technical information extending beyond the content of the application as filed.

- 3.5 In referring to decision G 1/93 (OJ EPO 1994, 541) the Appellant argued that the amount of lubricant, which according to the original wording was "sufficient to provide lubrication" directly corresponded to the amended wording "a sufficient amount to provide for lubrication of a compressor", since the skilled man would have considered the compressor as being the only moving part that needed lubrication. Therefore, the amendment did not have any technical contribution.

However, as admitted by the technical expert the amount of lubricant which is sufficient to lubricate a compressor is dependent on the design and type of the heat transfer device used, on the type of compressor used and on the chemical components used in the working fluid. Therefore, the technical feature relating to "a sufficient amount to provide for lubrication of a compressor" is restricting the scope of granted claim 1 and is technically significant. Therefore, the situation in the present case is different from that referred to in decision G 1/93, with the consequence that the amendment does offend against Article 123(2) EPC.

Auxiliary request 1

4. *Article 100(c) and 123(2) EPC*

The wording of claim 1 of auxiliary request 1 is based on the wording of claim 1 as granted, wherein the passage "for a compression cycle heat transfer device" has been introduced after "A working fluid composition" at the beginning of the claim (see paragraph IV above). Basis for this amendment may be found in the application on page 20, line 30.

However, this amendment does not represent a technical feature restricting the scope of claim 1 as granted, but is merely indicating that the working fluid composition has to be suitable for use in a compression cycle heat transfer device and is, thus, merely illustrative. Therefore, the subject-matter of claim 1 of auxiliary request 1 is identical to the subject-matter of claim 1 as granted and is still containing the feature "a sufficient amount to provide for lubrication of a compressor", which has been objected to under Article 100(c) EPC. Consequently, the same arguments and considerations with regard to the objection under Article 100(c) EPC of the main request apply to the subject-matter of auxiliary request 1.

Auxiliary request 2

5. *Article 100(c) and 123(2) EPC*

Claim 1 of auxiliary request 2 differed from claim 1 as granted in that it related to "A compression cycle heat transfer device containing a working fluid composition"

instead of the working fluid composition as such. A basis for this amendment may be found in original claim 27 in combination with page 20, line 30.

The working fluid composition, which is defined as in granted claim 1 of the main request, still contains the feature "a sufficient amount to provide for lubrication of a compressor", which has been objected to under Article 100(c) EPC. Therefore, the same arguments and considerations with regard to the objection under Article 100(c) EPC as brought forward for the main request also apply to the subject-matter of auxiliary request 2.

Auxiliary request 3

6. *Article 123(3) EPC*

Claim 1 of auxiliary request 3 is based on claim 1 as granted, wherein the feature "a sufficient amount of a lubricant to provide for lubrication of a compressor", which had been objected to under Article 100(c) EPC, has been replaced by "sufficient to provide lubrication of a lubricant" of claim 1 as originally filed.

However, according to the reinstated original wording of claim 1 the amount of lubricant has to be "sufficient to provide lubrication" irrespective of the kind of moving parts that should be lubricated. Therefore, any amount of lubricant that provides any lubrication falls within the scope of amended claim 1, whereas, as conceded by the Appellant, not every amount of lubricant is sufficient to provide for lubrication of a compressor (see paragraph 3.5 above). Therefore,

the scope of claim 1 according to auxiliary request 3 is broader than the scope of claim 1 as granted and, consequently, the amendment offends against Article 123(3) EPC.

Auxiliary request 4

7. *Article 123(3) EPC*

The wording of claim 1 of auxiliary request 4 is identical to that of claim 1 of auxiliary request 3 apart from the passage "for a compression cycle heat transfer device" inserted after "A working fluid composition" at the beginning of the claim (see paragraph IV above). Basis for this amendment may be found in the application on page 20, line 30.

However, as already indicated in paragraph 4. above this amendment is not a technical feature restricting the scope of claim 1, but is merely illustrative. Therefore, the subject-matter of claim 1 of auxiliary request 4 is identical to the subject-matter of claim 1 of auxiliary request 3 which has been objected to under Article 123(3) EPC. Consequently, the same arguments and considerations with regard to the objection under Article 123(3) EPC as brought forward for auxiliary request 3 also apply to the subject-matter of auxiliary request 4.

Auxiliary request 5

8. *Article 123(3) EPC*

Claim 1 of auxiliary request 5 differed from claim 1 of auxiliary request 3 in that it related to "A compression cycle heat transfer device containing a working fluid composition" instead of the working fluid composition as such. A basis for this amendment may be found in original claim 27 in combination with page 20, line 30. The working fluid composition, which is defined as in claim 1 of auxiliary request 3 still does not require as granted claim 1 that the amount of lubricant is "sufficient to provide lubrication of a compressor". Therefore, the same arguments and considerations with regard to the objection under Article 123(3) EPC as brought forward with regard to auxiliary request 3 also apply to the subject-matter of auxiliary request 5.

Auxiliary request 6

9. *Article 123(3) EPC*

Claim 1 of auxiliary request 6 was based on claim 1 as granted, wherein the feature (A) was specified as "based on the total weight of the composition, not more than 99% by weight of" a heat transfer fluid and component (B) was specified as "based on the total weight of the composition, at least 1% by weight" of a lubricant. Basis for these amendments is to be found on page 20, line 23 to 26 of the application as filed.

The amount of lubricant according to claim 1 as granted had to be "a sufficient amount to provide for lubrication of a compressor", whereas according to claim 1 of auxiliary request 6 the amount of lubricant had to be at least 1% by weight, based on the total weight of the working fluid composition. However, there is no evidence that the amount of at least 1% by weight of lubricant is always sufficient to provide for lubrication of a compressor, irrespective of the kind or design of the heat transfer device used or of the components used in the working fluid composition, which according to the technical expert have an influence on the amount of lubricant needed to ensure proper lubrication of a compressor (see paragraph 3.5 above). Therefore, the now claimed lower limit of at least 1% of lubricant extends the scope of granted claim 1 and, consequently, the amendment does not fulfil the requirements of Article 123(3) EPC.

9.1 The Appellant argued that the skilled person always had in mind to prepare a working composition, which was always providing for sufficient lubrication of the compressor and, thus, he would have always selected an amount of lubricant which ensured proper lubrication of a compressor. As for certain compressors the sufficient amount of lubricant might even be less than 1% by weight the restriction of the amount of lubricant to at least 1% by weight in claim 1 of auxiliary request 6 represented a clear restriction without offending against Article 123(3) EPC.

9.2 However, as already stated in paragraph 3.4 above, a skilled man when selecting an amount of lubricant would not necessarily have selected the amount of lubricant

to be sufficient to provide lubrication of a compressor, since, as stated on page 1, paragraph 2 of the application even the heat transfer devices of the mechanical compression type comprise moving parts other than the compressor, such as pumps or valves, which need lubrication too. Therefore, a skilled person, when reading the application would not have derived directly and unambiguously the information that the amount of lubricant had necessarily to be "a sufficient amount to provide for lubrication of a compressor". Consequently, he would have considered any working fluid composition containing at least 1% by weight of lubricant as falling within the scope of amended claim 1 and, thus, would also have used an amount of at least 1% by weight of lubricant for every design of heat transfer device irrespective of whether it was sufficient to provide for lubrication of a compressor or not. This argument of the Appellant thus has to be rejected.

Auxiliary request 7

10. *Article 123(3) EPC*

The wording of claim 1 of auxiliary request 7 was based on the wording of claim 1 of auxiliary request 6 (see paragraph 9 above), wherein the passage "for a compression cycle heat transfer device" was inserted after the wording "A working fluid composition" at the beginning of the claim. Basis for this amendment may be found in the application on page 20, line 30. However, as already stated in paragraphs 4 and 7 above, this amendment is not a technical feature restricting the scope of claim 1 of auxiliary request 6, but is merely illustrative. Therefore, the subject-matter of claim 1

of auxiliary request 7 is identical to the subject-matter of claim 1 of auxiliary request 6 and contains the same amendment concerning the amount of lubricant, which has to be at least 1% by weight, based on the total weight of the working fluid composition, without requiring anymore as claim 1 as granted that the amount is "sufficient to provide for lubrication of a compressor". Consequently, the same arguments and considerations with regard to the objection under Article 123(3) EPC of the auxiliary request 6 apply to the subject-matter of auxiliary request 7.

Auxiliary request 8

11. *Article 123(3) EPC*

Claim 1 of auxiliary request 8 differed from claim 1 of auxiliary request 6 in that it related to "A compression cycle heat transfer device containing a working fluid composition" instead of the working fluid composition as such. A basis for this further amendment may be found in original claim 27 in combination with page 20, line 30. The working fluid composition, which is defined as in claim 1 of auxiliary request 6, still claims the lower amount of lubricant to be "at least 1% by weight" based on the total amount of the composition and not as required by claim 1 as granted that the amount is "sufficient to provide for lubrication of a compressor". Therefore, the same arguments and considerations with regard to the objection under Article 123(3) EPC as brought forward with regard to auxiliary request 6 also apply to the subject-matter of auxiliary request 8.

Auxiliary request 9

12. *Article 123(3) EPC*

Claim 1 of auxiliary request 9 differed from claim 1 of auxiliary request 6 in that the working fluid contained "from 50% to 99% by weight" of component (A) and from "1 to 50% by weight" of a lubricant (B), thus defining closed ranges of amounts of component (A) and (B) (see paragraph IV above). Basis for this amendment is to be found on page 20, line 23 to 26 of the application as filed.

The lower limiting value for the amount of lubricant in claim 1 of auxiliary request 9 is identical to the lower limiting value of the amount of lubricant according to claim 1 of auxiliary request 6, which had been objected to under Article 123(3) EPC. Therefore, the same arguments and considerations as for the amendments made to claim 1 of auxiliary request 6 also apply for the amendments made to claim 1 of auxiliary request 9, which is, consequently, regarded as not fulfilling the requirements of Article 123(3) EPC.

Auxiliary request 10

13. *Article 123(3) EPC*

The wording of claim 1 of auxiliary request 10 was based on the wording of claim 1 of auxiliary request 9 (see paragraph IV above), wherein the wording "A working fluid composition" at the beginning of the claim was replaced by the wording "A working fluid composition for a compression cycle heat transfer

device". Basis for this amendment may be found in the application on page 20, line 30. However, as already stated in paragraphs 4, 7 and 10 above, this amendment is not a technical feature restricting the scope of claim 1 of auxiliary request 10, but is merely illustrative. Therefore, the subject-matter of claim 1 of auxiliary request 10 is identical to the subject-matter of claim 1 of auxiliary request 9 and contains the same amendments. Consequently, the same arguments and considerations with regard to the objection under Article 123(3) EPC of the auxiliary request 9 apply to the subject-matter of auxiliary request 10.

Auxiliary request 11

14. *Article 123(3) EPC*

Claim 1 of auxiliary request 11 was based on claim 1 of auxiliary request 9 and differed therefrom only in that it related to "A compression cycle heat transfer device containing a working fluid composition" instead of the working fluid composition as such. A basis for this further amendment may be found in original claim 27 in combination with page 20, line 30. The working fluid composition, which is defined as in claim 1 of auxiliary request 9, still claims the lower amount of lubricant to be "at least 1% by weight" based on the total amount of the composition. Therefore, the same arguments and considerations with regard to the objection under Article 123(3) EPC as brought forward with regard to auxiliary request 9 also apply to the subject-matter of auxiliary request 11.

15. For those reasons the Board came to the conclusion that there is neither an explicit nor an implicit disclosure in the application as filed for the feature relating to "a sufficient amount to provide for lubrication of a compressor" present in claim 1 as granted according to the main request and in claim 1 of auxiliary requests 1 and 2, thus justifying the ground for opposition pursuant to Article 100(c) EPC in the case of the main request and the auxiliary requests 1 and 2, and that the amendments made to claim 1 of auxiliary requests 3 to 11 are contrary to the requirements of Article 123(3) EPC, since they extend the protection conferred by the patent as granted with the consequence that none of the requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman

C. Rodríguez Rodríguez

P. Gryczka