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Datasheet for the decision of 28 January 2011

Case Number: T 0119/09 - 3.4.01

Application Number: 03006670.8

Publication Number: 1348465

IPC: A61N 5/10, G21K 1/093

Language of the proceedings: EN

Title of invention:
Particle therapy system

Patentee:
Hitachi, Ltd.

Opponent:
ION BEAM APPLICATIONS S.A.
SIEMENS AKTIENGESELLSCHAFT

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)
RPBA Art. 13

Keyword:
"Late-filed requests (admitted: main request, auxiliary requests 1.1, 1.2, 3.1, 3.2, corrected auxiliary requests 2.1, 2.2; not admitted; further auxiliary request"
"Added subject-matter (yes: all requests on file)"

Decisions cited:
-

Catchword:
-

Case Number: T 0119/09 - 3.4.01

D E C I S I O N
of the Technical Board of Appeal 3.4.01
of 28 January 2011

Appellant: (Patent Proprietor)	Hitachi, Ltd. 6-6, Marunouchi 1-chome Chiyoda-ku Tokyo 100-8280 (JP)
Representative:	Strehl Schübel-Hopf & Partner Maximilianstrasse 54 D-80538 München (DE)
Respondent/Opponent I:	ION BEAM APPLICATIONS S.A. Chemin du Cyclotron 3 B-1348 Louvain-la-Neuve (BE)
Representative:	Venite-Aurore, Olessia pronovem - Office van Malderen Avenue Josse Goffin 158 B-1082 Bruxelles (BE)
Respondent/Opponent II:	SIEMENS AKTIENGESELLSCHAFT Postfach 22 16 34 D-80506 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted 29 October 2008 revoking European patent No. 1348465 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman: B. Schachenmann
Members: H. Wolfrum
P. Fontenay

Summary of Facts and Submissions

I. The appellant/patent proprietor (Hitachi, Ltd.) lodged an appeal against the decision of the opposition division, dispatched on 29 October 2008, revoking European patent No. 1 348 465 for the reason that claim 1 of both a main request and an auxiliary request then on file comprised added subject-matter (Article 100(c) EPC 1973 and Article 123(2) EPC).

The notice of appeal was received on 8 January 2009 and the prescribed fee was paid on the same day. On 9 March 2009 a statement of grounds of appeal was filed. The appellant requested that the contested decision be set aside and the patent be maintained in amended form on the basis of amended sets of claims according to a main request or a first to fourth auxiliary request, all having been filed already in the course of the opposition proceedings. Moreover, oral proceedings were requested as an auxiliary measure.

II. The respondent/opponent I (Ion Beam Applications SA) filed observations by facsimile of 10 August 2009, reiterating among others objections under the ground of Article 100(c) EPC for the appellant's requests on file. An auxiliary request for oral proceedings was made.

The respondent/opponent II (Siemens AG) did not file any observations in response to the statement of grounds of appeal.

III. In a communication of 27 October 2010 annexed to summons for oral proceedings the Board pointed *inter* *alia* to possible problems of added subject-matter in the appellant's requests.

IV. By letter of 28 December 2010 the appellant filed a main request and six auxiliary requests (1.1, 1.2, 2.1, 2.2, 3.1 and 3.2), replacing its former requests.

V. Oral proceedings were held on 28 January 2011.

The appellant filed corrected auxiliary requests 2.1 and 2.2 at the beginning and a further auxiliary request later in the oral proceedings.

The Board admitted corrected auxiliary requests 2.1 and 2.2 into the proceedings but did not admit the appellant's further auxiliary request.

VI. The appellant requested, as its main request, that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of a set of claims 1 to 10 filed as main request with the letter of 28 December 2010. Alternatively, the appellant requested that the patent be maintained in amended form on the basis of a respective set of claims 1 to 6 according to auxiliary requests 1.1 and 1.2, filed with the letter of 28 December 2010, on the basis of a respective set of claims 1 to 8 according to auxiliary requests 2.1 and 2.2, filed in the oral proceedings, or on the basis of a respective set of claims 1 to 10 according to auxiliary requests 3.1 and 3.2, filed with letter of 28 December 2010.

VII. Both respondents requested that the appeal be dismissed.

VIII. Independent claim 1 of the appellant's **main request** reads as follows :

"*1. A particle therapy system comprising*

an accelerator (101) for accelerating a charged-particle beam to a set level of energy,

a second beam transport apparatus (102B) for conducting the charged-particle beam extracted from said accelerator (101), and

a rotating irradiation facility (103), which comprises

an irradiation field forming apparatus (70) for forming an irradiation field of the charged-particle beam, and

a first beam transport apparatus (102A) for con-ducting [sic !] *the charged-particle beam introduced by the second beam transport apparatus (102B) to the irradiation field forming apparatus (70), the first beam transport apparatus (102A) including magnets (111, 151, 152),*

wherein said particle therapy system further comprises:

a first beam position detecting apparatus (61, 62) arranged along an orbit of the charged-particle beam downstream of the most downstream one of said magnets (111, 151, 152) for detecting a position which the charged-particle beam passes;

a second beam position detecting apparatus (63, 64) arranged along the orbit of the charged-particle beam down-stream of said first beam position detecting apparatus (61, 62) for detecting a position which the charged-particle beam passes; and

a first steering magnet (181, 182) and a second steering magnet (183, 184) both provided in said first beam transport apparatus (102A);

characterized in that

both the first steering magnet (181, 182) and the second steering magnet (183, 184) are provided at a position upstream of the most downstream one of said magnets (111, 151, 152); and

in that the particle therapy system further comprises:

a first displacement amount computing apparatus (202, S110, S120, S130) for determining respective first displacement amounts, by which the position of the charged-particle beam is to be displaced by said first and second steering magnets (181, 182, 183, 184), respectively, by using both signals detected by said first and second beam position detecting apparatus (61 62, 63, 64), so that the displacement and gradient errors of an orbit of the charged-particle beam due to alignment errors of the magnets (111, 151, 152) in the first beam transport apparatus (102A) are corrected; and

a first control system (202, S140) for controlling respective excitation currents of said first and second steering magnets (181, 182, 183, 184) in accordance with the respective first displacement amounts."

Claims 2 to 10 are dependent claims.

Claim 1 of **auxiliary request 1.1** defines the magnets included in the first beam transport apparatus as "first magnets" and further defines in its pre-characterizing portion

"*a third beam position detecting apparatus (61, 62) arranged along an orbit of the charged-particle beam in the second beam transport apparatus (102B) downstream of the most downstream one of second magnets (121, 122)*

provided in the second beam transport apparatus for detecting a position which the charged-particle beam passes;
a fourth beam position detecting apparatus (63, 64) arranged along the orbit of the charged-particle beam in the second beam transport apparatus (102B) downstream of said first beam position detecting apparatus (61, 62) for detecting a position which the charged-particle beam passes; and
a third steering magnet (181, 182) provided in said second beam transport apparatus upstream of the most downstream one of second magnets (121, 122) provided in the second beam transport apparatus".

Claim 1 of **auxiliary request 1.2** is based on claim 1 of auxiliary request 1.1 and defines in addition to a third steering magnet "*a fourth steering magnet (183, 184) both provided in said second beam transport apparatus (102B) at a position upstream of said third beam position detecting apparatus (61, 62)*" wherein "*both the third steering magnet (181, 182) and the fourth steering magnet (183, 184) are provided at a position upstream of the most downstream one of said second magnets (121, 122)*", and further defines "*a second displacement amount computing apparatus (202, S20, S30, S40) for determining respective second displacement amounts, by which the position of the charged-particle beam is to be displaced by said third and fourth steering magnets (181, 182, 183, 184), respectively, by using both signals detected by said third and fourth beam position detecting apparatus (61, 62, 63, 64), so that the displacement and gradient errors of an orbit of the charged-particle beam due to alignment errors of the second magnets (121, 122) in*

the second beam transport apparatus (102B) are corrected; and
a second control system (202, S50) for controlling respective excitation currents of said third and fourth steering magnets (181, 182, 183, 184) in accordance with the respective second displacement amounts".

Claims 2 to 6 of auxiliary requests 1.1. and 1.2 are dependent claims.

Claim 1 of **auxiliary request 2.1** is based on claim 1 of the main request and further requires that "*a beam scanning apparatus (71, 72) or first and second scatterers (4, 5) as part of the irradiation field forming apparatus (70), but no bending or quadrupole magnets, are provided between the first and second beam position detecting apparatus* [sic !] *(61, 62; 63, 64)*".

In addition thereto, claim 1 of **auxiliary request 2.2** specifies that the first displacement amount computing apparatus is "*for computing the displacement and the gradient of the charged-particle beam at the first beam position detecting apparatus (61, 62) by using both signals detected by said first and second beam position detecting apparatus (61, 62, 63, 64) and then*" determining respective first displacement amounts "*by using the computed displacement and gradient at the first beam position detecting apparatus (61, 62)*".

Claims 2 to 8 of auxiliary requests 2.1. and 2.2 are dependent claims.

Claim 1 of **auxiliary request 3.1** is based on claim 1 of the main request and further specifies that the first displacement amount computing apparatus determines respective first displacement amounts "*by using ideal transfer matrices from the first steering magnet (181, 182) to the first beam position detecting apparatus (61, 62) and from the second steering magnet (183, 184) to the first beam position detecting apparatus (63, 64), the ideal transfer matrices being free of effects of alignment errors*".

Claim 1 of **auxiliary request 3.2** defines in addition to the wording of claim 1 of the main request that the first displacement amount computing apparatus determines respective first displacement amounts "*according to the following formulae, so that the displacement and gradient errors of an orbit of the charged-particle beam due to alignment errors of the magnets (111, 151, 152) in the first beam transport apparatus (102A) are corrected:*

$\vec{x1} + \vec{x2} + \vec{xerr} = \vec{0}$,

$\vec{x1} = M1\ \vec{k1}$,

$\vec{x2} = M2\ \vec{k2}$, *where*

M1 is the transfer matrix from the first steering magnet to the first beam position detecting apparatus without alignment errors of the magnets,

M2 is the transfer matrix from the second steering magnet to the first beam position detecting apparatus without alignment errors of the magnets,

$\vec{k1}$ is the first kick amount corresponding to the first steering magnet,

$\vec{k2}$ is the second kick amount corresponding to the second steering magnet, and

$\vec{xerr}$ is the displacement and gradient error at the first beam position detecting apparatus;

wherein the charged-particle beam therapy system further comprises a first control system (202, S 140) for controlling respective excitation currents of said first and second steering magnets (181, 182, 183, 184) in accordance with the respective first and second kick amounts."

Claims 2 to 10 of auxiliary requests 3.1. and 3.2 are dependent claims.

Reasons for the Decision

1. In the light of the entry into force of the EPC 2000, reference is made to Article 7(1), 2nd sentence of the Revision Act of 29 November 2000 ("Act revising the Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973, last revised on 17 December 1991") and the transitional provisions for the amended and new provisions of the EPC (Decision of the Administrative Council of 28 June 2001), from which it may be derived which Articles of the EPC 1973 are still applicable and which Articles of the EPC 2000 shall apply.

2. The appeal complies with the requirements of Articles 106 to 108 and Rule 99 EPC and is, therefore, admissible.

3. Admissibility of late-filed requests

3.1 In the present case, the appellant replaced by the letter of 28 December 2010, *ie* one month before the oral proceedings, its former requests by a new main request and six new auxiliary requests.

At the beginning of the oral proceedings, the appellant requested replacement of two of the newly filed auxiliary requests (numbers 2.1 and 2.2) by corrected versions thereof. The corrections concern a clarifying complement to the definition of a beam scanning apparatus and first and second scatterers as being part of the irradiation field forming apparatus. Due to an oversight, it had been forgotten to incorporate this complement into the versions of auxiliary requests 2.1 and 2.2 that were filed in preparation of the oral proceedings.

During the oral proceedings, the appellant filed a further auxiliary request in an attempt to address an objection under Article 123(2) EPC. Claim 1 of the further auxiliary request differs from claim 1 of the main request in that the phrase "*characterized in that both the first steering magnet (181, 182) and the second steering magnet (183, 184) are provided at a position upstream of the most downstream one of said magnets (111, 151, 152); and*" is replaced by the phrase "*wherein both the first steering magnet (181, 182) and the second steering magnet (183, 184) are provided at a position upstream of the first beam position detecting apparatus (61, 62); characterised*". It was submitted that the amendment was not complex and did not raise new issues in that it replaced a feature for which the basis of disclosure was in dispute by a feature that was already present in claim 1 of the patent as granted.

3.2 Respondent/opponent I objected to the admission of the further auxiliary request filed in the course of the oral proceedings. The request was filed at a very late stage of the appeal proceedings and the amendment necessitated a new examination, *eg* as to the basis of disclosure for all resulting combinations with the features provided in the dependent claims.

Respondent/opponent II objected to the admission of all the appellant's auxiliary requests that were presented for the first time in the oral proceedings. The corrections made to auxiliary claims 2.1 and 2.2 had already been discussed in the opposition proceedings and had led at the time the opposition division not to admit an auxiliary request into the proceedings which contained these amendments. The appellant's further auxiliary request removed an amendment that had been made at an early stage of the opposition proceedings and had since then determined the debate of novelty and inventive step and the selection of the relevant prior art. Admission of the further auxiliary request would require reconsideration of the matter of inventive step and the prior art, for which the opponents would have to be given sufficient time. Thus, the appeal proceedings would be unduly delayed if the further auxiliary request was admitted into the proceedings.

3.3 According to Article 13 (1) of the Rules of Procedure of the Boards of Appeal (RPBA) "*Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subjectmatter* *submitted, the current state of the proceedings and the need for procedural economy.*"

Article 13 (3) RPBA complements that "*Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.*"

3.4 In the present case, the respondents did not object to the admissibility of the appellant's requests which were filed on 28 December 2010 one month before the oral proceedings, and the Board has not seen any reason why these requests, which are amended versions of the requests that were filed with the appeal, and which respond to observations given in the Board's communication, should not be admitted into the proceedings.

The requested corrections to auxiliary claims 2.1 and 2.2 do not significantly change the claimed subject-matter and have no substantial influence on the issues in debate. Therefore, the Board has decided to admit also corrected auxiliary requests 2.1 and 2.2 into the proceedings.

3.5 The situation is different, however, for the appellant's further auxiliary request.

The amendment aims at avoiding one of a number of objections as to added subject-matter by removing from claim 1 a feature which defines a particular position of the steering magnets in the first beam transport apparatus ("*at a position upstream of the most downstream one of said magnets (111, 151, 152)*") and replacing it by a different definition ("*at a position upstream of the first beam position detecting apparatus (61, 62)*") as it is contained in claim 1 of the patent as granted. The deleted feature was originally introduced in reaction to prior art that had come up by the notices of opposition. The appellant was aware of doubts as to the basis of disclosure of the said feature at the latest from the Board's communication (cf paragraph 4.1.2). Nevertheless, the appellant decided to defend the claim definitions with the said feature by way of all requests filed on 28 December 2010 in preparation of the oral proceedings and, besides, centred its argumentation as to novelty and inventive step with respect to the prior art on this very feature.

It is not ruled out that, in exceptional cases, a new request from a patent proprietor may be admitted even at an advanced stage of oral proceedings. However, in the Board's view, such a procedural approach should be limited to cases where the late-filed request would not lead to prolonged debates and could readily be dealt with by the other parties and the board in the oral proceedings.

In the present case, the further auxiliary requests is not convergent with the requests which have been admitted into the proceedings and, judged on a *prima facie* basis, is not clearly allowable.

In particular, the further auxiliary request would open a debate different in substance from that which took place for the requests filed in preparation of the oral proceedings. In such a situation, the Board would have to grant the other parties sufficient time to reconsider their case. Therefore, admission of the further auxiliary request would have required that the proceedings be continued in writing and another oral proceedings be scheduled just for the debate on this request. Clearly, such an approach would not be efficient from a procedural point of view and not be in line with the directive of Article 13 (3) RPBA.

For these reasons, the Board has decided not to admit the further auxiliary request into the proceedings.

4. Added subject-matter (Article 123(2) EPC)

4.1 The feature that "*both the first steering magnet (181, 182) and the second steering magnet (183, 184) are provided at a position upstream of the most downstream one of said magnets (111, 151, 152)*" is common to claim 1 of all requests on file, *ie* the main request as well as auxiliary requests 1.1, 1.2, 2.1, 2.2, 3.1 and 3.2.

4.2 The application documents as originally filed do not contain an express reference to the claimed positioning of the steering magnets in relation to the magnets of the first beam transport apparatus.

It would appear though that the claimed feature can be spotted in some of the drawings (notably Figures 1, 6 to 9 and 12) of the application documents as filed. However, according to established case law (cf. for instance T 169/83 (OJ 1985, 193), T 523/88, T 818/93), amendments of claims to include features from drawings are allowable, provided such features are clearly, unmistakably and fully derivable from the drawings by a skilled person in terms of structure and function.

It will be shown in the following that this condition is not met in the present case.

First of all, it is not apparent which technical purpose would be served by the specifically claimed position of the steering magnets. In this respect, it is to be noted that the claimed measure has no discernible effect on the manner in which the automated correction of the particle beam by means of the first and second beam position detecting apparatuses (beam position monitors) and the first and second steering magnets works. The beam correction according to the patent is based on an approximation model which allows to separate the action of the beam optical magnets (ie bending magnets and/or quadrupole magnets) in the beam transport apparatus on the charged particle beam into an "ideal" contribution (which is mathematically dealt with by an "ideal transfer matrix") and alignment errors of the magnets involved (paragraphs [0060], [0061], [0076] and [0082] of the application description as published). The description lists two conditions that have to be met for the beam correction to work within the scope of this model : "*(a) two beam position monitors are installed in a state in which there are no beam optical equipment (i.e., bending magnets and quadrupole magnets) between them, and (b) two steering magnets are installed upstream of those two beam position monitors*" (paragraph [0089] of the published application). The position of the steering magnets with respect to any of the beam optical magnets is actually no criterion to be taken into consideration for solving the problem that underlies the present patent (paragraphs [0010] to [0012] of the published application). As a matter of fact, when it comes to the arrangement of steering magnets in relation to the beam optical magnets, the embodiments illustrated by Figures 1 and 6 to 12 show that beam optical magnets can be arranged upstream of the steering magnets, in-between the steering magnets, as well as downstream of the steering magnets. Incidentally, some of these examples concern a beam transport apparatus with automated beam correction without any beam optical magnet that would be arranged downstream of both steering magnets (see the example of a first beam transport apparatus in Figure 10 and the examples of a second beam transport apparatus in Figures 1, 6 to 9 and 11).

In the absence of any hint as to the significance of a particular positioning of the steering magnets in the application description as originally filed and of a respective function that would be recognizable from the drawings, the skilled reader of the application documents has no reason to pay any attention to the claimed specific arrangement of the steering magnets with respect to the beam optical magnets, even when present in some of the drawings. The introduction into claim 1 of the requests on file of a specific requirement as to the position of the steering magnets with respect to beam optical magnets thus amounts to arbitrarily picking of a detail from some of the drawings of the application as filed and of which the skilled reader of the application would hardly take notice.

4.3 The appellant has argued that the claimed positioning of the steering magnets was not only unambiguously derivable from the drawings of all embodiments which related to a particle therapy system equipped with a rotating irradiation facility (rotating gantry) but was also implied in the description of Figures 2 and 3, which explained the physical and mathematical background of the beam correction according to the present patent. It was evident from the description of these figures that the invention presupposed the presence of at least one beam optical magnet which was arranged downstream of the second steering magnet, since otherwise the whole mathematical analysis of the beam correction based on transfer matrix elements representing beam optical magnets would be reduced to the trivial borderline case of an identity matrix and thus became virtually meaningless.

The technical meaning at the basis of the feature in dispute was to identify a class of structures for which the invention worked particularly well. The problem addressed in paragraph [0011] of the patent specification (as well as of the published application) concerned therapy systems with a rotating gantry. In a rotating gantry, the beam optical magnets experienced varying alignment errors. They always comprised a last bending magnet for the particle beam before entering the irradiation field forming apparatus (irradiation nozzle). Due to the claimed specific arrangement of this last bending magnet between the steering magnets and the position monitors, an improved correction of the alignment errors of the last bending magnet was obtained. As further technical effect, the claimed feature safeguarded a compact structure of the rotating gantry because it avoided that steering magnets, which tended to be bulky and had to be separated by a drift space for the alignment kicks to become effective, were provided between the last bending magnet and the irradiation nozzle. Such an arrangement was undesirable because it increased the diameter of the rotating gantry. This technical advantage was readily recognizable from the application documents as filed, given the fact that paragraphs [0020] and [0137] of the published application expressly addressed the aim of reducing the size of the rotating gantry.

4.4 This argumentation is found unconvincing.

The Board does not share the appellant's view that the figures, and in particular Figures 2 and 3 with their corresponding description in the application documents as originally-filed, implied the teaching that the claimed provision of at least one (beam optical) magnet downstream of the second steering was instrumental in the desired automated correction of the beam path. On the contrary, the approximation model and its mathematical implementation which are discussed with the help of Figures 2 and 3 make it clear to the skilled reader that beam optical magnets, when arranged downstream of a steering magnet, are mathematically treated as if they operated in an ideal manner (ideal transfer matrix), whereas any alignment error is taken into consideration as an additional term which becomes physically manifest in the beam positions as measured by the position monitors (see equations "(1-2)" to "(1-4)" and "(1-8)" in the published application). For any automated correction of the beam path, as it is ultimately expressed by equations "(2-10)" and "(2-11)" of the application documents as filed, the position of the steering magnets with respect to the beam optical magnets is of no consequence. Besides, the general mathematical model according to Figures 2 and 3 of the application would not become meaningless just because of the absence of a beam optical magnet downstream of both steering magnets since the model deals with beam optical magnets arranged downstream of any of the steering magnets, including for instance the presence of beam optical magnets in-between the pair of steering magnets.

To sum up, the quality of the correction of the beam path for alignment errors of the beam optical magnets is the same, regardless of where these magnets are arranged in the (first) beam transport apparatus. It is this teaching which the skilled reader can derive clearly and unmistakeably from the drawings and their corresponding description in the originally-filed application documents and which is confirmed by the statement at the beginning of paragraph [0089] of the application as published which reads : "*Thus, according to the above-described method, the displacement and the gradient at the first beam position monitor 62 and an ideal transfer matrix of each piece of equipment arranged downstream of the steering magnet 182 or 184 are only required, whereas the alignment error and the tilt amount of each piece of equipment and values of the displacement and the gradient of the beam 1 transported to the position of the first steering magnet 182 are not required for the purpose of calculations (in other words, the beam orbit can be corrected even when it is unknown at all how large the* *alignment error is in fact or what displacement and gradient are caused in each transport element caused by such an alignment error).*" Hence, the very disclosure of the application documents disproves the argument that alignment errors of the beam optical magnets arranged downstream of the steering magnets were better corrected than those of beam optical magnets arranged elsewhere in the first beam transport apparatus.

Furthermore, contrary to the appellant's argumentation, the originally-filed application documents do not link the claimed specific positioning of the steering magnets with respect to beam optical magnets in a directly recognizable and unambiguous manner to the goal of achieving a compact construction of the rotating gantry. In fact, considerations as to the size and dimensions of the rotating gantry do not form part of the statement of the problem as given in paragraph [0011] of the application as published. As far as the application documents refer to the aspect of size reduction, paragraphs [0019], [0020], [0025] and [0026] of the published application address measures for size reduction of the irradiation facility as such, which measures concern the provision of steering magnets that are configured for displacing the particle beam in two orthogonal directions in the first and second beam transport apparatus. Size reduction of a rotating irradiation facility is addressed exclusively in paragraphs [0136] and [0137] of the published application, where it is also attributed to the provision of bi-directionally operating steering magnets in the first beam transport apparatus. Thus, the application documents as originally filed associate size reduction with a measure which is unrelated to the rotating capacity of the irradiation facility, differs from the feature in dispute and, besides, does not even form part of any of the claims of the requests on file. In this context, it is added that, as far as the appellant's arguments link a compact structure of the rotating gantry to the presence of a "last bending magnet" downstream of the steering magnets, they are unfounded already for the fact that the claim definition under consideration does not mention such a specific magnet.

4.5 It follows from the above considerations that the appellant's requests on file do not comply with the requirement of Article 123(2) EPC and are therefore not allowable.

Order

For these reasons it is decided that :

The appeal is dismissed.

The Registrar | The Chairman

R. Schumacher | B. Schachenmann