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**Datasheet for the decision
of 4 September 2012**

Case Number: T 0380/09 - 3.2.07

Application Number: 97938713.1

Publication Number: 975444

IPC: B08B 9/04

Language of the proceedings: EN

Title of invention:
SOFT CORE PIG

Patentee:
Eveready Energy Services Corp.

Opponent:
Cokebusters Limited

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Feature added during examination phase - admissibility (no, all requests)"

Decisions cited:
T 0170/87

Catchword:
-



Case Number: T 0380/09 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 4 September 2012

Appellant: Eveready Energy Services Corp
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 22 December 2008
revoking European patent No. 975444 pursuant to
Article 101(3)(b) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: H. Hahn
I. Beckedorf

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division to revoke the European patent EP-B-0 975 444.
- II. The following documents of the opposition procedure are cited in the present decision:

D1 = WO-A-98 37990 (the published document corresponds to the application as originally filed underlying the patent in suit)

D2 = US-A-4 242 771

D9 = The Chambers Dictionary, Chambers Harrap Publishers Ltd 1993, page 551

and the following documents from the appeal proceedings are cited:

D10 = Witness statement of Mr Boase dated 21 October 2009 and video

D11 = "Vibrathane^R 8083", Chemtura technical information dated 29 September 2011, pages 1-6 (annexed to the Board's summons)

D12 = Supplementary witness statement of Mr Boase dated 3 August 2012

- III. The opposition had been filed against the patent in its entirety under Article 100(a) EPC, for lack of novelty and inventive step, under Article 100(b) EPC, that the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art, and under

Article 100(c) EPC, that the patent extends beyond the content of the application as originally filed.

The Opposition Division held that the feature "**completely** encasing" of claim 1 of the main request as filed by fax on 10 October 2008 contravenes Article 123(2) EPC and that this feature "completely" cannot be removed to bring it in line with the provisions of Article 123(2) EPC since claim 1 would then contravene Article 123(3) EPC. The same conclusion applied to claims 1 of the first and second auxiliary requests as received on 7 November 2008 which contained the objected feature in identical form. The objection under Article 100(c) EPC was directed to the same feature, as it was present in claims 1 as granted. Consequently, the patent was revoked.

- IV. With a communication dated 3 May 2012 and annexed to the summons to oral proceedings the Board presented its preliminary opinion with respect to claims 1-4 of the of the main request, and claims 1-4 of the first and second auxiliary requests, all as filed together with the grounds of appeal dated 15 April 2009.

The Board remarked with respect to the issue of Articles 123(2) and (3) EPC also that the feature "**completely** encasing" of claim 1 of the main request appeared not to be derivable in a clear and unambiguous manner from the application as originally filed (corresponding to the published D1: WO-A-98 37990).

Therefore it appeared that the subject-matter of claim 1 of the main request extends beyond the content of the application as filed (Article 123(2) EPC) but

that the objectionable feature cannot be removed from claim 1 since in such a case it would then contravene Article 123(3) EPC.

The same conclusion appeared to be valid for the claims 1 of the first and second auxiliary requests which comprised the identical feature of granted claim 1.

- V. With letter dated 2 August 2012 the appellant submitted, as a response to the summons to oral proceedings, further arguments in combination with exhibits A1-A3 (colour photos) and an unsigned supplementary witness statement of Mr Boase.

An executed copy of said supplementary witness statement dated 3 August 2012 (D12) was submitted with letter dated 8 August 2012.

- VI. With letter dated 29 August 2012 filed by fax on the same date the respondent submitted arguments concerning the appellant's submission dated 2 August 2012 and stated that exhibits A4-A7 (photos) would be submitted together with the confirmation copy of the fax.

- VII. Oral proceedings before the Board were held on 4 September 2012. To start, the admittance into the proceedings of the respondent's submissions and exhibits A4 to A7, all filed with letter of 29 August 2012 was first discussed. This was followed by the discussion under Article 123(2) EPC of the original disclosure of the feature "completely encasing" in the original application D1, this feature being comprised

in claim 1 of all three requests, as filed with letter of 15 April 2009.

- (a) The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of one of the sets of claims filed as main request and as first and second auxiliary requests, all submitted with letter of 15 April 2009.
- (b) The respondent requested that the appeal be dismissed.

At the end of the oral proceedings the Board announced its decision.

VIII. Claim 1 of the main request reads as follows (emphasis added by the Board):

"1. A pipeline pig for scraping a build-up from the interior surface of a pipeline, the pipeline pig comprising a bi-directional body (20) having blunt, hemispherical front and rear noses (41, 42) and a cylindrical middle portion (43) extending between said front and rear noses (41, 42) providing surface area for sealing against the interior surface of a pipeline, and a plurality of studs (80) on said surface, thereby forming an abrasive surface for scraping the build-up from the interior surface of a pipe, characterised in that the bidirectional body (20) comprises

- (a) an elongatable and compressible core (60), formed from a material which tends to elongate and narrow as the pig moves through bends, curves, corners and areas of heavy buildup, said material being a mixture of

resin and isocyanate; and
(b) an external cover (40) made of heat-treated urethane **completely** encasing the compressible and elongatable core, said studs (80) being carried by the external cover (40)."

IX. Claim 1 of the first auxiliary request reads as follows (emphasis added by the Board):

"1. A pipeline pig for scraping a build-up from the interior surface of a pipeline, the pipeline pig comprising a bi-directional body (20) having blunt, hemispherical front and rear noses (41, 42) and a cylindrical middle portion (43) extending between said front and rear noses (41, 42) providing surface area for sealing against the interior surface of a pipeline, and a plurality of studs (80) on said surface, thereby forming an abrasive surface for scraping the build-up from the interior surface of a pipe, characterised in that the bi-directional body (20) comprises
(a) an elongatable and compressible core (60), formed from a material which tends to elongate and narrow as the pig moves through bends, curves, corners and areas of heavy buildup, said material being a mixture of resin and isocyanate; and
(b) an external cover (40) made of heat-treated urethane **completely** encasing the compressible and elongatable core, said studs (80) being carried solely by the external cover (40)."

X. Claim 1 of the second auxiliary request reads as follows (emphasis added by the Board):

"1. A pipeline pig for scraping a build-up from the interior surface of a pipeline, the pipeline pig comprising a bi-directional body (20) having blunt, hemispherical front and rear noses (41, 42) and a cylindrical middle portion (43) extending between said front and rear noses (41, 42) providing surface area for sealing against the interior surface of a pipeline, and a plurality of studs (80) on said surface, thereby forming an abrasive surface for scraping the build-up from the interior surface of a pipe, characterised in that the bi-directional body (20) comprises

- (a) an elongatable and compressible core (60), formed from a material which tends to elongate and narrow as the pig moves through bends, curves, corners and areas of heavy buildup, said material being a mixture of resin and isocyanate; and
- (b) an external cover (40) made of heat-treated urethane **completely** encasing the compressible and elongatable core, said studs (80) providing a planar base and being carried solely by the external cover (40)."

XI. The appellant argued, insofar as relevant for the present decision, essentially as follows:

In its communication annexed to the summons to oral proceedings dated 18 February 2008 the Opposition Division did not object to the term "**completely** encasing" (see point 6.2). It was at the oral proceedings that apparently the Opposition Division changed its mind. One has first to ask oneself the question what does the term "encase" mean and what is meant by "completely"? According to three web-based dictionaries (namely Cambridge on-line, Macmillan

dictionary and Collins dictionary) the term "encase" means "to cover or surround something or someone **completely**", "to **completely** cover or enclose something" and "to place or **enclose** in or as if **in a case**", respectively. The skilled person is thus taught already by the simple term "encasing" that the core of the pipeline pig is **completely** covered so that the addition of "completely" in the examination proceedings does not add subject-matter. It is, however, admitted that during the first instance proceedings it was stated that this amendment has been made in order to further distinguish the claimed subject-matter from the prior art D2.

The pipeline pig structure described in the description of D1 and depicted in its figures requires three components: the core, the cover and the studs. Figure 1 shows a side view of these three components which are also defined in the summary and the claims of D1. D1 does not mention that in the **finished product** the wire rods (= pins) extending through the core, to support the latter in the mould during production, are still present. The skilled person has therefore no reason to imagine that things which are not shown in the drawings could actually be there. If pins would go all the way through the pig or core then they should be shown in figure 1.

There is also no description in D1 of holes or pins being present in the cover and the described method is only an example of one possibility of making the pipeline pig. The drawings are not schematic but depict the simple structure of the pig.

It is admitted that the cross section of figure 2 of D1 need not necessarily show pins or holes if they are present in the pipeline pig, but the drawings show all features described in the description and are consistent with it. The witness statement of Mr Boase also supports that no holes or pins are in the outer cover of the finished product.

Since the drawings do not show any holes or pins and the description does not mention them either a person skilled in the art would not derive from the paragraph bridging pages 4 and 5 of D1 that the pipeline pigs could in fact be produced with such holes or pins. The skilled person would conclude that the pins are removed together with the mould. The Opposition Division accepted such a demoulding step (see decision, point 2.3 of the reasons) but concluded that holes will remain. However this is not what actually happens. After removing the mould and before final curing the urethane would still be partially fluid and fill the holes from the inside.

It is uncontested that the process is a gradual curing process. It is normal that the pig comprises no pins or holes and it is possible to produce a pig in accordance with the claims (without any such pins or holes) as proven by the witness statement of Mr Boase and the submitted video. The skilled person will not expect features to be present in the pig which are not described in the description of D1; he is taught by the drawings to remove the pins before final curing when carrying out the described method, so as to not have them in the final product.

With respect to the "optional" feature of encasing the core by the cover (page 3 of D1) it is remarked that features are often presented as optional at the beginning. Consequently, this argument is irrelevant.

Therefore the feature "**completely** encasing" of the claims 1 of all requests complies with Article 123(2) EPC and does not extend beyond the content of D1, the application as originally filed.

XII. The respondent argued, insofar as relevant for the present decision, essentially as follows:

The appellant now argues for the first time that "**completely** encasing" is not different from "encasing". This is surprising in view of the statement made by the appellant's representative in the oral proceedings before the Opposition Division that there is a difference between these two terms and that this feature was introduced to delimit the subject-matter over the prior art D2 (see decision point 2.2 of the reasons and the minutes dated 22 December 2008, page 2, second paragraph). Furthermore, the appellant now for the first time refers to three new dictionaries for support. According to D9 "encase" includes "to enclose in a case and to surround or cover" (see page 551) which infers that the term "encase" does **not** necessarily mean to totally envelop something. However, by the simple fact of adding "**completely**" to "encasing" it must have a certain meaning differing from the original meaning "encasing".

Furthermore, the appellant argues with respect to what is described and illustrated concerning the **structure**

of the pipeline pig but not with respect to the **method** described at the paragraph bridging pages 4 and 5 of D1. It refers to three main components of the pig, i.e. the core, the cover and the studs. Page 3, lines 16 to 18 of D1 discloses that "bi-directional body 20 is formed from a core 60 that is optionally encased by a cover, which may optionally support a plurality of studs 80 ...". Hence the cover and the studs even do not represent essential features. Many of the appellant's arguments can be summarized as "there is no explicit disclosure of holes or pins being present" but actually it should show that the impugned decision is wrong and that there is a clear and unambiguous disclosure of said feature.

D1 clearly mentions wire rods (= pins) in the last two lines of page 4 and in D1 it is important how the pig is made. It is not clearly and unambiguously derivable from the figures of D1 how the pig is made. Any holes formed during the process of making the pig may be features which are not important compared to said three (essential) features and therefore may not need to be shown in the drawings. Page 5, lines 2 to 4 discloses only the removal of the mould but contains no disclosure about the removal of any supporting pins. The removal of the mould implies that the partly cured cover has to be sufficiently cured to be self-supporting which appears to exclude that the urethane is still sufficiently fluid to fill any holes resulting from the removal of any supporting pins. The video submitted by the appellant shows curing of the pig **in the mould** for an unspecified time at an unspecified curing temperature and thus cannot support anything, compared to the description in D1 of the method, where

the product should be removed from the mould for further curing.

The skilled person is taught by D1 how he should make the pig by the described two step process which is, however, silent with respect to the allegation that a pig without holes or pins should result. The appellant's arguments made in this context show that it tries to change the burden to proof of the disclosure of a cover "**completely** encasing" the core.

Supporting pins can be used from various directions and they must not necessarily be provided from all sides of the core, which implies that figure 1 does not need to show any such pins.

According to the Guidelines for Examination in the European Patent Office, H-IV, 2.2 "an applicant is not allowed to improve its position by adding subject-matter not disclosed in the application as filed" which applies to the present case where the figures do not show directly and unambiguously a pig having a cover "**completely** encasing" the core.

Therefore the feature "**completely** encasing" of claims 1 of all requests extends beyond the content of the application as originally filed, contrary to Article 123(2) EPC.

Reasons for the Decision

1. *Admissibility of the feature "**completely** encasing"
(Article 123(2) EPC)*

Taking account of the arguments presented by the two parties the Board considers that it has not been shown that the Opposition Division's conclusion was wrong in concluding that the feature "**completely** encasing" of claim 1 of the main and the two auxiliary requests extends beyond the content of the application as originally filed (see points 2 and 3 below). The reasons are, however, more extensive.

Taking account of this conclusion there is no need to discuss whether or not further amendments made in these requests comply with Article 123(2) EPC.

Main request

2. Claim 1 of the main request contains the feature "**completely** encasing" (see point VIII above) which is considered **not** to be derivable in a clear and unambiguous manner from the description, the claims and the drawings of the application as originally filed (corresponding to D1).
 - 2.1 The feature "an external cover (40), encasing the elongatable core (60)" originally comprised in claim 2 of D1 had been amended during the examination of the application for the patent in suit to the present term "an external cover (40) ... **completely** encasing the compressible and elongatable core" of claim 1 of the

present main request, which in this respect corresponds to claim 1 of the patent as granted.

- 2.1.1 At the oral proceedings before the Opposition Division the representative of the patent proprietor stated that the term "**completely**" had been added during the examination proceedings in order to distinguish the claimed subject-matter over the prior art D2. He further admitted that there might probably be a difference in the meaning of the terms "completely encasing" and "encasing" but argued that there would be a basis for both terms, particularly at page 5, lines 2 to 4 and figures 1 and 2 (see impugned decision, point 2.2 of the reasons and the minutes dated 22 December 2008, page 2, second paragraph).

At the oral proceedings before the Board the appellant for the first time in the proceedings argued that the two terms - due to the interpretation now based on three web-based dictionaries (namely Cambridge on-line, the Macmillan dictionary and the Collins dictionary), so that the term "encase" means "to cover or surround something or someone completely", "to completely cover or enclose something" and "to place or enclose in or as if in a case", respectively - actually have the same meaning, so that the added term "completely" would not add matter.

The Board cannot accept these arguments for the following reasons:

- 2.1.2 First of all, where the claims are concerned the wording is used in particular to define the subject-matter for which protection is sought. Generally each

single word of a claim has a specific meaning and is carefully and purposively selected to define the subject-matter defined therein.

Therefore it cannot be accepted that the addition of the term "**completely**" to the originally disclosed term "encasing" during the examination proceedings has in fact no meaning or does not alter the meaning of "encasing". The International Preliminary Examination Report on this application contained an inventive step argument against claim 1 using D2 for the feature of "encasing the core". On entry into the regional phase before the EPO claim 1 was amended as now discussed. The Board can see this amendment only as having been made with the intention to further delimit the claimed subject-matter over the prior art D2, as was also admitted in the opposition proceedings.

In this context the Board remarks that the quoted prior art D2 discloses a pipeline pig having a core with a plurality of studs being anchored in said core and further having a cover coated over said core through which said studs are protruding (see e.g. figures 1-4). Hence the core according to D2 is encased by a cover 20 but - due to the openings left in the cover (figure 1), which show the underlying core, and the mention in the description (column 3, lines 49 to 51) that the cover is not totally inclusive of the core - is **not** completely encased by the cover.

2.1.3 Secondly, considering all four dictionaries and their definitions of the term "encase", in particular that of D9 (see page 551), it is clear that the term "encase" does **not** necessarily mean to **totally** envelop something

since any case, cover or mantle can contain holes serving a specific purpose e.g. for mounting switches or simply to allow cooling by an improved air exchange (for example a PC is encased by a cover having cooling holes and several switches and plug-in connectors).

2.1.4 Therefore the addition of the term "**completely**" to the term "encasing" cannot be simply disregarded as the appellant wishes the Board to do; it provides a difference over the originally disclosed term (see the minutes dated 22 December 2008, page 2, first paragraph), as admitted by the appellant at the oral proceedings during the opposition procedure.

2.2 However, as conceded by the appellant in its grounds of appeal, this feature is nowhere explicitly disclosed in D1, neither in the description nor the claims or drawings.

2.2.1 The drawings of D1, in particular figures 1 and 2, do **not** provide a clear and unambiguous basis for this amendment since they - although the claimed pipeline pig represents a simple structure comprising three components: the core, the cover and the studs - are schematic, contrary to the appellant's arguments.

According to D1 "Fig. 1 is a side orthographic view of a pipe pig constructed in accordance with the **principles of the invention**, having the core shown in dotted outline" while "Fig. 2 is a cross-sectional view of the pipe pig of Fig.1, taken about the 2-2 lines" (see page 2, last line to page 3, line 4) and "Figure 2 illustrates in cross-section the **relationship** of the cover 40 to the studs and the core 60" (see page 4,

last paragraph). These "principles of invention" as derivable from the description of D1 (see e.g. page 1, sixth paragraph to page 2, third paragraph and page 3, line 12 to page 4, line 6) must not necessarily show all details of the desired pipeline pig in accordance with D1. For example, according to the described method of manufacturing the cover is of uniform thickness (see page 5, line 1), which is clearly not the case for the pig depicted in figure 1. It is further remarked that the wording "comprising" of claims 1 and 5 as originally filed does **not** exclude any holes or wire rods (= pins) being present in the cover and although certain preferred versions of the pig are described in D1 "other versions are possible" (see page 7, second paragraph).

Furthermore, at the oral proceedings the appellant admitted that the cross-section of figure 2 of D1 need **not** necessarily show any pins or holes. These can be present in other cross-sections of the pig.

- 2.2.2 As correctly argued by the Opposition Division in the impugned decision, the fact that these figures do not show any openings or holes (i.e. in addition to the holes drilled for the studs) in the external cover 40 does not necessarily mean that there are no such openings.

According to the established jurisprudence a figure which served only to give a schematic explanation of the **principle** of the subject-matter of the patent (the same holds true with respect to figures 1 and 2 of D1, compare point 2.2.1 above), but not to represent it in every detail, does not allow the definite conclusion to

be drawn that what is disclosed purposively excludes any feature not represented (see Case Law of the Boards of Appeal of the European Patent Office, 6th edition 2010, section III.A.5; see T 170/87, OJ EPO 1989, 441, reasons point 6).

2.2.3 From the description of D1 it is also neither apparent nor plausible that the cover should not contain any holes, e.g. resulting from the manufacturing process of the pig, which were alleged by the appellant to deteriorate the cleaning properties of the claimed pipeline pig, since it is essentially the cylindrical portion of the pig cover and the plurality of studs mounted therein which are responsible for cleaning the internal surface of pipes (see page 5, fifth paragraph). These arguments cannot be accepted since the appellant, although this deficiency was remarked in the Board's communication annexed to the summons to oral proceedings (see point 3.1.3), did **not** file any evidence supporting this allegation.

2.2.4 In this context also the manufacturing method for producing a preferred version of the pipeline pig with an external cover made with urethane (more specifically Vibrathane 8083), which is described in D1 in the context of figure 2, has to be considered. According to this process there are wire rods supporting the core in the mould when the urethane is poured into it, to achieve a uniform thickness of the external cover. Thereafter the urethane is heated to a temperature of 250°, the pig is demoulded and then placed in a curing oven for approximately 2 hours (see page 4, last paragraph to page 5, second paragraph). Thereafter a plurality of holes is drilled in the cover and the pig

is heated again to 250° and studs are inserted in these holes with an air gun (see page 5, third and fourth paragraphs).

The use of these wire rods is considered to be essential for centering the core within the mould and therefore in the (cured) urethane cover of the pig.

According to Mr Boase the specified temperature of "250°" has to be interpreted as "250 °F" (see D12, page 2, points 2 and 3) and thus corresponds to "121.1°C". This value perfectly fits with the curing temperature of 100°C (212°F) for the urethane Vibrathane^R 8083 mentioned in the description and in the respective technical information sheet D11 (see page 2, "processing conditions"), sent to the parties by the Board with its communication annexed to the summons.

It was uncontested by both parties that there is a gradual curing of the pig cover. The curing starts immediately when mixing the urethane with the curing agent (D1 is silent with respect to the addition of a curing agent). According to D11 the typical pot life after starting this mixing is 5-6 minutes (see page 2, "processing conditions"), i.e. the time within which the urethane/curing agent mixture has to be poured into the mould. The progress of the curing reaction is then greatly influenced by the applied curing temperature and the elapsed time.

D1 is silent with respect to the time necessary for reaching said temperature of 250°F of the mould and also with respect to the question whether the mould is horizontally or vertically arranged. It is uncontested

that the resulting pig cover in any case must have a sufficient green strength of the applied urethane coating, to be demoulded and to be self-supporting. This fact excludes, in the Board's view, that the urethane can be still fluid since in that case the demoulded pig with its partly cured urethane cover would lose its shape when placed in the curing oven without its supporting mould for the mentioned "about 2 hours", so would not obtain a cover having a uniform thickness of the cured urethane.

The same conclusion is, however, considered to be fully valid for any holes produced by the supporting wire rods (also designated as "pins" by the parties) in the cover during the moulding step - if these wire rods are at all removed at this stage (D1 is silent about any removal). Since wire rods are made of metal (which by definition is an excellent thermal conductor) they will provide a good heat transfer along their surface to the interior of the urethane cover so that it is not credible that the urethane surrounding the hole can still be sufficiently fluid after removing the rods in said demoulding step, so as to fill it. The appellant's arguments to the contrary thus cannot be accepted. Consequently, any hole produced by the wire rods in the cover would extend through the thickness of the external cover.

If on the other hand said supporting wires would not be removed with or after said demoulding step, but would remain in said pig during said final "curing" step in the curing oven then there will in any case be holes in said external cover when the pins are removed only afterwards, or they will remain in the cover.

Therefore it is clear from the production method as described in D1 that the external cover cannot "completely" encase the core as required by claim 1 of the main request.

2.2.5 The appellant's further arguments cannot hold for the following reasons.

Firstly, the description of D1 clearly mentions wire rods (or pins) in the process for making a pig with a cover having a uniform thickness so that the person skilled in the art need ask himself only how he should proceed with these wire rods since D1 is totally silent in this respect. Should they be removed or not from the produced pig and at which stage during the manufacturing process of the pig should they be removed from the pig and/or mould. Furthermore, as already remarked, the drawings are schematic only and do not necessarily show details, such as the wire rods, which as such are not considered to be important for the simple pig structure comprising the core, the cover and the studs being mounted in the drilled holes.

Furthermore, as remarked by the Board at the oral proceedings, it would also be possible to use wire rods located at diametrically opposed locations in the length direction of the core, e.g. being separated from one another by about 90°, which have a length to just about the inside of the mould and which therefore do not need to extend through the wall of the mould and consequently do not need to be removed during the demoulding step.

Secondly, all arguments based on the witness statement of Mr Boase or on the video or exhibits A1 to A3 are considered **not** to be relevant since the process discussed and shown therein is **not** identical with that described in D1 (see point 2.2.4 above) as it differs considerably from it since four diametrically opposed wire rods extending through the wall of a vertically arranged mould are used for centering the core in the mould. Further, **no** demoulding step takes place when the wire rods are removed after a first heating step, i.e. the complete curing of the urethane takes place in said mould for an unspecified curing time and at an unspecified curing temperature. Furthermore, the studs are already placed in said mould and enclosed in the urethane.

- 2.2.6 Consequently, claim 1 of the main request extends beyond the content of the application as originally filed and thereby contravenes Article 123(2) EPC. The main request is therefore not allowable.

First and second auxiliary requests

3. Claims 1 of the first and second auxiliary requests comprise the identical term "**completely** encasing" as claim 1 of the main request (see points IX and X above).

Consequently, the objection raised under Article 123(2) EPC in point 2.2.6 above applies *mutatis mutandis* to the claims 1 of the first and second auxiliary requests.

The claims 1 of the first and second auxiliary requests therefore also contravene Article 123(2) EPC. The first and second auxiliary requests are therefore not allowable.

4. As the present decision could be arrived at as discussed above, it need not go into the reasons for admitting/not admitting the additional evidence A4 to A7, see point VII.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders