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**Datasheet for the decision
of 21 September 2012**

Case Number: T 2233/09 - 3.3.06

Application Number: 01200864.5

Publication Number: 1126075

IPC: D21C 3/22, D21C 3/02,
D21C 7/00, D21C 11/04

Language of the proceedings: EN

Title of invention:
Dissolved solids control in pulp production

Patentee:
Andritz Inc.

Opponent:
Metso Paper Sweden Aktiebolag

Headword:
Augmenting step/ANDRITZ

Relevant legal provisions:
EPC Art. 99(1), 123(2)
EPC R. 76(2)(c)
RPBA Art. 12(4), 13(3), 16(a), 16(c)

Relevant legal provisions (EPC 1973):
EPC Art. 54(1)(2), 56, 76(1), 100(b)(c)

Keyword:

"Admissibility of the new grounds of opposition (no): no consent of the Patent Proprietor"

"Admissibility of the new objections raised under Art. 123(2) EPC (no): their introduction during oral proceedings would have disadvantaged the Patent Proprietor"

"Admissibility of documents submitted with the grounds of appeal (yes): reaction to the decision under appeal"

"Novelty (yes): implicit disclosure of one of the claimed method steps not convincingly proven"

"Inventive step (yes): unobvious alternative"

"Apportionment of costs in the Respondent's favour (yes): adjournment of oral proceedings due to Appellant's conduct"

Decisions cited:

G 0010/91, G 0007/95, T 0922/94, T 0006/05

Catchword:

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Case Number: T 2233/09 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 21 September 2012

Appellant: Metso Paper Sweden Aktiebolag
(Opponent) S-85194 Sundsvall (SE)

Representative: Becker, Eberhard
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Respondent: Andritz Inc.
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Representative: Moore, Christopher Mark
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
22 September 2009 concerning maintenance of the
European patent No. 1126075 in amended form.

Composition of the Board:

Chairman: P.-P. Bracke
Members: L. Li Voti
D. Prietzel-Funk

Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division to maintain the European patent no. 1 126 075, concerning a method of kraft cooking, in amended form.

II. In its notice of opposition the Opponent, by referring *inter alia* to documents

(1): US-A-4670098 and

(4): "Extended delignification in kraft cooking - a new concept" by N. Hartler, Svensk papperstidning no. 15 (1978), 81, pages 483 and 484,

sought revocation of the patent on the grounds of Article 100(a) EPC 1973, because of lack of novelty and inventive step of the claimed subject-matter.

III. The Opposition Division found in its decision that the amended claims according to the main request, submitted during oral proceedings, complied with the requirements of Articles 123(2) and (3) EPC since the amendment in claim 2 consisted only in the deletion of one of the alternatives listed in the claim and the addition of the wording "in said order" after "cook", in line 2 of claim 1, found basis throughout the specification and was not objected to by the Opponent.

As regards novelty the Opposition Division found that document (1) did not contain any explicit or implicit teaching of the recirculation of an augmented liquid as required by claim 1. Moreover, the cited documents did not contain any teaching of augmenting and

recirculating a liquor withdrawn from the digester. Therefore, the claimed subject-matter involved also an inventive step.

IV. Claim 1 of the main request reads as follows:

"1. A method of kraft cooking comminuted cellulose fibrous material in a continuous digester, said method comprising at one stage during the cooking process, either at the start of the cook or during an intermediate stage of the cook in said order:

- (a) extracting liquor; from withdrawal screens at the start of the cook or at an intermediate stage of the cook
- (b) treating the extracted liquor to remove, or passivate, the adverse effects of the DOM therein to reduce the effective DOM level in the extracted liquor;
- (c) augmenting the extracted liquor with liquor containing a substantially lower effective DOM level than the extracted liquor; and
- (d) recirculating the resulting liquor to the digester at about the level of the withdrawal screens at the start of the cook or intermediate stage of the cook respectively to reduce the level of DOM in the digester and thereby improve the strength of the pulp so-produced and reduce consumption of chemicals."

Claims 2 to 5 relate to specific embodiments of the method of claim 1.

V. An appeal was filed against this decision by the Opponent (Appellant).

In the statement of the grounds of appeal, the Appellant submitted various new documents, *inter alia* documents

(7a): Declaration of Prof. Dr. Mikael Lindström, and

(7b): Declaration of Prof. Dr. Lars-Åke Lindström.

In the afternoon before the oral proceedings scheduled for the 20th December 2011, the Appellant sent a fax on 14.50h reading as follows:

"The Appellant and Opponent Metso Fiber Karlstad AB has changed into Metso Paper Sweden AB (copy of merger certificate is enclosed herewith)...".

The attachment to the fax, consisting of a copy of a merger certificate dated 7 January 2011, did not reach the Office with the first fax because of an error and was resent correctly on 18.32h after business hours.

During the oral proceedings held on the subsequent day, the Respondent (Patent Proprietor), which had not been informed before of the change of name, and the Board questioned the evidence of the alleged merging.

Following a discussion on the admissibility of the Appellant's change of name and of the appeal itself, the Board decided to postpone the oral proceedings in order to allow the Appellant to submit in writing further evidence in support of the alleged merging.

With the letter of 27 February 2012 the Appellant submitted further evidence of the occurred merging, including a further certificate of the Bolagsverket of 24 January 2011 accompanied with extracts from the

Swedish register showing the implementation of the merger scheme mentioned in the copy of the certificate submitted in the oral proceedings of 20 December 2011.

Further oral proceedings were then held on 21 September 2012.

During the new oral proceedings the admissibility of the change of name was no longer contested; moreover, the Appellant requested the introduction into the proceedings of documents (7a) and (7b) only. The auxiliary requests 1 to 4 submitted by the Respondent were not admitted by the Board and the Respondent did not pursue its previous request of an apportionment of costs in its favour because of the additional documents cited with the statement of the grounds of appeal and of the new grounds of appeal cited.

VI. The Appellant submitted in essence that

- the claimed invention would contravene the requirement of Article 83 EPC 1973;

- claim 1 as maintained by the Opposition Division extended beyond the content of the original disclosure of the PCT application of which the patent in suit was a divisional; moreover, even though this objection had not been raised at first instance, it should be admitted by the Board (reference was made in this respect to T 922/94); furthermore, the introduction of the wording "in said order" in line 2 of claim 1 contravened the requirements of Article 123(2) EPC;

- the additional documents (7a) and (7b) were highly relevant documents cited in the statement of the grounds of appeal as a reply to the arguments exposed by the Opposition Division in the decision under appeal with regard to the novelty of the claimed subject-matter; therefore, they had to be admitted into the proceedings;

- the claimed subject-matter was not novel over the disclosure of document (1) and it lacked an inventive step over the combination of document (1) with document (4) or with the common general knowledge of the skilled person;

- the requested Appellant's change of name had already been known to the Respondent from previous cases; moreover, it had been already clear from the merger certificate submitted at the oral proceedings of 20 December 2011 that the original Opponent had been dissolved and that the new Appellant was its universal successor; therefore, the oral proceedings of 20 December 2011 had to be adjourned at least partly because of the unjustified massive doubts raised by the Respondent. Consequently, the costs of the oral proceedings should not be apportioned in favour of the Respondent.

VII. The Respondent submitted that

- it did not consent to the introduction into the proceedings of the new grounds for opposition concerning sufficiency of disclosure and added subject-matter (reference was made in this respect to G 10/91);

- moreover, it did not consent to the introduction into the proceedings of the new objection against the wording "in said order" in claim 1, which objection had never been mentioned before the oral proceedings of 21 September 2012;

- the late filed documents (7a) and (7b) should not be admitted into the proceedings; moreover, they were not relevant since the information given by the Declarant of document (7a) could not concern the state of the art at the priority date of the patent in suit, i.e. in 1993; moreover, the Declarant of (7b) had a clear relationship with the Appellant and could not be considered to be a skilled person at the priority date of the patent in suit;

- the claimed subject-matter was novel and inventive over the cited prior art as already found in the decision under appeal;

- the Respondent was presented for the first time in the oral proceedings of 20 December 2011 with the copy of the Appellant's fax of 19 December 2011 requesting a change of name; since the Appellant could not convincingly prove at those oral proceedings that the new Appellant was the universal successor of the previous Opponent, the need to continue the procedure in writing was entirely due to its conduct; therefore, for reasons of equity, costs should be apportioned in favour of the Respondent because of the wasted oral proceedings.

VIII. The Appellant requests that the decision under appeal be set aside and the patent be revoked.

IX. The Respondent requests that the appeal be dismissed or that the patent be maintained on the basis of one of the auxiliary requests 1 to 4, submitted during oral proceedings of 21 September 2012. Moreover, it requested that its expenses for the oral proceedings of 21 September 2012 be borne by the Appellant.

Reasons for the Decision

1. *Admissibility of the new grounds of opposition*

1.1 The Appellant raised in the statement of the grounds of appeal an additional ground of opposition, namely lack of disclosure according to Article 100(b) EPC 1973.

However, Article 100(b) EPC 1973 was not one of the grounds of oppositions raised by the Opponent within nine months of the publication of the mention of the grant of the patent, as required by Article 99(1) EPC in conjunction with Rule 76(2)(c) EPC.

Moreover, it is established jurisprudence of the Boards of Appeal of the EPO that new grounds of opposition not submitted within said time limit of nine months can be introduced into the appeal proceedings only with the consent of the Patent Proprietor (see G 10/91, OJ 1993, 420, point 3 of the headnote).

Since in the present case the Respondent/Patent Proprietor did not consent to the introduction of this new ground of opposition (see point VII above), it is to be rejected as inadmissible.

1.2 The Appellant argued in the statement of the grounds of appeal that claim 1 extended beyond the content of the original parent application of which the patent in suit is a divisional.

The Board notes that Article 100(c) EPC 1973 was also not one of the grounds of opposition raised by the Opponent within the time limit of nine months, as required by Article 99(1) in conjunction with Rule 76(2) (c) EPC.

Moreover, even though the granted claim 1 had been modified during the opposition proceedings before the Opposition Division and the compliance of the amended claims with Article 123(2) EPC was considered in the decision under appeal, the present objection, which was never raised at first instance, does not concern an extension beyond the content of the application as originally filed, i.e. the compliance with the requirement of Article 123(2) EPC, but a different legal ground, namely an extension with respect to the original parent application of which the patent in suit is a divisional, i.e. a compliance with the requirement of Article 76(1) EPC 1973.

Therefore, it concerns a legal objection which is equally covered by Article 100(c) EPC 1973 but is different from Article 123(2) EPC.

The Board notes in this respect that the Enlarged Board of Appeal of the EPO decided in G 7/95 (OJ 1996, 626) with respect to the different legal grounds covered by Article 100(a) EPC 1973 that legal grounds covered by

the dispositions of Article 100(a) which have not been substantiated in due time can only be introduced into the proceedings with the consent of the Patent Proprietor (points 6 and 7.1 of the reasons).

The Board thus finds that the same principle must apply similarly to Article 100(c) 1973 EPC, which concerns both the extension beyond the content of the original application (Article 123(2) EPC) as well as, in case of a divisional application, the extension beyond the content of the original parent application (Article 76(1) EPC 1973).

Since in the present case no objections with respect to Article 76(1) EPC 1973 had been substantiated during the opposition proceedings, such a new legal ground can be introduced in the appeal proceedings only with the consent of the Patent Proprietor.

Since, the Respondent/Patent Proprietor did not consent to the introduction of this new ground of opposition (see point VII above), it is to be rejected as inadmissible.

- 1.3 For the reasons mentioned above the decision T 922/94, cited by the Appellant, referring to the power of the Board to consider the compliance with the requirement of Article 123(2) EPC of claims amended during the opposition proceedings (see point 2.2. of the reasons), cannot apply to the present case.

2. *Admissibility of the new objections raised under Article 100(c) EPC 1973*

The Appellant submitted for the first time during the oral proceedings of 21 September 2012 that the introduction of the wording "in said order" into claim 1 contravened the requirements of Article 123(2) EPC.

The Board remarks that this objection had never been raised before by the Appellant during the written proceedings and, contrary to the Appellant's submissions, there is no recall that such an objection had been raised at first instance either in the decision under appeal or in the minutes of the oral proceedings held before the Opposition Division. To the contrary, the decision under appeal clearly states under point 17 that "this amendment finds basis throughout the specification and was not objected to by the Opponent" (see also point III above).

This new objection thus amounts to an amendment of the Appellant's case which can be admitted only at the Board's discretion and shall not be admitted if the issues raised cannot be reasonably expected to be dealt with without adjournment of the oral proceedings (see Article 13(3) RPBA).

Since no objection against this amendment, which was considered allowable by the Opposition Division, had been raised in writing and the Board had not found any reason for raising this objection by itself in advance of the oral proceedings, it is clear that neither the Respondent nor the Board could expect and foresee the

arguments that the Appellant intended to raise in this respect.

The admission of such a new objection at this very late stage of the proceedings thus would clearly disadvantage the Respondent and could not allow the Board to reach a decision at the end of the oral proceedings.

For these reasons the introduction of this new objection at such a late stage of the proceedings is not admissible under Article 13(3) RPBA.

The Board notes, for the sake of completeness, that also in this case the decision T 922/94, cited by the Appellant, does not apply, since in that case the objections under Article 123(2) EPC had already been raised in writing before the oral proceedings and the RPBA did not yet contain at that time the restrictions foreseen by Article 13(3) RPBA.

3. *Admissibility of documents (7a) and (7b) submitted with the grounds of appeal*

As explained in the statement of the grounds of appeal, documents (7a) and (7b) are two experts' opinions submitted by the Appellant as a reaction to the decision under appeal on novelty since, in the Appellant's view, document (1) was not considered correctly by the Opposition Division.

Since claim 1 according to the main request is an amended version of granted claim 1 and was filed for the first time during the oral proceedings before the

Opposition Division, it is clear that the Opponent could take notice of the full reasoning with respect to such a claim only with the issuing of the decision under appeal.

The Board thus finds that it was the Appellant's right to defend and implement its case in the light of the reasoning of the decision.

Since documents (7a) and (7b) were clearly submitted as a reaction to the decision under appeal, they thus have to be admitted into the proceedings under Article 12(4) RPBA.

4. *Respondent's main request*

4.1 Article 123(2) and (3) EPC

The Board has no reason to depart from the finding of the Opposition Division that the claims of the main request comply with the requirements of Articles 123(2) and (3) EPC (see point III above).

4.2 Novelty

4.2.1 The Appellant submitted that example 1 of document (1) would disclose a method of kraft cooking comprising all the steps of claim 1. In particular, the augmenting step (c) in which the treated extracted liquor is diluted or partially replaced with a liquor having a lower effective DOM content, would be implicitly disclosed in document (1). The experts' opinions (7a) and (7b) were cited in support of this alleged implicit disclosure.

It is clear from the description of example 1 that it concerns only the simulation of a continuous process by means of a laboratory batch digester, wherefrom an amount of cooking liquid is removed and replaced with the same amount of treated digested liquor deriving from a separate continuous digester (see column 8, lines 3 to 6 in combination with lines 24 to 43 and column 9, lines 2 to 8).

Therefore this example, being a simulation of a continuous process, suggests at most the possibility of applying the principles derivable from its description into a continuous process but does not disclose all the steps of a continuous process itself.

Hence, the Board finds that example 1 cannot explicitly or implicitly disclose all the steps of the process of claim 1, which concerns only a continuous process and not the combination of a batch and a continuous digester.

- 4.2.2 Document (1) discloses also, by reference to figure 2, a method of kraft cooking comminuted cellulose fibrous material in a continuous digester, wherein said method comprises during an intermediate stage of the cook a step of extracting liquor from withdrawal screens, treating the extracted liquor by means of an ultrafiltration membrane to remove lignin and other decomposition products thereof, i.e. the so-called dissolved organic materials (DOM), thus reducing the effective DOM level in the extracted liquor, and recirculating the resulting liquor to the digester at about the level of the withdrawal screens to reduce the

level of DOM in the digester and thereby improve the strength of the pulp so-produced and reduce consumption of chemicals (see column 6, line 46 to column 7, line 16 and 49 to 54 in combination with column 1, line 55 to column 2, line 27 and column 3, line 67 to column 4, line 45).

Therefore, the description of document (1) discloses explicitly all the steps of claim 1 of the main request with the exception of the augmenting step (c).

The Appellant submitted in this respect that the skilled person, thanks to its common general knowledge in this technical field, would have derived implicitly from the disclosure of document (1) that an augmenting step as required in the patent in suit had to be carried out necessarily, as supported by the experts' opinions (7a) and (7b).

- 4.2.3 According to established case law, the content of a prior art document is to be interpreted in the manner in which it would have been understood by the skilled person at the time it was made available (see Case Law of the Boards of Appeal of the EPO, 6th edition (2010), point I.C.1.1 on page 64).

The Board notes in this respect that the expert's opinion (7a) is not dated but it was certainly drafted not earlier than January 2009, since it reports the number of the author's publications till this date (see page 3, line 3). Since the author declared to have been in the field of chemical/cellulose pulping for 17 years (page 1, line 6 to 7), his earliest knowledge in this technical field, even if it cannot be precisely

assessed, can be assumed to originate from year 1992, i.e. much later than the publication date of document (1), which is 2 June 1987. Therefore, this declaration cannot represent the knowledge of the skilled person in June 1987 and is useless for the purpose of evaluating the novelty of the claimed subject-matter over document (1).

As regards the expert's opinion (7b), dated 27 November 2009, the author has declared to have been working in the area of fiber processing technology for more than 30 years (page 1, lines 6 to 7), its expertise area being chemical pulping technology (page 1, line 8). This fact is in agreement with the list of work experience and publications reported on pages 4 to 10 of (7b). Therefore, the Board can accept that the author was an expert of the field at the publication date of document (1). As enshrined in the current case law, the fact that the author had a connection with the Opponent is not a reason for disregarding this declaration (see Case Law of the Boards of Appeal of the EPO, 6th edition, point VI.H.4.2.1 on page 554).

In document (7b) it is stated that, whenever a portion of DOM is removed from a liquor withdrawn from the digester in a commercial pulping system, make-up liquor has to be added to the treated liquor in order to recycle the same volume of liquor that has been removed from the digester (see four lines above figure 1 on page 2). However, even if one would admit that it was already common general knowledge of the skilled person at the publication date of document (1) that the volume of liquor in the digester should possibly not vary during cooking, fact which is not possible to derive

from the declaration (7b) itself, this declaration does not clarify why the skilled person would have considered at the publication date of document (1) that the addition of make-up liquor to the treated liquor for compensating the loss of liquor during treatment had to occur **necessarily** before recirculating the liquor to the digester and not, for example, directly into the digester.

In fact, the declaration lacks completely any explanation why it would not be possible to carry out the process disclosed in document (1) as shown explicitly in figure 2, i.e. without any augmenting step in the recirculation loop of the treated liquor and with the addition of dilution liquor only at the bottom of the digester (see column 7, lines 35 to 36).

Moreover, it was discussed during the oral proceedings of 21 September 2012 before the Board that a different solution had already been offered in document (4), a document of 1978, i.e. earlier than document (1) already cited in paragraph 14 of the patent in suit. In this document it is stated that the state of knowledge in this specific technical field pointed to extended delignification carried out in a continuous Kamyrdigester with partial counter-current flow (i.e. the state of the art reported also in paragraph 2 of the patent in suit); according to this document white liquor could be added directly to certain points of the digester in order to make-up the loss of alkali because of extracted pulping liquor withdrawn from the digester (see figure 4 and left column, lines 1 to 7 and 29 to 32 below "The new tentative system").

The Board thus finds that no convincing evidence has been submitted that the only possibility for making up the above mentioned loss of liquor that the skilled person would have thought of at the publication date of document (1) was the addition of liquid to the extracted treated liquor before recirculating it as required by claim 1.

4.2.4 Therefore, the Board concludes that the subject-matter of claim 1 is novel over the cited prior art.

4.3 Inventive step

4.3.1 As explained in the description of the patent-in-suit, it was known that during kraft pulping of cellulose, the level of dissolved organic materials (DOM) is detrimental in the later stages of the cooking process since it hinders the delignification process. According to the description the effect of DOM concentration at other parts of cooking, besides the later stages, was believed to be insignificant.

Therefore, the impeding action of DOM during the later stages of the cook was minimized in some continuous cooking processes of the state of the art by means of a counter-current flow of liquor (including white liquor) at the end of the cook which reduces the concentration of DOM both at the end of the "bulk delignification" phase, and throughout the so-called "residual delignification" phase (paragraph 2 of the patent in suit).

According to the present invention, it has been allegedly found that not only does DOM have an adverse affect on cooking at the end of the cooking phase, but

that the presence of DOM adversely affects the strength of the pulp produced during any part of the cooking process, that is at the beginning, middle, or end of the bulk delignification stage and that if the DOM level is minimized throughout the cook, pulp strength is increased significantly (paragraph 8).

Therefore, according to the patent in suit the technical problem underlying the invention amounted to the provision of a method for kraft cooking cellulose which provided increased pulp strength, reduced chemical consumption and increased bleachability (paragraph 18, first 3 lines).

- 4.3.2 Both parties indicated document (1) as the most suitable starting point for the evaluation of inventive step.

In fact, document (1) concerns also a method for kraft cooking cellulose which provided increased pulp strength, reduced chemical consumption and increased bleachability (column 1, lines 45 to 54).

Therefore, the Board takes also this document as the starting point for the evaluation of inventive step.

As regards the technical problem underlying the claimed invention in the light of the teaching of document (1), the patent in suit does not contain any evidence that the claimed method would bring about any advantage over the process disclosed in document (1). In fact, the specific examples tested in the patent in suit concern a method of kraft cooking including the sequence of

steps (a), (c) and (d) without step (b) (see figures 17 and 19 to 23; and paragraph 84).

Moreover, there is no evidence that the only distinctive feature with respect to the closest prior art, i.e. the addition of step (c) as explained under point 4.2.2 above, would bring about any additional advantage with respect to those already realized by means of the continuous process of document (1) including the sequence of steps (a), (b) and (d).

The Board thus finds that the technical problem underlying the invention can only be defined as the provision of an alternative method for kraft cooking cellulose which provides also increased pulp strength, reduced chemical consumption and increased bleachability as that of document (1).

There is no doubt that the claimed method solves this technical problem.

4.3.3 For evaluating inventive step it remains to decide if the skilled person, on the basis of the teaching of the prior art or of his common general knowledge, would have carried out the augmenting step (c) before the recirculation of the extracted treated pulping liquor into the digester.

As explained above with regard to novelty, this step is not explicitly or implicitly disclosed in document (1). It is also undisputed that this step is not explicitly disclosed in the other cited documents of the prior art.

Moreover, as already mentioned above, document (4) contained the teaching of adding make-up liquid

directly at specific levels of the digester countercurrently to the descending digested liquor containing DOM, i.e. it disclosed what it was already indicated to represent the prior art in the patent in suit itself (see paragraph 2). No evidence was submitted that the skilled person would have interpreted document (4) as implying also the addition of make-up liquid co-currently with any recirculated withdrawn liquor.

- 4.3.4 As already mentioned above (point 4.2.3), the expert's opinion (7b) does not explain why the skilled person, at the priority date of the patent in suit, would have preferred or thought of adding the make-up liquid as required by claim 1 of the main request and not as suggested in the prior art, for example in document (4), counter-currently to the flow of liquor in the digester and does not explain convincingly that the augmenting step (c) belonged to the common general knowledge of the skilled person at the priority date of the patent in suit.

As regards the expert's opinion (7a), it contains the statement that the author did not use hindsight from documentations or knowledge obtained after May 1993 (fourth and fifth line from the bottom of page 2). However, the author's earliest knowledge in this technical field cannot be exactly determined and cannot be before 1992 (see point 4.2.3 above) and the earliest of his listed publications is from 1996 (see point 7 on page 3). Therefore, in the light of the evident contradiction of the data mentioned above, the Board cannot assume that the reported author's opinion coincides with the common general knowledge of the

skilled person at the priority date of the patent in suit and has not been influenced by the more relevant experience acquired by the author after this date.

Therefore, it is the Board's view that document (7a) cannot represent the common general knowledge of the skilled person at the priority date of the patent in suit, i.e. in 1993, and is useless for evaluating inventive step.

- 4.3.5 The Board thus finds that, in the absence of any pointer in the prior art, the skilled person would have had no motivation for trying to add liquid co-currently with the treated withdrawn liquor before its recirculation into the digester instead of adding it directly and counter-currently to the digester as it was already been explicitly suggested in the prior art.

Hence, the Board finds that the claimed subject-matter amounts to an alternative of the process of document (1) which was not obvious for the skilled person at the priority date of the patent in suit.

Claims 1 and claims 2 to 5, dependent on claim 1, thus involve an inventive step.

5. Since the claims of the main request have been found to comply with the requirements of the EPC there is no need to discuss the reasons for not admitting the Respondent's auxiliary requests.

6. *Apportionment of costs*

6.1 As explained in point V above, the Appellant announced its change of name, which had already occurred in January 2011, only in the oral proceedings of 20 December 2011.

It is established case law that if a third party claims that the appellant status has been transferred to him, he has to produce sufficient evidence to satisfy the Board of Appeal that a transfer has occurred (see T 6/05, point 1.3 of the reasons).

Since the evidence submitted by the Appellant in the oral proceedings of 20 December 2011 was considered to be insufficient, the proceedings were continued in writing and the Appellant/Opponent was requested to clarify within 2 months from the date of dispatch of the minutes the legal identity of the Appellant, respectively a possible legal succession of rights under Swedish law, as having been discussed in the oral proceedings.

The Appellant had no difficulty in filing with a letter dated 27 February 2012 the requested evidence.

It is thus evident that this information could have been provided to the Board and to the other party well in advance of the oral proceedings.

6.2 As to the Appellant's allegation that the Respondent already knew of the change of name and that the unjustified massive doubts raised by him during oral proceedings had also caused at least partly the adjournment of the oral proceeding, the Board notes

that the Appellant did not file any convincing evidence in this respect.

In fact, even though the Appellant submitted in writing that the Respondent had been informed of the occurred merging from several other cases, the Appellant had submitted with the letter of 27 February 2012 only some enclosures concerning the proceedings relating to the SE-application No. 0602349-3. It is clear from the pages provided that the change of name concerned in that case a change from Kvaerner Pulping AB into Metso Paper Sweden AB. This change of name was communicated to the other party, which was the Respondent. Apart from the fact that this change of name did not concern Metso Karlstad AB, the Board remarks that, even if it would have concerned the same change of name as in the present case, these enclosures do not contain any indication that a merging had taken place.

Since a change of name could only imply a transfer of part of the assets from the previous party to the new one and can differ from case to case, it concerns a very different legal situation than the merging of one party into another one; in fact, in such a case, also under Swedish law, the new party becomes the universal successor of the previous one.

Therefore, the Board cannot agree with the Appellant's allegation that the Respondent knew already of the merging and had at least partly caused the adjourning of the oral proceedings.

- 6.3 The Board concludes that it would have been possible for the Appellant to submit the necessary evidence well

ahead of the oral proceedings and that it was its conduct that has caused the adjourning of the oral proceedings.

Therefore, for reasons of equity, the Respondent's costs for the new oral proceedings of 19 September 2012 have to be borne by the Appellant, as foreseen by Articles 16(a) and (c) RPBA.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The costs incurred to the Respondent due to the oral proceedings of 19 September 2012 are to be borne by the Appellant.

The Registrar:

The Chairman:

D. Magliano

P.-P. Bracke