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Datasheet for the decision of 29 April 2015

Case Number: T 1104/11 - 3.2.07

Application Number: 00981733.9

Publication Number: 1162162

IPC: B65G47/86, B65G47/84, B65G47/244, A61F13/15

Language of the proceedings: EN

Title of invention:
METHOD AND DEVICE FOR TRANSPORTATION

Patent Proprietor:
Zuiko Corporation

Opponent:
SCA Hygiene Products AB

Headword:

Relevant legal provisions:
EPC Art. 56
RPBA Art. 13(1), 13(3)

Keyword:
Inventive step - main request (no)
Late-filed auxiliary request - admitted (no)

Decisions cited:

Catchword:
see point 2

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Case Number: T 1104/11 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 29 April 2015

Appellant: (Patent Proprietor)	Zuiko Corporation 15-21, Minamibefu-cho, Settu-Shi Osaka 566-0045 (JP)
Representative:	Schwabe - Sandmair - Marx Patentanwälte Stuntzstraße 16 81677 München (DE)
Respondent: (Opponent)	SCA Hygiene Products AB 405 03 Göteborg (SE)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 8 March 2011 revoking European patent No. 1162162 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	H. Meinders
Members:	G. Patton
	G. Weiss

Summary of Facts and Submissions

I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division to revoke European patent No. 1 162 162.

The opposition had been filed against the patent as a whole and was based on Article 100(a) EPC (lack of novelty and lack of inventive step).

The Opposition Division held that:

- the then main request (patent as granted) and auxiliary requests 3 and 4 did not fulfil the requirements of Article 56 EPC in view of the documents:

D1 : US-A-4 617 082
D12 : US-A-4 610 751; and

- the then auxiliary requests 1 and 2 did not fulfil the requirements of Articles 84 and 123(2) EPC.

II. With the statement setting out the grounds of appeal the appellant requested that the patent be maintained on the basis of a main request, subsidiarily, of one of the auxiliary requests I to XI, all different from the requests underlying the impugned decision.

The opponent (respondent) requested with its reply that the appeal be dismissed.

III. The Board provided the parties with its preliminary non-binding opinion annexed to the summons for oral proceedings dated 21 January 2015, in that:

- the main request and auxiliary requests I, II, VI, VII and VIII appeared to be inadmissible; and
- the subject-matter of claims 1 of auxiliary requests III, IV, X, IX, X and XI appeared to not fulfill the requirements of Article 56 EPC in view of D1 and D12 and the common general knowledge of the skilled person.

In reaction, the respondent filed with letter dated 23 April 2015 a new main request and a new auxiliary request replacing all requests on file.

IV. Oral proceedings took place on 29 April 2015 during which the following issues, *inter alia*, were discussed:

- the compliance of claim 1 of the main request with Article 56 EPC over D1 combined with D12 and the application of general technical knowledge by the skilled person; and

- the admissibility of the auxiliary request.

The parties agreed that the subject-matter of claim 1 of the main request was the same as the subject-matter of claim 1 of earlier auxiliary request III.

The present decision was announced at the end of the oral proceedings.

V. The appellant requests that the decision under appeal be set aside and the European patent be maintained on the basis of the main or the auxiliary request filed with letter dated 23 April 2015.

The respondent requests that the appeal be dismissed.

VI. Claim 1 of the **main request** reads as follows:

"A transfer method for transferring a workpiece (X) from a preceding stage (C1) to a subsequent stage (C2) by using a transfer apparatus (1) comprising at least one transfer section (3) being part of at least one revolving section (30) and capable of revolving around a rotation axis (11) and a velocity-changing section (2) for changing a transfer velocity (V1) of the transfer section (3), the velocity-changing section (2) including a generally disc-shaped driving wheel (21) linked to one end of a driving shaft (41) inserted through the centre of a base body section (40) of the transfer apparatus (1), a plurality of crank arms (22) attached to the driving wheel (21) and disposed at regu1ar intervals, each crank arm (22) including a disc-shaped substrate section (221), an arm section (222) extending from the surface of the substrate section (221), and a velocity-changing cam roller (223) protruding from the substrate section (221) and placed in a velocity-changing guide (44) formed in a flange (45) of the base body section (40), wherein the substrate section (221) is attached via an annular bearing (212) to a crank arm support hole (211) formed in the circular shape of the driving wheel (21), wherein the velocity-changing cam roller (223) is provided at a position spaced apart from a pivot center (220) of the crank arm (22) by a distance and moves along the velocity-changing guide (44), and wherein one end of the revolving section (30) is pivotally linked via a link lever (23) to the arm section (222) of each crank arm (22), the method comprising:

- a pickup step, wherein in order for the transfer section (3) to pick up the workpiece (X) transferred by the preceding stage (C1) at a first transfer velocity

(V1), the transfer section (3) moves at a pickup velocity (V2) substantially equal to the first transfer velocity (V1) in a pickup area having a width;

- a velocity-changing step of changing the transfer velocity (V1) of the transfer section (3) while the transfer section (3) is holding the workpiece (X) which has been picked up, using the velocity-changing guide that is eccentric to the rotation axis (11) and does not move around the rotation axis (11),

- wherein the angular velocity of the transfer section (3) changes, thereby changing the transfer velocity;

- a direction-changing step of changing a direction of the workpiece (X) by pivoting the transfer section (3) about an axis transverse the rotation axis (11) using a direction-changing guide that runs along a path around the curved surface of a nonrotatable cylinder that is coaxial with the axis of rotation (11), the path of the direction-changing guide being displaced in a direction parallel to the rotation axis (11) to effect the pivoting of the transfer section (3); and

- a hand-over step, wherein in order to transfer the workpiece (X) at a second transfer velocity (V4) by the subsequent stage (C2), the transfer section (3) moves at a hand-over velocity (V3) substantially equal to the second transfer velocity (V4) in a hand-over area having a width,

wherein the pickup velocity (V2) and the hand-over velocity (V3) are different from each other."

Claim 1 of the **auxiliary request** reads as follows:

"A transfer method for transferring a workpiece (X) from a preceding stage (C1) to a subsequent stage (C2) by using a transfer apparatus (1) comprising:

- a base body section (40) including a generally cylindrical casing (401);

- a plurality of generally annular lock plates (46) attached to the casing (401) along the periphery thereof;

- a plurality of revolving sections (30) including
- an elongate, flat and box-shaped drive box (31) linked to an arm (462) protruding from the respective lock plate (46) which is attached to the casing (401) of the base body section (40) along the periphery thereof via a bearing (461) so that the drive box (31) can revolve around the base body section (40) with the longitudinal direction of the drive box (3 1) being parallel to a rotation axis (210); and
- an attracting member (32) being pivotally held at one end of the drive box (31), and capable of revolving around the rotation axis (210), wherein the drive box (31) and the attracting member (32) are hollow and communicated to each other, and wherein the attracting member (32) is provided with a plurality of small apertures (323) that reach inside of the attracting member (32);

- a direction-changing section (5) including
- a cylindrical cam (47) provided along the periphery of, and being coaxial with the casing (401), having a direction-changing cam-groove (48) formed in the cylindrical cam (47) and running all the way around a

side surface of the cylindrical cam (47) while being displaced in the direction of the generatrix of the cylindrical cam (47); and
- direction-changing cam-rollers (322) for each of the attracting members (32), protruding on the side of the base body section (40) at a position spaced apart by a distance from a pivot centre of a cylindrical pivot shaft (321) provided generally at the centre of the attracting member (32), held via a bearing (312) by a cylindrical support section (311) provided in the drive box (31) in a direction perpendicular to the revolving plane of the revolving drive box (31), the direction-changing cam-roller (322) moving along the direction-changing cam-groove (48);

- a velocity-changing section (2) for changing a transfer velocity (V1) of the attracting members (32), the velocity-changing section (2) including
- a generally disc-shaped driving wheel (21) linked to one end of a hollow driving shaft (41) which is inserted through the centre of the base body section (40) and rotatably attached to the casing (401) via a bearing (43), the driving shaft (41) being attached at its other end to a driving gear (42), the driving wheel (21) being attached along its periphery to the revolving sections (30) and revolving with the revolving sections (30), wherein the rotation axis (210) of the driving wheel (21), the driving shaft (41) and the driving gear (42) are coaxial with the casing (401);
- a flange (45) formed at one end of the casing (401), with a velocity-changing cam groove (44) which is formed to be eccentric to the centre of the driving wheel (21); and

- a plurality of crank arms (22) attached to the driving wheel (21) and disposed at regular intervals, each crank arm (22) including

- a disc-shaped substrate section (221) attached via an annular bearing (212) to a crank ann support hole (211) formed in the circular shape of the driving wheel (21), so that a pivot centre (220) of each of the crank arms (22) rotates at the same angular velocity as the driving wheel (21);
- an arm section (222) extending from the surface of the substrate section (221), the arm section (222) being pivotally linked to a link lever (23) pivotally linked to a linking block (24) fixed to the drive box (31) of a respective revolving section (30); and
- a velocity-changing cam roller (223) protruding from the substrate section (221) and placed in the velocity-changing cam groove (44), and provided at a position spaced apart from the pivot centre (220) of the crank arm (22) by a distance and moving along the velocity-changing cam groove (44); and

- a vacuum adjustment section including
- a vacuum shaft (49) inserted through the hollow driving shaft (41) and held with respect to the driving shaft (41) via a bearing (492), so that when the driving shaft (41) rotates, the casing (401) and the vacuum shaft (49) do not rotate; and
- a U-shaped hose (33) connected to one end of the drive box (31) and to a vacuum communication aperture (493) formed in the vicinity of the junction between the driving wheel (21) and the driving shaft (41), wherein the vacuum communication aperture (493) meets a vacuum adjustment port (491) provided at one end of the vacuum shaft (49) that is coaxial with the casing (401), the vacuum communication aperture (493) rotating

along with the driving wheel (21) and communicated to and disconnected from the vacuum adjustment port (491) depending upon its rotational position, wherein a suction path extends from the hose (33) to the plurality of small apertures (323) of the attracting members (32) via the drive box(31);

the method comprising:

- a pickup step, wherein in order for the attracting members (32) to pick up the workpieces (X) transferred by the preceding stage (Cl) at a first transfer velocity (V1), the attracting members (32) move at a pickup velocity (V2) substantially equal to the first transfer velocity (V1) in a pickup area, and wherein the vacuum communication aperture (493) is communicated to the vacuum adjustment port (491);

- a velocity-changing step of changing the transfer velocity (V1) of the attracting members (32) while the attracting members (32) are holding the workpieces (X) which have been picked up, using the velocity-changing earn groove (44), wherein the angular velocity of the attracting members (32) changes, thereby changing the transfer velocity;

- a direction-changing step of changing a direction of the workpieces (X) by pivoting the attracting members (32) about an axis transverse the rotation axis (210) using the direction-changing cam-groove (48);

- a hand-over step, wherein in order to transfer the workpieces (X) at a second transfer velocity (V4) by the subsequent stage (C2), the attracting members (32) move at a hand-over velocity (V3) substantially equal to the second transfer velocity (V4) in a hand- over

area, and wherein the vacuum communication aperture (493) and the vacuum adjustment port (491) are disconnected from each other; and

- wherein the pickup velocity (V2) and the hand-over velocity (V3) are different from each other."

Since claim 1 is relevant for the present decision, it is not necessary to report the wording of the independent apparatus claim 6 of the requests.

VII. The appellant argued essentially as follows:

Main request

D12 should, instead of D1, be regarded as the closest prior art to claim 1.

D12 does not disclose that the velocity-changing section comprises a disc-shaped substrate section of the crank arms from which the cam roller protrudes, said substrate section being attached via an annular bearing to a support hole formed in the driving wheel. This combination of features provides for a more compact transfer apparatus. Since there is no indication whatsoever in the cited prior art, the claimed solution to the problem of providing a more compact apparatus is the result of inventive step.

Auxiliary request

The auxiliary request was filed in order to address the objection of added subject-matter raised by the respondent in its reply to the appeal and addressed by the Board in the annex to the summons for oral proceedings. The respondent should therefore not be

surprised. The independent claims had to be re-worded to incorporate the required features, but also to avoid lack of clarity. The lateness of its filing was due to difficulties in communicating and coordinating with the client. The auxiliary request should, hence, be admitted in the proceedings.

VIII. The respondent argued essentially as follows:

Main request

D1, which is regarded as representing the closest prior art to claim 1, does not disclose the angular velocity-changing mechanism. This mechanism is, however, known from D12. The claimed features of this mechanism which are not disclosed in D12 relate to mere simple design choices within the skilled person's common general knowledge which would be applied when implementing the mechanism of D12 into the apparatus of D1. The subject-matter of claim 1 of the main request should therefore be regarded as lacking inventive step.

Auxiliary request

Added subject-matter has been an issue, already in the opposition proceedings and the respondent's reply pointing it out again dates from December 2011. Already for this reason, the appellant could have reacted much more in advance of the oral proceedings. Further, the Board did not provide any preliminary opinion in the annex to the summons for oral proceedings on this issue and, in any case, the summons were sent three months before the oral proceedings so that the filing of the auxiliary request only three working days before the oral proceedings cannot be justified.

The appellant's behaviour amounts to an unfair conduct which would require an adjournment of the oral proceedings so as to allow for sufficient time to the respondent for a proper consideration, more in particular on inventive step.

The alleged appellant's difficulties to communicate and coordinate with its client cannot be a valid reason either.

For these reasons, the auxiliary request should not be admitted in the proceedings.

Reasons for the Decision

1. *Main request*

1.1 Since the Board considers that the subject-matter of independent claim 1 of the main request lacks inventive step (see below), there is no need to discuss in this decision whether the other requirements of the EPC are fulfilled.

1.2 Inventive step (Article 56 EPC)

1.2.1 The appellant considers D12 as the closest prior art. The Board does not see any reason, however, to deviate from the finding of the opposition division to start from D1 as the closest prior art as also suggested by the respondent. As a matter of fact, no argument has been brought forward by the appellant for its approach. Further, D1, like claim 1, is in the technical field of transfer apparatuses comprising both a rotating and revolving unit, for the same purpose of modifying the velocity (cf. for instance figures 5A, 5B and 5C).

1.2.2 D1 (column 6, line 40 to column 14, line 44; figures 3A, 3B, 3C, 4A, 4B, 4C, 5A, 5B, 5C, 6, 7, 7A, 8) discloses a transfer method for transferring a workpiece ("elastic strips" 16, 18) from a preceding stage to a subsequent stage by using a transfer apparatus (100, 200) comprising at least one transfer section ("transfer member" 30, 116, 146, 260) being part of at least one revolving section including a drive box ("carriage means" 118; "carriage frame" 230), and capable of revolving around a rotation axis (38, 102, 202), and a velocity-changing section ("cam track" 60, 130, 132, 242 and "cam followers" 62, 128, 240 enable to change the **linear** (tangential) velocity of transfer member 30, 116, 146, 260 by sliding it in the radial direction via "support" 48, 114, 226) for changing a transfer velocity of the transfer section, the velocity-changing section including a generally disc-shaped driving wheel ("web portion" 41; "carriage frame" 120, 230) linked to one end of a driving shaft (38, 102, 202) (in figure 6 via "support shafts" 114 of "transfer members" 116 slidably mounted on "support means" 108 mounted on shaft 102; in figure 7 via "carriage trolleys" 232, 234 sliding in "tracks" 214, 216 of "radial support arms" 206, 208 affixed to rotatable shaft 202) inserted through the centre of a base body section ("opposed wall stanchions" 46, 46a, 100, 106) of the transfer apparatus (100, 200), the method comprising:

- a pickup step, wherein in order for the transfer section to pick up the workpiece (16, 18) transferred by the preceding stage at a first transfer velocity, the transfer section moves at a pickup velocity substantially equal to the first transfer velocity in a pickup area (S) having a width;
- a velocity-changing step of changing the transfer velocity of the transfer section while the transfer

section is holding the workpiece (16, 18) which has been picked up, using a velocity-changing guide ("cam tracks" 60, 130, 132, 242) that is eccentric to the rotation axis (38, 102, 202) and does not move around the rotation axis (38, 102, 202), thereby changing the transfer velocity;
- a direction-changing step of changing a direction of the workpiece (16, 18) by pivoting the transfer section about an axis transverse the rotation axis (38, 102, 202) using a direction-changing guide that runs along a path ("cam tracks" 136, 250) around the curved surface of a nonrotatable cylinder ("barrel cam" 134, 246) that is coaxial with the axis of rotation (38, 102, 202), the path of the direction changing guide being displaced in a direction parallel to the rotation axis (38, 102, 202) to effect the pivoting of the transfer section (30, 116, 146, 260); and
- a hand-over step, wherein in order to transfer the workpiece (16, 18) at a second transfer velocity by the subsequent stage, the transfer section (30, 116, 146, 260) moves at a hand-over velocity substantially equal to the second transfer velocity in a hand-over area (T) having a width;
wherein the pickup velocity and the hand-over velocity are different from each other (column 10, lines 1-13; compare figure 3A and figure 3C).

1.2.3 As a result, the following features of claim 1 of auxiliary request III are not disclosed by D1:

- the angular velocity of the transfer section changes;

- a plurality of crank arms attached to the driving wheel and disposed at regular intervals, each crank arm including a disc-shaped substrate section, an arm section extending from the surface of the substrate

section, and a velocity-changing cam roller protruding from the substrate section and placed in a velocity-changing guide formed in a flange of the base body section wherein the substrate section is attached via an annular bearing to a crank arm support hole formed in the circular shape of the driving wheel, wherein the velocity-changing cam roller is provided at a position spaced apart from a pivot center of the crank arm by a distance and moves along the velocity-changing guide, and wherein one end of the revolving section is pivotally linked via a link lever to the arm section of each crank arm

1.2.4 These distinguishing features, by themselves, have the synergetic technical effect of providing the transfer section with a velocity at the hand-over area different from that at the pick-up area.

As explained above, this technical effect is *de facto* already obtained in D1 via the change in the **linear** (tangential) velocity of transfer member (30, 116, 146, 260) through its radial sliding via the "support" (48, 114, 226).

1.2.5 Consequently, the problem to be solved can only be regarded as to provide an **alternative means** for providing the transfer section with a velocity at the hand-over area different from that at pick-up the area.

1.2.6 The skilled person faced with this problem will come across document D12 which is, like D1 and claim 1, in the technical field of transfer apparatuses. Since D12 discloses this alternative solution to the problem, he will immediately think of applying the teaching of D12 to the transfer apparatus of D1.

1.2.7 D12 discloses the following mechanism for changing the velocity of a workpiece from a pick-up area to a hand-over area in a transfer apparatus (column 3, lines 26-28; column 4, line 24 to column 5, line 62; figures 1-2):

a plurality of crank arms ("first levers" 3) attached to the driving wheel ("driving disc" 2) and disposed at regular intervals, each crank arm (3) including a substrate section, an arm section extending from the surface of the substrate section, and a velocity-changing cam roller ("free ends" of first levers 3) placed in a velocity-changing guide ("curved path" 8) formed in a flange of the base body section wherein the substrate section is attached in rotation ("axe" 5) in the circular shape of the driving wheel (2), wherein the velocity-changing cam roller ("free ends" of first levers 3) is provided at a position spaced apart from a pivot center (5) of the crank arm (3) by a distance and moves along the velocity-changing guide (8), and wherein one end of the revolving section ("conveying element" 1) is pivotally linked via a link lever ("second levers" 4) to the arm section of each crank arm (3).

1.2.8 D12 does not disclose the following features:

- the changing cam roller **protrudes** from the substrate section;

- the substrate section is attached via an **annular bearing** to a crank arm **support hole** formed in the circular shape of the driving wheel; and

- each crank arm includes a **disc-shaped** substrate section.

1.2.9 These features relate, however, to obvious design choices within the common general knowledge of the skilled person. Therefore, the skilled person using his common general knowledge when adapting the teaching of D12 to the transfer apparatus of D1 will arrive at the claimed subject-matter in an obvious manner (Article 56 EPC).

1.2.10 The above analysis of D1 and D12 given under points 1.2.2, 1.2.3 and 1.2.7 with respect to the features of claim 1 of the main request equates with the preliminary opinion of the Board provided in the annex to the summons in view of claim 1 of the then auxiliary request III, which corresponds to present claim 1 (see point VI above). This analysis has not been contested subsequently by the parties, neither in writing nor at the oral proceedings.

1.2.11 The appellant considers, as put forward in its written submissions dated 23 April 2015 and argued again at the oral proceedings that the combination of the above listed features not known from D12 (point 1.2.8) - the disc-shaped substrate section of the crank arms from which the cam roller protrudes and the substrate section attached via an annular bearing to a support hole formed in the driving wheel - provides for an axial arrangement of the driving wheel and the velocity changing guide leading to a more compact design of the transfer apparatus.

The distinguishing features would, hence, solve the problem of providing a more compact apparatus, instead of merely finding an alternative. As a result, since there are no indications to this solution in the cited prior art, inventive step should be acknowledged.

According to the appellant, levers extending from the crank arms to the cam roller were omitted in the claimed invention. This would in particular be in contrast to D12 which would suggest a velocity-changing mechanism comprising crank arms for the cam rollers extending far beyond the rotational bearing provided for the levers in the vicinity of its rotational axis (5) in figure 1.

1.2.12 The Board cannot share the appellant's view for the reasons given at the oral proceedings, namely that figure 1 of D12 aims only at describing the kinematics of the moving parts in view of changing the angular velocity of the transfer section. It is schematic and, hence, no dimensions can be extrapolated nor measurements can be taken from it. Consequently, the argument that the cam rollers extend "far beyond" the rotational bearing provided for the levers in the "vicinity" of its rotational axis cannot hold.

In fact, the kinematics disclosed in figure 1 of D12 are the same as those in claim 1.

Further, as put forward by the respondent, the implementation of the disclosed kinematics in the apparatus of D1 is not hindered by any technical difficulties, but consists of simple design choices. As a matter of fact, the above features not disclosed in D12 amount to obvious solutions the skilled person has at its disposal and is aware of when designing such an apparatus. For instance, having the cam roller in one axial direction or the other is indeed a matter of simple design choice.

1.2.13 The respondent also argues that the alleged advantage of compactness of the claimed design has been late-filed (only with the letter of 23 April 2015) and has no support in the contested patent so that it should not be admitted in the proceedings.

The Board considers, however, that even taking the argument into account, to the advantage of the appellant, the above reasoning in view of D1, D12 and the skilled person's common general knowledge still applies. Should the skilled person be confronted with the requirement of compactness when implementing the solution of D12 in the apparatus of D1, he has at his disposal a number of obvious available solutions among which also figures the solution as proposed by claim 1.

2. *Auxiliary request*

2.1 The appellant filed the auxiliary request with fax on 23 April 2015, i.e. only three working days before the oral proceedings before the Board. Due to this late filing the admission of the request in the proceedings is subject to the discretionary power of the Board in accordance with Articles 13(1), (3) RPBA.

2.2 As put forward during the oral proceedings, the independent claims of the auxiliary request, i.e. including claim 1, have been completely reformulated. Features present in claim 1 of the main request are distributed in different locations in claim 1 of the auxiliary request and are combined with a rather long list of features taken from the description. There are no concrete explanations as to their basis ("all the features set out in section 5.1.2 of the provisional opinion of the Board have been introduced into independent claims" is the only substantiation) and as

to these combinations with existing features of this claim. This already makes a *prima facie* assessment whether the requirements of Article 123(2) EPC are fulfilled impossible. In fact, it is apparently expected that the Board performs the acts the requester should have performed.

This manner of proceeding is regarded by the Board as being contrary to the following conditions frequently applied in connection with Article 13(1) RPBA for its admission: the efficiency of the proceedings should not be impaired and the request being *prima facie* allowable under Article 123(2) EPC.

2.3 It may well be that, as argued by the appellant, the claims had to be re-worded for clarity reasons, but this does not change the issues mentioned above.

2.4 Apart from the issues with Article 123(2) EPC, there is also the further issue with inventive step. In fact, in this respect the respondent was left with only three working days for it to assess whether a long list of new added features taken from the description indeed created more differences of claim 1 over D1, their effects, the problem(s) solved, etc. in terms of inventive step. This cannot be expected of the respondent without adjournment of the oral proceedings (Article 13(3) RPBA), since also on that issue of inventive step there is no clear guidance or argumentation in the accompanying letter applying the "problem-solution" approach starting from D1, according to the Boards of Appeal case law.

2.5 The appellant argued that the independent claims of the auxiliary request are based on those of the main request (auxiliary request III of the statement of

grounds of appeal) with the further addition of all the features listed by the respondent in its reply, page 6, which were regarded by the respondent as leading to an inadmissible intermediate generalisation due to their omission in the claims. For the appellant, the amendments to the independent claims were therefore to simply address this respondent's objection with respect to Article 123(2) EPC.

For these reasons, the respondent could not be surprised by the amendments conducted in the auxiliary request and, hence, the auxiliary request should be admitted in the proceedings, for this reason alone.

2.6 The Board cannot share the appellant's view for the above mentioned reasons (point 2.4) given by the respondent during the oral proceedings.

Where the appellant requests the Board to acknowledge also inventive step, such requests do need a further substantiation also on that issue. For maintenance in amended form as is presently the case, the Board has to be convinced by the appellant-patent proprietor; it does not fall upon the Board to explain why unsubstantiated requests do not fulfil the requirements of the EPC.

In fact, the Board shares the respondent's view that the issue is not a matter of whether the respondent has been surprised by the amendments but rather a matter of a fair conduct from the appellant's side.

Finally, the difficulties to communicate and coordinate with its client, as argued in writing by the appellant (letter dated 23 April 2015), are entirely internal

reasons, which cannot be taken into consideration by the Board.

2.7 In view of the above, the auxiliary request is not admitted in the proceedings (Articles 13(1),(3) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar: The Chairman:

G. Nachtigall H. Meinders

Decision electronically authenticated