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Datasheet for the decision of 25 March 2015

Case Number: T 1155/11 - 3.5.07

Application Number: 09165318.8

Publication Number: 2110817

IPC: G11B20/18, G11B7/007

Language of the proceedings: EN

Title of invention:
Write-once optical disc, and method and apparatus for allocating spare area on write-once optical disc

Applicant:
LG Electronics Inc.

Headword:
Allocating defect management areas/LG ELECTRONICS

Relevant legal provisions:
EPC Art. 54(2), 54(3), 56, 87, 88(3), 89, 153(5)

Keyword:
Priority - multiple priorities - validity of priority
Novelty - after amendment (yes)
Inventive step - after amendment (yes)
Related and divisional applications - double patenting (no)

Decisions cited:
G 0001/05, G 0001/06, T 0123/82, T 2402/10, T 2461/10, T 1780/12

Catchword:

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Case Number: T 1155/11 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 25 March 2015

Appellant: (Applicant)	LG Electronics Inc. LG Twin Towers 20, Yeouido-dong Youngdungpo-gu Seoul 150-721 (KR)
Representative:	Vossius & Partner Patentanwälte Rechtsanwälte mbB Siebertstrasse 3 81675 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 22 December 2010 refusing European patent application No. 09165318.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	R. Moufang
Members:	P. San-Bento Furtado
	M. Rognoni

Summary of Facts and Submissions

I. The appeal lies from the decision of the Examining Division to refuse the European patent application No. 09165318.8. The application concerns allocating defect management areas on a dual-layer write-once optical recording medium.

II. The present patent application No. 09165318.8 was filed as a divisional from European patent application No. 03815869.7 granted as European patent No. 1 595 251. The parent application originated from international application No. PCT/KR2003/002025 filed on 1 October 2003 and published as WO 2004/072963. Each of these applications claimed priority from the following Korean applications and respective filing dates

- KR 10-2003-0009895 of 17 February 2003, and
- KR 10-2003-0023876 of 16 April 2003.

III. The European search report and search opinion, issued together, cited four documents including the following two documents considered to be relevant prior art under Article 54(1) and (3) EPC:

D1: EP 1 547 066 A; this is the publication number of European patent application No. 03798601.5, filed by LG Electronics Inc. and derived from international application No. PCT/KR2003/002010 filed on 30 September 2003, which claimed two Korean priorities of 30 September 2002 and 11 January 2003 and was published as WO 2004/029942 (**D1'**) on 8 April 2004;

D2: EP 1 547 065 A; this is the publication number of European patent application No. 03798600.7 filed by LG Electronics Inc. and derived from international application No. PCT/KR2003/002009

filed on 30 September 2003, which claimed two Korean priorities of 30 September 2002 and 25 February 2003 and was published as WO 2004/029941 (**D2'**) on 8 April 2004.

For each of the applications D1 and D2, one European divisional application has been filed.

IV. The present application was refused for lack of inventive step, Articles 52(1) and 56 EPC, of the subject-matter of independent claim 1 of the sole request over the prior art described in the application and the common general knowledge of the skilled person, illustrated by documents D6 and D8:

D6: ECMA: Standardizing Information and Communication Systems: "Standard ECMA-240: Data Interchange on 120 mm Optical Disk Cartridges using Phase Change PD Format - Capacity: 650 Mbytes per Cartridge", June 1996;
D8: US 5 065 388 A, 12 November 1991.

V. In the statement of grounds of appeal the appellant requested that the decision be set aside and that a patent be granted on the basis of the main request filed during oral proceedings before the Examining Division on 23 November 2010, considered in the appealed decision and re-submitted with the grounds of appeal.

VI. The appellant was invited to oral proceedings. In a subsequent communication sent in advance of the oral proceedings, the Board expressed its preliminary opinion that the subject-matter of claim 1 did not appear to be obvious over the prior art cited in the

application and used as closest prior art by the Examining Division.

The Board also informed the appellant that the first priority of the present application did not appear to describe all the features of the claimed invention. The questions of right of priority had not been addressed by the Examining Division, so that a remittal might be necessary in this respect.

In the opinion of the Board, documents on which the contested decision did not rely might be considered relevant under Article 54(3) EPC. In this context the Board found Euro-PCT application D2 particularly relevant, since it appeared to disclose the claimed features.

The Board furthermore introduced the following document into the proceedings:

D9: EP 1 573 723 A; this is the publication number of European patent application No. 03815979.4 filed by LG Electronics Inc. and derived from international application No. PCT/KR2003/002027 filed on 1 October 2003, which claimed the Korean priorities
- KR 10-2003-0010925 of 21 February 2003,
- KR 10-2003-0013200 of 3 March 2003 and
- KR 10-2003-0023876 of 16 April 2003,

and was published as WO 2004/075180 (**D9'**) of 2 September 2004.

Euro-PCT application D9 led to the grant of a patent. Its divisional application was refused.

The Board informed the appellant that the second priority application of 3 March 2003 of D9 seemed to already disclose all the relevant features. Depending on the validity of the priorities with regard to the features of the claim for both that application and the present application, application D9 could be detrimental to the novelty of the claimed invention under Article 54(1) and (3) EPC.

VII. With a letter of reply the appellant filed a new set of claims 1 to 9.

The appellant argued that the two priority documents of application D2 did not disclose certain features of the newly claimed subject-matter.

The appellant submitted certified English translations of the text of two Korean priority applications:

D10: translation of KR 10-2003-0013200, filed on 3 March 2003;
D11: translation of KR 10-2003-0023876, filed on 16 April 2003.

Document D10 is the translation of the description and claims of the second priority application of D9. Document D11 is the translation of the text of the third priority of D9 and the second priority of the present application, which are the same.

The appellant argued that document D10 did not disclose some of the features of the claimed invention and that therefore application D9 did not enjoy the second priority of 3 March 2003 for the claimed subject-matter and was not detrimental to the novelty of the

independent claims. The appellant submitted that consequently remittal was not necessary.

VIII. Oral proceedings were held on 25 March 2015. During the oral proceedings the appellant submitted a new set of claims and amended pages of the description. At the end of the oral proceedings, the chairman pronounced the Board's decision.

IX. The appellant's final request was that the contested decision be set aside and that the case be remitted to the department of first instance with the order to grant a patent on the basis of the following documents:

- Claims 1 to 6 as submitted during the oral proceedings in appeal;
- Description pages 1 to 3 as originally filed and description pages 4 to 18 as submitted during the oral proceedings in appeal;
- Drawings: Figures 1 to 8 as originally filed.

X. Claim 1 of the sole request reads as follows:

"A method for allocating a defect management area on a write-once optical recording medium having two recording layers (Layer 0, Layer 1), each of the recording layers including an inner zone (Lead-in area, Lead-out area), a data area (35a, 35b) and an outer zone (Outer Zone 0, Outer Zone 1), wherein the inner and outer zones include defect management areas (DMAs) for storing defect management information of the recording medium when the recording medium is to be finalized, characterized in that the method comprises:

allocating, to the data area (35a) within a first recording layer (Layer 0), a first inner spare area (ISA0) with a predetermined fixed size and a first

outer spare area (OSA0) with a size that is not predetermined;

allocating, to the data area (35b) within a second recording layer (Layer 1), a second inner spare area (ISA1) and a second outer spare area (OSA1) with sizes that are not predetermined;

allocating, to each of the first and second outer spare areas (OSA0, OSA1), an interim defect management area (IDMA) in a same size, the interim defect management area (IDMA) being used for storing defect management information of the recording medium until the recording medium is finalized; and

allocating, to the inner zone (Lead-in area, Lead-out area), a temporary defect management area (TDMA) with a predetermined fixed size for storing defect management information of the recording medium until the recording medium is finalized,

wherein each of the interim defect management areas (IDMA) has a non-predetermined size depending on the size of the outer spare areas (OSA0, OSA1), and

wherein the interim defect management information (IDMA) is used for storing defect management information when the temporary defect management area (TDMA) becomes full."

Claims 2 and 3 are dependent upon claim 1.

Claim 4 reads as follows:

"An apparatus for allocating a defect management area on a write-once optical recording medium having two recording layers (Layer 0, Layer 1), each of the recording layers including an inner zone (Lead-in area, Lead-out area), a data area (35a, 35b) and an outer zone (Outer Zone 0, Outer Zone 1), wherein the inner and outer zones include defect management areas (DMAs)

for storing defect management information of the recording medium when the recording medium is to be finalized, the apparatus comprising: a pickup (22) configured to write/read data to/from the recording medium; a servo unit (23) configured to control the pickup (22) to maintain a distance from the recording medium and track a relevant track on the recording medium; and a data processor (24) configured to process and supply input data to the pickup (22) for writing and process data read from the recording medium; characterized in that the apparatus further comprises

a microcomputer (26) operatively coupled to above components -the pickup (22), the servo unit (23) and the data processor (24), and configured to control the components to allocate a first inner spare area (ISA0) with a predetermined fixed size and a first outer spare area (OSA0) with a size that is not predetermined to the data area (35a) within a first recording layer (Layer 0), and a second inner spare area (ISA1) and a second outer spare area (OSA1) with sizes that are not predetermined to the data area (35b) within a second recording layer (Layer 1); and control the components to allocate, to each of the first and second outer spare areas (OSA0, OSA1), an interim defect management area (IDMA) in a same size, the interim defect management area (IDMA) being used for storing defect management information of the recording medium until the recording medium is finalized,

wherein the microcomputer (26) is configured to further control the components to allocate, to the inner zone (Lead-in area, Lead-out area), a temporary defect management area (TDMA) with a predetermined fixed size for storing defect management information of the recording medium until the recording medium is finalized,

wherein each of the interim defect management areas (IDMA) has a non-predetermined size depending on the size of the outer spare areas (OSA0, OSA1), and

wherein the microcomputer (26) is configured to control the components to use the interim defect management information for storing defect management information when the temporary defect management area (TDMA) becomes full."

Claims 5 and 6 are dependent upon claim 4.

Reasons for the Decision

1. The appeal complies with the provisions referred to in Rule 101 EPC and is therefore admissible.

The invention

2. The invention relates to recording defect management information on a write-once optical recording medium, for example the Blu-ray Disc Write-Once (BD-WO), having two layers.

3. According to the description, a prior art Blu-ray Disc Rewritable (BD-RE) is divided into a lead-in area (LIA), a data area and a lead-out area (LOA). The data area includes an inner spare area (ISA) in the front, a user data area, and an outer spare area (OSA) in the rear (paragraph [0004], figure 2 of the published patent application). The lead-in and lead-out areas include defect management areas (DMAs) where defect information, including a list of defect areas, is recorded. The spare areas are used as a replacement for writing the data of the defective areas

(paragraph [0006]). A BD-RE dual-layer disc is also described as background art (Figure 3B, paragraph [0009]).

4. The invention is directed to the allocation of defect management areas in a two-layered write-once optical disc, or DB-WO double-layer (figure 7). In the write-once optical recording medium according to the invention, each of the recording layers includes an inner zone, a data area, and an outer zone. The lead-in and lead-out areas, located in the inner zones, and the outer zones include final or permanent defect management areas (DMAs) where defect management information is stored when the BD-WO is finalised.

Additionally, areas are allocated for temporarily storing defect management information until the recording medium is finalised. There are two types of such areas: temporary defect management areas (TDMAs) of fixed size allocated in the lead-in and/or lead-out areas, and interim defect management areas (IDMAs), of variable size, allocated in spare areas of variable size, e.g. N x 256 clusters ($0 \leq N \leq 32$). The IDMAs are used for storing defect management information when the TDMA is full.

Amendments - Articles 76(1) and 123(2) EPC

5. Independent claim 1 corresponds to original claims 1 to 5, or to the embodiment of Figure 7 described on page 13, line 9 to page 17, line 2 of the description of the application as originally filed. The use of the TDMAs is also described on page 11, lines 9 to 21 of the original description.

Claim 1 does not define IDMA 38b in ISA1 depicted in Figure 7. In the Board's opinion this is allowable because the feature is described as an optional feature of the embodiment in the paragraph bridging pages 14 and 15 of the description.

6. Independent apparatus claim 4 defines an apparatus comprising a pickup, a servo unit, a data processor and a microcomputer, and further comprising corresponding features to those of method claim 1. The apparatus features are shown in Figure 8 and described on page 17, lines 3 to 20 as filed. The basis for the other features is as explained for claim 1 (see point 5 above).

7. The features of dependent method claims 2 and 3, and of corresponding apparatus claims 5 and 6, are depicted in Figure 7 and described on page 15, lines 5 to 13.

8. Since the originally filed description and drawings are the same for both the application and the parent application, the claimed subject-matter is described in the original parent application in the same passages of the description as cited above.

9. The Board is hence satisfied that the claims comply with Articles 123(2) and 76(1) EPC.

Clarity - Article 84 EPC

10. The minor clarity objections raised at the oral proceedings before the Board have been overcome by amendments. The description has been adapted to the claims. The claims therefore meet the requirements of Article 84 EPC.

State of the art under Articles 54(3) and 153(5) EPC

11. The present application has a filing date of 1 October 2003 and claims priority from two Korean applications with filing dates of 17 February 2003 and 16 April 2003 (see section II above).

12. Euro-PCT applications D1 and D2 were cited in the search report as prior art under Article 54(3) EPC, since they claim a first priority date of 30 September 2002 which is earlier than that of the present application (see section III).

In its communication the Board raised doubts about the validity of the earliest priority of the present application and introduced Euro-PCT application D9 as possible state of the art under Article 54(3) EPC. The first two claimed priority dates of application D9 are earlier than the second claimed priority date of the present application (see section VI above).

The Board is also satisfied that each of the Euro-PCT applications D1, D2 and D9 meets the conditions mentioned in Article 153(5) EPC. Therefore, depending on the validity of priority rights, each of those three applications may constitute relevant state of the art for the present application under Articles 54(3) and 89 EPC.

13. On the other hand, each of the patent applications D1, D2 and D9 were published only in 2004, as documents D1', D2' and D9', i.e. after the filing date of the present application in 2003 (see sections II, III and VI above). Independently of whether a priority right is valid for the present application, none of those

publications constitutes prior art relevant for inventive step under Article 56 EPC.

Novelty - Article 54(1) and (3) EPC

14. Euro-PCT applications D1 and D2 disclose very similar subject-matter to the present application and, as explained above, may be relevant for the examination of novelty depending on the validity of the claimed priorities.

14.1 Application D2 discloses defect management in a write-once optical recording medium, including TDMAs and DMAs. Figure 5 shows the structure of the defect management areas of a write-once single-layered disk (see also page 13, lines 4 to 13). An embodiment for a dual-layer BD-WO is described on page 14, line 13 to page 15, line 23, which includes most of the features of the present claim. In particular, some TDMAs in the method of application D2 have a variable size (Figure 5, page 15, lines 2 to 6) and thus correspond to the IDMAs of the claim.

14.2 Application D1 discloses a similar invention to that of application D2. A dual-layer disc including both DMAs and TDMAs is shown in Figure 7 and described on page 16, line 10 to page 18, line 2.

14.3 However, neither D1 nor D2 discloses at least two features of the claimed method: allocating a second inner spare area (ISA1) with a size that is not predetermined and the IDMA being used for storing defect management information when the TDMA becomes full.

14.4 Given that some features are not disclosed in either D1 or D2, it is not decisive for the question of novelty under Article 54(1) and (3) in connection with Articles 89 and 153(5) EPC whether, additionally, the priority documents of the applications D1 and D2 fail to describe other claimed features, as argued by the appellant for application D2.

14.5 Therefore, the claimed method is novel over each of the Euro-PCT patent applications D1 and D2 (Article 54(1) and (3) EPC). Furthermore, the same conclusions apply with regard to the European divisional applications of D1 and D2.

15. During the appeal proceedings the Board introduced Euro-PCT patent application D9, and corresponding international publication D9', which appeared to be relevant for the question of novelty of the claimed subject-matter.

15.1 The first priority date claimed in relation to the application in suit is prior to the earliest priority of application D9 (see sections II and VI and point 12 above). However, in its communication the Board raised doubts regarding the validity of that first priority of the present application according to Articles 87 and 88(3) EPC. In particular, the Board noted that the figures of the first priority document did not depict the temporary and interim defect management areas (TDMAs and IDMAs), whereas those of the second priority document of 16 April 2003 did. It was not clear whether those and other features were disclosed in the first priority document.

On the other hand, the Board pointed out that application D9 appeared to disclose all the features of

claim 1 then on file in Figure 5, and on page 7, line 21 to page 12, line 14. The second priority application of 3 March 2003 of application D9 appeared to depict the relevant embodiment in the figures and be a valid priority for those features.

The Board noted that if the priority of 3 March 2003 was valid for Euro-PCT patent application D9 with regard to the features described in Figure 5 and in the cited passages of D9, and the earliest valid priority date for the corresponding claimed features of the present application was 16 April 2003, then application D9 could be novelty-destroying for the claimed invention under Article 54(1) and (3) EPC.

15.2 In its letter the appellant submitted certified translations D10 and D11 of the two Korean priority applications of 3 March 2003 and 16 April 2003, respectively. As explained in section VII above, document D10 is the second priority application of D9 and document D11 is the third priority of D9 and the second of the present application.

According to the appellant, the claimed subject-matter was supported by priority document D11. On the other hand, document D10 failed to disclose that "the interim defect management information (IDMA) is used for storing defect management information when the temporary defect management area (TDMA) becomes full". Referring to paragraph [48] of document D10, the TDMA was a temporary DMA for recording the most recent defect management information at the time when the recording medium was ejected, while IDMA was an interim DMA for recording defect management information detected while the recording medium was in use. Furthermore, document D10 disclosed in paragraph [73]

that the TDMA could record temporary disc definition structure (TDDS) information only when the recording medium was ejected. Therefore, application D9 could not enjoy the priority date of 3 March 2003 and was not novelty-destroying for the claimed subject-matter.

15.3 The Board agrees with the appellant that document D10 does not disclose the mentioned features. It does not indicate that the IDMA is used when the TDMA becomes full. The Board notes furthermore that it does not mention the disc being finalised. Throughout the description document D10 refers only to the "defect management area of using" and "defect management area of ejecting" into which the defect management information is transferred when ejecting (see for instance paragraphs [35] to [39], [44] and [45], the passages cited by the appellant and the closing paragraphs [99] and [100]). The same is described in paragraphs [71] to [73], [96] and [97] for the most relevant embodiments of figures 6 and 18 of the application of D10, and in several claims (for example, claims 1, 2, 6 to 8, 10 and 13 to 16). Even though it may be assumed that a finalisation of the disc often occurs when the disc stops being "in use" or is ejected, the features are not necessarily the same. Therefore the second priority of 3 March 2003 is not valid for the relevant subject-matter of Euro-PCT application D9.

15.4 The Board concluded from an inspection of the first priority document of application D9 that it does not describe an embodiment corresponding to the claimed subject-matter either.

15.5 Since the remaining third priority of application D9 and the second priority of the present application are

the same, and the two applications enjoy the same filing date, it is irrelevant for the question of novelty under Article 54(1) and (3) in connection with Articles 89 and 153(5) EPC whether the common priority date of 16 April 2003 is valid for the subject-matter in each of the applications. European application D9 may become relevant solely for the question of double patenting (see T 123/82 of 30 August 1985, point 9).

15.6 Therefore, the Board concludes that application D9 is not detrimental to the novelty of the subject-matter of the present application. The same conclusions apply to the European divisional application of D9.

16. From the above reasoning the Board concludes that the present application fulfils the requirements of novelty under Article 54(1) and (3) EPC.

Novelty and inventive step - Articles 54(1) and (2) and 56 EPC

17. The most relevant prior art for novelty pursuant to Article 54(1) and (2) EPC and inventive step is document D6.

17.1 Document D6 is not related to Blu-ray discs but it describes defect management in read-only optical disks on the basis of working defect lists (WDL1 to WDL4) (page 42, page 47, section 18.5, and page 49, section 19.4.2). As argued in the decision under appeal, the working defect lists of document D6 are used to temporarily record defect management information and therefore serve a similar purpose to that of the temporary defect management area (TDMA) of the invention.

17.2 However, the method of document D6 does not allocate areas of non-predetermined size for the working defect lists and replacement data. Besides, the working defect lists are allocated additionally to and independently of the spare areas (see page 42, table 6; page 44, table 7b; page 47, section 18.5).

Therefore, document D6 does not disclose any defect management area corresponding to the IDMA of the invention. It does not describe either the details of allocation of defect management areas in a recording medium having two recording layers as defined in the claim. The distinguishing features provide for an advantageous flexible allocation of defect management areas in a dual-layer disc.

18. The Examining Division took the prior art acknowledged in the application as the closest prior art.

18.1 The application describes on page 1, line 13, to page 3, line 14 rewritable optical discs such as the Blu-ray Disc Rewritable (BD-RE). Figures 3A and 3B depict, as background art, the structure of the defect management areas in single and dual layer BD-RE discs, respectively.

18.2 The appellant submitted that the prior art acknowledged in the application was not a proper starting point for the assessment of inventive step. That prior art was directed to a rewritable disc, the structure of which was technically different from the present invention directed to a write-once disc.

The Board does indeed find it questionable whether the BD-RE is a proper starting point for discussion of inventive step in the present case, since the focus of

the invention is on the allocation of defect management areas for write-once discs, in particular of temporary defect management areas, whereas rewritable discs do not need temporary defect management areas. However, for the sake of argument the Board will also discuss inventive step starting from that prior art.

18.3 The claimed invention differs from the prior art acknowledged in the application in that the optical recording medium is write-once and the method further allocates a temporary defect management area (TDMA) and an interim defect management area (IDMA) for storing defect management information until the recording medium is finalised. Additionally, those prior-art discs do not include any of the features related to the IDMA and TDMA described in detail in the claim, for instance the IDMAs being allocated in a same size to each of the outer spare areas (OSAO, OSA1), the TDMA being allocated with a predetermined fixed size to the inner zone, or the IDMA being used for storing defect management information when the TDMA becomes full.

18.4 According to the Examining Division, the invention solved the problem of adapting the known method of managing defects for a rewritable medium so that it could be applied to a write-once medium.

In the opinion of the Board the claimed invention solves that problem but additionally the distinguishing features, in particular the allocation of spare areas and of temporary and interim defect management areas in the manner claimed, offer more flexibility in allocating recording capacity according to the needs.

19. None of the cited documents discloses the features distinguishing the claimed invention from either D6 or

the dual-layer BD-RE described in the application. In the Board's view, it would not be obvious for the skilled person to arrive at those features either, because the prior-art methods do not even allocate temporary defect management areas of variable size in the spare areas used for replacement and do not offer the advantage of more flexible allocation of defect management areas. Given this flexibility it is possible to increase for a particular disc the data area available for user data.

20. It follows that the subject-matter of claim 1, and that of corresponding independent claim 4, is novel and involves an inventive step over the available prior art. By virtue of their dependency upon the independent claims, the same applies to claims 2, 3, 5 and 6. Therefore, the claims meet the requirements of Articles 54(1) and (2) and 56 EPC.

Double patenting

21. The prohibition of double patenting is an accepted principle in the jurisprudence of the Boards of Appeal, on the basis that an applicant has no legitimate interest in proceedings leading to the grant of a second patent for the same subject-matter (point 13.4 of decisions G 1/05 and G 1/06, OJ EPO 2008, 271 and 307 respectively, and Case Law of the Boards of Appeal, 7.ed., 2013, II.F.4).

22. As explained in a recent decision, issues of double patenting of the same invention may occur in three different types of combinations of European applications by the same applicant: two applications filed on the same day, parent and divisional applications, or an application and its priority

application (T 2461/10 of 26 March 2014, points 6 and 11).

In the present case, the question of double patenting could arise with respect to either European patent No. 1 595 251 granted for the parent application of the present application, or to European patent No. 1 573 723 granted for application D9. The present application and those patents have the same effective filing date (see point 15.5 above) and designate the same contracting states.

22.1 However, none of those patents defines the same invention as the claims of the present application. In particular, none of the granted claims specifies that the IDMA is used to store defect management information when the TDMA becomes full, a feature which is defined in each of the independent claims of the present application.

23. The subject-matter of the claims of each of those two patents encompasses the subject-matter of some claims of the present application.

According to established jurisprudence, the claimed subject-matter must be the same for the double patenting prohibition to apply (T 1780/12 of 30 January 2014, points 6 to 9, T 2461/10, point 25), this requirement also being mentioned in decisions G 1/05 and G 1/06.

In the present case the Board follows decision T 2402/10 in finding that the fact that the subject-matter of a claim put forward later is already encompassed by a granted claim does not mean that the requirement of the "same subject-matter" is met

(T 2402/10 of 10 May 2002, point 8, Case Law of the Boards of Appeal, II.F.4).

24. Therefore, the Board is satisfied that granting the present application does not go against the principle of prohibition of double patenting.

Concluding remarks

25. Acknowledgement of the prior art has been added to the description, for compliance with Rule 42(1)(b) EPC.

26. From the above the Board concludes that the application complies with the provisions of the EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to grant a patent on the basis of the following documents:

   - Description: pages 1 to 3 as originally filed, and pages 4 to 18 as submitted during the oral proceedings;

   - Claims: 1 to 6 as submitted during the oral proceedings;

   - Drawings: Figures 1 to 8 as originally filed.

The Registrar: The Chairman:

I. Aperribay R. Moufang

Decision electronically authenticated