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**Datasheet for the decision  
of 10 February 2015**

**Case Number:** T 0196/12 - 3.3.06

**Application Number:** 02708881.4

**Publication Number:** 1383955

**IPC:** D21C3/24

**Language of the proceedings:** EN

**Title of invention:**

CONTINUOUS DIGESTER FOR CELLULOSE PULP INCLUDING METHOD AND  
RECIRCULATION SYSTEM FOR SUCH DIGESTER

**Patent Proprietor:**

Valmet Aktiebolag

**Opponent:**

Andritz, Inc.

**Headword:**

Continous digester/VALMET

**Relevant legal provisions:**

EPC Art. 52(1), 54(1), 54(2)  
RPBA Art. 12(4), 13(1), 13(3)

**Keyword:**

Late-filed request - admitted (yes) - (Main Request)  
Novelty - (no) - (Main Request)  
Late-filed auxiliary requests - admitted (no) -  
not clearly allowable

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 0196/12 - 3.3.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.06**  
**of 10 February 2015**

**Appellant:** Valmet Aktiebolag  
(Patent Proprietor) 851 94 Sundsvall (SE)

**Representative:** Becker Kurig Straus  
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**Respondent:** Andritz, Inc.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 7 December 2011  
revoking European patent No. 1383955 pursuant to  
Article 101(3)(b) EPC.**

**Composition of the Board:**

**Chairman** B. Czech  
**Members:** G. Santavicca  
J. Geschwind

## Summary of Facts and Submissions

- I. The appeal lies from the decision of the Opposition Division to revoke European patent No. 1 383 955.
- II. The patent in suit had been opposed in its entirety on the grounds of lack of novelty and inventive step, in particular having regard to the disclosure of document D1: US 3,434,920 A.
- III. In the decision under appeal, the Opposition Division came to the following conclusions with regard to the claims as granted (Main Request) and the amended claims according to First and Second Auxiliary Requests filed at the oral proceedings:
- a) Claim 1 as granted, still present also according to the First Auxiliary Request, was directed to an apparatus lacking novelty over the apparatus disclosed in D1.
  - b) The process of Claim 15 as granted and of Claim 1 according to the Second Auxiliary Request, lacked novelty over the process disclosed in D1.
- IV. With its statement setting out the grounds of appeal, the Appellant *inter alia* submitted
- a Declaration of Mr Hans Furhem (included as Point 6 in the statement of grounds) and
  - a copy of a submission of Mr Presland, dated 17 April 2007, that had already been submitted in a corresponding Swedish case.

The Appellant upheld the three claims requests that had been pending before the Opposition Division. It stressed that in the decision under appeal the disclosure of document D1 had not been correctly assessed. In particular, D1 did not disclose a 3<sup>rd</sup>

treatment zone within the meaning of the patent in suit. Moreover, D1 disclosed a different kind of digester which was not operated with dwell times and a decrease of the L/W ratio as required by the claims at issue.

- V. In its response, the Respondent, referring to newly filed document

D11: US 2,938,824 A

and to calculations based on the example of D1, *inter alia* maintained that the apparatus and process according to the claims as granted lacked novelty over D1. In particular, it had been demonstrated beyond all reasonable doubts that the zone below strainers 61 in the apparatus of D1 was a third concurrent cooking zone.

- VI. The parties were summoned to oral proceedings.

- VII. With a further letter, the Appellant filed amended sets of claims as new Main Request and new First and Second Auxiliary Requests, replacing the previously pending claim requests.

The Appellant submitted that the following features were essential for the invention:

- "1) All the cooking liquor may be added at the beginning of the cooking.
- 2) The liquid-to-wood (L/W) ratio is successively decreased as the chips move downwardly in the digester.
- 3) The extracted cooking liquid is recirculated back to the top of the digester."

As regards the reasons given in the decision under appeal in respect of the claimed process, the Appellant

maintained that the dwell time and the decrease of the liquid-to-wood ratio required by the claims at issue were not even implicitly disclosed by D1.

- VIII. In response, the Respondent raised objections pursuant to Articles 12(4), 13(1) and/or (3) RPBA regarding the admissibility of the new claim requests in view of their late filing. In this connection it held that the requests raised new issues under Articles 84 and 123(2) and (3) EPC due to the amendments made.
- IX. By letter dated 12 January 2015, the Appellant reverted to Auxiliary Request 2 dealt with in the decision under appeal and filed clean copies thereof to be considered as its new Main Request. With the same letter it also submitted two sets of amended claims as its new First and Second Auxiliary Requests, replacing the previously pending ones. It considered that these claim requests were admissible although filed after the issuance of the summons to oral proceedings, and that the claims met the requirements of the EPC.

Claim 1 according to the Main Request reads as follows (Amendments in comparison to Claim 15 as granted are made apparent by the Board):

*"~~15~~1. Process for operating a continuous digester for manufacturing chemical pulp, which digester has a top to which a mixture of chips and cooking liquid is fed, and after which pulp dissolved in the digester is fed out from the bottom of the digester,  
- whereby a number, n, of positions for extracting cooking liquid are made between the top and bottom of the digester, at different heights in the digester, with the first extraction position, seen in relation to*

*the other extraction positions, being arranged uppermost in the digester, and where n is at least 2, - whereby the chips pass through a number, (n+1), of treatment zones down through the digester, with the first treatment zone, seen in relation to the other treatment zones, being arranged in an upper part of the digester, and preferably uppermost in the digester, and the said extraction positions being made between the treatment zones, - whereby the dwell time for the chips in the treatment zones lies within the interval 10-120 minutes between the extraction positions, characterized in that - cooking liquid which is extracted from the said number n of extraction positions is recirculated to the upper part of the digester in a position above the first extraction position in order, at that point, to be mixed with supplied chips and, in interaction with the quantities which are extracted, to be regulated such that the liquid-to-wood ratio successively decreases between the treatment zones and down through the digester."*

Claim 1 according to the new First Auxiliary Request, reads as follows (amendments to claim 1 according to the Main Request, quoted *supra*, are made apparent by the Board):

*"1. Process for operating a continuous digester for manufacturing chemical pulp, which digester has a top to which a mixture of chips and cooking liquid is fed, and after which pulp dissolved in the digester is fed out from the bottom of the digester, - whereby a number, n, of positions for extracting cooking liquid are made between the top and bottom of the digester, at different heights in the digester, with the first extraction position, seen in relation to*

the other extraction positions, being arranged uppermost in the digester, and wherein **n** is at least **23**, - whereby the chips pass through a number, **n+1**, of treatment zones down through the digester, with the first treatment zone, seen in relation to the other treatment zones, being arranged ~~in an upper part of the digester, and preferably~~ uppermost in the digester, and the said extraction positions being made between the treatment zones, - whereby the dwell time for the chips in the treatment zones lies within the interval 10-120 minutes between the extraction positions, ~~characterized in that~~ **wherein** - cooking liquid ~~which is extracted from the said number n of extraction positions is recirculated to the upper part of the digester in a position above the first extraction position in order, at that point, to be mixed with supplied chips~~ **the at least 3 extraction positions at different heights in the digester and recirculated to the top of the digester in order to be mixed, at that point, with chips which are supplied to the digester** and, in interaction with the quantities which are extracted, to be regulated such that the liquid-to-wood ratio successively decreases between the treatment zones and down through the digester."

Claim 1 according to the new Second Auxiliary Request reads as follows (amendments to claim 1 according to the new First Auxiliary Request are made apparent by the Board):

" 1. Process ...

- cooking liquid is extracted from the at least 3 extraction positions at different heights in the digester and recirculated to the top of the digester in order to be mixed, at that point, with chips which are supplied to the digester **and wherein the largest**



**quantity of cooking liquid is extracted from the first extraction position and in that successively smaller quantities of cooking liquid are extracted from each subsequent extraction position and, in interaction with the quantities which are extracted, to be regulated such that the liquid-to-wood ratio successively decreases between the treatment zones and down through the digester."**

X. Oral proceedings were held on 10 February 2015.

The debate first focussed on the issue of admissibility of the new Main Request into the proceedings. Novelty of over D1 was then extensively dealt with.

Then, the parties were heard on the issue of admissibility of the First Auxiliary Request at issue, in particular regarding the reasons for its late filing, as well as its *prima facie* clear allowability under Articles 123(3) and 84 EPC.

More particularly, the question was addressed whether Claim 1 of the First Auxiliary Request at issue resulted in an extended scope of protection in view of the amended features "*with the first treatment zone, seen in relation to the other treatment zones, being arranged in upper part of the digester, and preferably uppermost in the digester*".

It was not in dispute that the same question was also relevant in respect of Claim 1 of the Second Auxiliary Request at issue.

In reaction, the Appellant filed further amended sets of claims as new First and Second Auxiliary Requests, replacing the First and Second Auxiliary Requests previously discussed.

The parties were then heard regarding the admissibility into the proceedings of these new auxiliary claim requests 1 and 2.

The respective claims 1 according to the First and Second Auxiliary Requests filed at the oral proceedings differ from the respective claims 1 according to the previously pending Auxiliary Requests 1 and 2 (see Point IX, *supra*) in that the features relating to the relative location of the first treatment zone read (again, like in Claim 15 as granted) "*..., being arranged **in an upper part of the digester, and preferably** uppermost in the digester...*" instead of "*being arranged uppermost in the digester*".

XI. The final requests of the parties were as follows:

The Appellant/Patent Proprietor requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims according to the Main Request submitted with letter dated 12 January 2015 or, alternatively, on the basis of the claims according to one of the First or Second Auxiliary Requests filed at the oral proceedings.

The Respondent/Opponent requested that the appeal be dismissed.

XII. The arguments of the Appellant of relevance for the decision can be summarised as follows:

*Admissibility of the new Main Request*

The Appellant was taken by surprise by the objection raised against the admissibility of the new Main Request, as the claims thereof had already been in the proceedings. Their (re-)filing was due to the objections previously raised under Article 123(2) EPC against the replacement of the term "*treatment zone*" with the term "*cooking zone*". The term "*treatment zone*" was reintroduced. The Main Request at issue was clearly admissible considering Articles 12(4), 13(1) and 13(3) RPBA. It had good chances to overcome the pending novelty objection. Also, the requirements of Articles 84 and 123(2) EPC were fulfilled.

In particular, Article 13(3) RPBA was not applicable, since the case could be discussed and concluded at the oral proceedings, i.e. there was no newly added complexity.

The new representative, when taking over the file, had to file new claim requests which were clearly admissible and which did not disadvantage the Respondent, and did so.

### *Novelty*

There were at least two features of Claim 1 at issue which were not at least implicitly and unambiguously disclosed in D1.

In the process carried out in the apparatus according to D1, there were two independent liquor recirculations: The first started at strainers 44 and went through parts 43, 69, 43a and 45 to a first position in the top; the second started at strainers 61 and went through parts 64 and 40 to another position in the top. Therefore, these two different extraction positions for cooking liquor were not in fluid connection with each other and did not convey the extracted liquors back to a single, i.e. one and the

same, reintroduction position before the first treatment zone. Hence, D1 neither disclosed a mixing of the extracted liquors nor a mixing of the resulting mixture with the chips and the added liquor at the top of the digester and before the first treatment zone. Furthermore, it was apparent from Figures 1 and 4 of D1, and the respective description, that zone 39 was a heating zone, whilst the cooking zone started at 42a and ended at its lower portion 46. So there was only one cooking zone, which was nothing more than the conventional arrangement of digesters at that time. It was also apparent that if all zones of the digester of D1 were considered, i.e. also zone 39, than the L/W ratio increased when going from zone 39 to zone 42, i.e. the liquid to wood ratio (L/W) did not always decrease between the treatment zones down through the digester.

Therefore, the claimed process was novel over the one disclosed by D1.

*Admissibility of the new First and Second Auxiliary requests*

The First and Second Auxiliary Requests were filed late in reaction to objections raised by the Respondent only at the oral proceedings. The Appellant felt that it had the right to honestly try to obtain allowable claims. On this basis admission of the First and Second Auxiliary Requests was requested.

The objections concerning the allowability of claim 1 were not convincing. In particular, Claim 1 of the First Auxiliary Request was the result of a mere combination of Claims 15 and 18 as granted. Hence, the scope of the claims was more limited, not extended. Moreover, at least the positive feature of the at least three extraction positions clearly provided novelty

over D1, so that the claim request was clearly allowable.

The same arguments applied *a fortiori* to the Second Auxiliary Request which was also more restricted in relation to the first extraction position.

XIII. The arguments of the Respondent of relevance for the decision can be summarised as follows:

*Non-admissibility of the Main Request*

The Main Request made in the statement setting out the grounds of appeal was the main Request dealt with in the decision under appeal (claims as granted).

Although no new issues were raised in the Respondent's response to the statement setting out the grounds of appeal, the Appellant later took out this Main Request and submitted a new Main Request, allegedly based on the Second Auxiliary Request dealt with in the decision under Appeal, but containing substantial amendments, which were objected to in the Respondent's letter of 18 December 2014.

With its letter of 15 January 2015, the Appellant submitted a further Main Request allegedly corresponding to the Second Auxiliary request dealt with in the decision under appeal, i.e. a set of claims allegedly already present in the previous proceedings. However, this claim request was filed with a new argumentation relying on other distinguishing features, not invoked before.

Since the new Main Request and the new arguments were filed well after the oral proceedings were arranged and just before holding oral proceedings, the new Main request was to be disregarded under Article 13(3) RPBA. The Respondent's writ of 18 December 2014 was provoked by the claim requests filed with the

Appellant's letter of 31 October 2014, and could not be seen as a justification for the filing of new claim requests. Hence, there was no reason for the late filing, nor convincing reasoning for taking the Main Request out and then reintroducing it again.

Also, said late filing created a disadvantage, i.e. the surprise of a new reasoning which *inter alia* relied on the emphasis to be given to the mixing and reintroduction of the extracted cooking liquors in a single position on the top of the digester, a feature allegedly not disclosed by D1. Further complexity arose from the fact that whilst before the first instance the discussion focussed on whether a third zone was present in the digester of D1, now this was no longer maintained. Instead, it was now held that distinctions such as the mixing and single reintroduction point were the more relevant differences.

This behavior amounted to an abuse of procedure.

Also, the Appellant had not explained why the new claim request could not have been presented before the Opposition Division (inadmissibility under Article 12(4) RPBA was invoked). The exchange of the representative entrusted with the case was not a sufficient justification for this course of action.

In summary, the Main Request at issue was inadmissible under Articles 12(4), 13(1) and 13(3) RPBA because it was filed very late and supported by entirely new arguments, and because it was not clearly allowable.

#### *Lack of novelty*

Claim 1 did not require that the extracted liquor streams be combined into one stream before being recirculated to the top of the digester. Also, according to the description of the patent in suit (Page 4, lines 3-4 and paragraph [0016], lines 24-26),

the cooking zones with a successively decreasing liquid-to-wood ratio were not the only zones of the digester, which could contain further treatment zones, for instance impregnation zones. Furthermore, the dwell time mentioned in Claim 1 was that of the treatment zones between the extraction positions. For the first and last zones of the digester no dwell times were specified. Finally, the cooking liquid as defined in Claim 1 could be any pulping liquor, as described in the patent in suit (page 3, lines 51-52). So, it was apparent that, in the digester of D1, zone 39 was a zone of impregnation, not a treatment zone according to the patent in suit, at least it had no extraction position. Zone 39, according to D1 (Figure 1, column 3, lines 14-30), was followed, in the intermediate section of the digester, by:

- a first cooking zone 42;
- a first cooking liquid extraction position 44;
- a second cooking zone 46, located between liquid extraction positions 44 and 61;
- a second cooking liquor extraction position 61;
- a third cooking zone located between extraction position 61 and the inlet of cooling liquid 50.

Cooling zone 47 was the last zone of the digester and was not a treatment zone according to Claim 1 at issue and the patent in suit.

Therefore, D1 disclosed three treatment zones and two extraction positions as defined in Claim 1 at issue, irrespective of what further treatment, if any, happened at the top and the bottom of the digester, for which no criteria were defined in Claim 1 at issue. In the three identified cooking zones, established by and between the two extraction positions, the liquid to wood ratio (L/W) always decreased down through the digester.

It was to be noted that the fact that below cooling liquid inlet conduit 50 there was a concurrent flow of chip and liquor was no longer in dispute. Nor was it in dispute that the dwell times defined in Claim 1 at issue were already disclosed in D1 for the cooking zones.

Concerning the two extraction positions, cooking liquor was extracted from both of them, as required by Claim 1 at issue.

Finally, it was apparent from D1 (Figures 1 and 4; column 5, lines 43-45; column 8, line 73, to column 9, line 2) that the cooking liquids extracted from positions 44 and 61 were recirculated to the top of the digester and there mixed with the chips.

Therefore, the claimed process was not new.

*Non-admissibility of the new First and Second Auxiliary Requests*

The First and Second Auxiliary Requests were filed at a late stage of the oral proceedings before the Board, and had thus to be clearly allowable to be admissible, if at all.

Claim 1 of the First Auxiliary Request required a higher number of extraction positions and of treatment zones. It was filed in order to overcome the novelty objection based on D1. This claim request could thus have been filed before the first instance. There was no justification for the late filing. Moreover, the First Auxiliary Request was not clearly allowable for *inter alia* the following reason:

Claim 1 was not a pure combination of Claims 15 and 18 as granted, and hence gave rise to objections at least under Article 123(3) EPC, considering that the features "*in an upper part of the digester in a position above the first extraction position*") were omitted upon



insertion of the features of Claim 18 as granted into Claim 15 as granted. This objection resulting from an analysis of the new claim request after its filing at the oral proceedings, it could not be raised before. The objections raised against the First Auxiliary Request applied likewise to the Second Auxiliary Request, which was thus not admissible either.

## **Reasons for the Decision**

### *Appellant's Main Request*

#### *Admissibility into the proceedings*

1. The Main Request is identical (except for the renumbering of the claims and removing the parenthesis around n+1) to the Second Auxiliary Request considered in the decision under appeal, and which was maintained in the statement setting out the grounds of appeal (Point 2, Requests). This claim request was already pending before the Opposition Division, and the claims thereof were considered and dealt with by the Respondent in its reply to the statement setting out the grounds of appeal.
- 1.1 It is true that the Appellant, after issuance of the summons to oral proceedings, amended the then pending Second Auxiliary Request ("*treatment zone*" replaced by "*cooking zone*") and made it become its Main Request. The Respondent thus had to deal with an amended claim request. In reaction to the objections raised by the Respondent against this request, the Appellant however immediately reverted back to the claims of the Second Auxiliary Request previously on file (now Main Request).

- 1.2 Even though this behaviour might be considered to have been disadvantageous for the Respondent, the fact remains that the claims at issue were always present throughout the opposition and appeal proceedings and had already been dealt with by the Respondent.
- 1.3 The objection against the admissibility of the Main Request at issue relies on the allegedly new argumentation of the Appellant in support of claim 1, in particular on the fact that the Appellant no longer relied on the some alleged distinctions previously argued, but on at least two new allegedly distinctive features over D1.
- 1.4 The Patent Proprietor, whose patent was revoked, indeed amended its argumentation regarding the issue of novelty of the claimed process over the document D1, invoking different/more distinguishing features. However, this change in the argumentation did not take the Respondent by surprise. On the contrary, the Respondent had ample opportunity to react to said change in argumentation.
- 1.5 The Board thus decided to admit the Main Request into the proceedings (Articles 114(2) EPC and 13(1)(3) RPBA).

### *Novelty*

2. D1 discloses the operation of a digester. Reference is made in particular to Figures 1 and 4, reference numeral 30; description: Column 2, line 48, to Column 3, line 37; Column 3, line 40, to Column 4, line 67; Column 5, lines 37-57; Column 8, line 64, to Column 9, line 2.

- 2.1 More particularly, D1 discloses a process for manufacturing chemical pulp comprising continuously operating digester 30 which, as shown in Figure 1, is a vertically elongated chamber. The digester has a top (see high pressure rotary feeder 35, screw mechanism 36 and manifold 40) to which a mixture of chips and cooking liquid is fed. The digested or cooked pulp is discharged from the bottom (blow valve 48) of the digester.
- 2.2 The digester 30 of D1 *inter alia* comprises a number  $n$  of positions for extracting cooking liquor arranged at different heights between the top and the bottom of the digester. More particularly, the digester shown in Figure 1 of D1 comprises  $n = 2$  extraction points with (reference numerals 44 and 61) in the digester. The first extraction position 44, seen in relation to the other extraction position 61, is arranged uppermost in the digester.
- 2.3 In the process of D1, the chips pass through a number of  $n+1$ , i.e.  $2+1 = 3$ , consecutive treatment zones, namely cooking zone 42, cooking zone 46 and the zone between strainers 61 and pipe 50 (see Column 3, lines 14-27; Column 4, lines 57-58) down through the digester. These treatment zones are cooking zones as described in the patent in suit (see page 4, lines 24-26). The first treatment zone 42, seen in relation to the other treatment zones, is arranged in an upper part of the digester, and said extraction positions 44 and 61 are arranged between the treatment zones 42, 46, the zone between strainers 61 and pipe 50 is the third treatment zone.

- 2.4 The dwell time for the chips in the treatment zones between the extraction positions 44 and 61 can be 1 hour (Column 4, lines 55-57), hence lying between 10 and 120 minutes as specified in Claim 1 at issue.
- 2.5 Cooking liquid which is extracted from the said number (n=2) of extraction positions 44 and 61 is recirculated (as shown in Figures 1 and 4 of D1, respectively, via pumps 69 and 65, and pipes 43a and 40) to the upper part of the digester, respectively to a position (41,45) above the first extraction position 44 in order to be mixed at that point (in the broadest sense) with supplied chips. In interaction with the quantities which are extracted, the liquid-to-wood ratio (L/W) will necessarily decrease down through the digester in the consecutive treatment zones 42, 46 and the zone between extraction point 61 and inlet 50.
- 2.6 The Appellant argued that D1 did not disclose that the mixed extracted liquors were recirculated to a single point at the top of the digester and that in the digester of D1 the L/W ratio did not always decrease as defined in Claim 1 at issue.

In this connection, the Board notes

- that Claim 1 at issue does not require a mixing of the extracted cooking liquors before their re-entry at the top of the digester;
- that the feature concerning recirculation of cooking liquid "*to the upper part of the digester in a position above the first extraction position*", encompasses but is not limited to the recirculation of liquid to a single, i.e. one and the same, position; and
- that according to D1, as according to the patent in suit (page 4, lines 30-31), the successive decrease of the L/W ratio will inevitably be obtained by the

extraction of cooking liquor from the end positions (44 and 61) of each of the first and second cooking zones 42 and 46.

- 2.7 The Board concludes that D1 discloses a process with all the combined features of Claim 1 at issue.

Hence, the subject-matter of claim 1 lacks novelty (Articles 52(1) and 54(1)(2) EPC.

3. Therefore, the Appellant's Main Request is not allowable.

#### *Appellant's First Auxiliary Request*

##### *Admissibility into the proceedings*

4. The First Auxiliary Request at issue was filed during oral proceedings before the Board.

- 4.1 It was filed in reaction to the objection under Article 123(3) EPC raised by the Respondent only at the oral proceedings, in view of some of the amended features in claim 1 of the previously pending First Auxiliary Request ("~~...being arranged in upper part of the digester, and preferably uppermost in the digester...~~"). Thus, its late filing might, in principle, have been considered justifiable.

- 4.2 However, upon analysing said new First Auxiliary Request, it became apparent to the Board that Claims 7 and 8 thereof still contained the term "*cooking zone*" (instead of "*treatment zone*"), which had been objected to under Article 123(2) EPC by the Respondent in its letter of 18 December 2014.

4.3 Moreover, the Respondent also particularly pointed to the fact that Claim 1 was not a mere combination of Claims 15 and 18 as granted, as a feature of Claim 15 as granted had been cancelled (see: "~~recirculated to the upper part of the digester in a position above the first extraction position ...~~"). In view of the suppression of the requirement "*above the first extraction position*" Claim 1 at issue appeared to be *prima facie* objectionable at least under Article 123(3) EPC.

The board accepts that considering that the amendment in question indeed appears to lift a limitation previously present in the claim, the clear allowability of the amendments to the claims is called into question.

4.4 Thus, the First Auxiliary Request raised at least one further issue at a late stage of the oral proceedings, instead of only overcoming objections raised by the Respondent. The issue raised increased the complexity of the case, rather than making the debate more convergent.

4.5 Consequently, the Board decided not to admit the First Auxiliary Request into the proceedings pursuant to Articles 114(2) EPC and 13(1), (3) RPBA.

#### *New Second Auxiliary Request*

5. The Second Auxiliary Request at issue was also filed at the oral proceedings, together with the First Auxiliary at issue.

5.1 The features "*above the first extraction position*" are also omitted in Claim 1 according to the Second

Auxiliary Request.

Hence, the finding of the Board as regards the omission of said features from independent claim 1 according to the First Auxiliary Request, i.e. its *prima facie* objectionability likewise applies to Claim 1 of the the Second Auxiliary Request.

5.2 Consequently, the Board decided not to admit the Appellant's Second Auxiliary Request into the proceedings either (Articles 114(2) EPC and 13(1), (3) RPBA).

### *Conclusion*

6. None of the Appellant's claim requests was found to be both admissible and allowable.

### **Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



D. Magliano

B. Czech

Decision electronically authenticated