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Datasheet for the decision of 4 August 2015

Case Number: T 0050/13 - 3.3.06

Application Number: 02076414.8

Publication Number: 1240941

IPC: B01J23/72

Language of the proceedings: EN

Title of invention:
Use of copper-aluminium mixed oxide catalysts in hydrogenation reactions

Patent Proprietor:
BASF Catalysts LLC

Opponent:
Clariant Produkte (Deutschland) GmbH

Headword:
Cu/Al oxide catalyst / BASF CATALYSTS

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2), 101(1)
RPBA Art. 12(2)

Keyword:
Admissibility of appeal - (no)

Decisions cited:
T 0220/83, T 0213/85, T 1206/01, T 0934/02, T 0922/05, T 0570/07, T 1581/08, T 0933/09

Catchword:

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Case Number: T 0050/13 - 3.3.06

D E C I S I O N
of Technical Board of Appeal 3.3.06
of 4 August 2015

Appellant: (Patent Proprietor)	BASF Catalysts LLC 100 Campus Drive Florham Park, NJ 07932 (US)
Representative:	Oudshoorn, Otto Leonard V.O. Johan de Wittlaan 7 2517 JR Den Haag (NL)
Respondent: (Opponent)	Clariant Produkte (Deutschland) GmbH Brüningstrasse 50 65929 Frankfurt am Main (DE)
Representative:	Dannenberger, Oliver Andre Abitz & Partner Patentanwälte mbB Postfach 86 01 09 81628 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 10 October 2012 revoking European patent No. 1240941 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	B. Czech
Members:	L. Li Voti
	C. Heath

Summary of Facts and Submissions

I. The present appeal is from the decision of the Opposition Division to revoke the European patent no. 1 240 941, granted on a divisional European application.

II. The opposition had been filed on the grounds of *inter alia* Article 100(c) EPC. According to the opponent the claimed subject-matter exetended beyond the scope of both the divisional application as filed and the parent application.

III. The Opposition Division found in its decision that claims 1 to 6 according to the sole then pending request, filed by letter of 30 November 2010 (hereinafter referred to as claims **of 30 November 2010**), were not allowable under Articles 76(1) and 123(2) and Article 100(c) EPC.

Claim 1 of 30 November 2010 is the unamended claim 1 of the patent in suit as granted and reads as follows (emphasis added by the Board):

"*1. Use of a solid Cu-Al-O catalyst comprising a tablet being formed with 0 to 8% graphite powder substantially free of chromium, the catalyst comprising a tablet having a pore volume from 0.2 ml/g to 0.6 ml/g and a bulk density of 0.7 g/ml to 1.5 g/ml, the solid catalyst having a bimodal pore size distribution* ***centering around 100Å and between 500 and 2000Å****, and having a surface area of 20 m^2/g to 200 m^2/g, the catalyst having a calculated alumina content 30% to 60% by weight, the calculated CuO content is 70% to 40% by weight, the catalyst having a promoter being present in an amount not greater then 25% by weight of the catalyst and being*

chosen from the group consisting of salts and oxides of Ce, Mn, Ba and Ni
in a catalytic reaction chosen from the group consisting of (i) hydrogenolysis of coconut fatty acid, (ii) hydrogenolysis of methyl laurate, (iii) hydrogenation of an amide, (iv) hydrogenation of a fatty acid via esterification and hydrogenolysis."

IV. In its statement of grounds of appeal of 20 February 2013 the Appellant (Patent Proprietor) requested

"to set aside the decision of the Opposition Division and to refer the case back to the Opposition Division (Main request) or on the basis of one of the Auxiliary requests currently filed."

Moreover, the statement of grounds contains a passage (page 2, below the heading "Claims"), reported hereinbelow, indicating ***verbatim*** an independent claim 1 (hereinafter referred to as claim 1 "**of page 2**") differing from claim 1 of 30 November 2010 (III, *supra*), the difference being emphasised by the Board:

"The patent contains one independent claim, which reads as follows:

1. Use of a solid Cu-Al-O catalyst
(a) comprising a tablet being formed with 0 to 8% graphite powder substantially free of chromium,
(b) the catalyst comprising a tablet having a pore volume from 0.2 ml/g to 0.6 ml/g and a bulk density of 0.7 g/ml to 1.5 g/ml,
(c) the solid catalyst having a bimodal pore size distribution ***centering around 100Å and 2000Å*** *and*
(d) having a surface area of 20 m^2/g to 200 m^2/g,
(e) the catalyst having a calculated alumina content 30% to

60% by weight, the calculated CuO content is 70% to 40% by weight,
(f) the catalyst having a promoter being present in an amount not greater then 25% by weight of the catalyst and being chosen from the group consisting of salts and oxides of Ce, Mn, Ba and Ni
(g) in a catalytic reaction chosen from the group consisting of hydrogenolysis of coconut fatty acid, hydrogenolysis of methyl laurate, hydrogenation of an amide, hydrogenation of a fatty acid via esterification and hydrogenolysis.

For clarity, the features of claim 1 have been numbered from (a) to (g), as was also done by the Opposition Division in its decision."

Together with the statement of grounds, the Appellant filed hard-copies of auxiliary requests 1 to 19, each consisting of an amended claim 1. Claim 1 according to the auxiliary request 9 reads as follows:

"*1. Use of a solid Cu-Al-O catalyst having the formula* $nCuO \cdot Al_2O_3$ *wherein n is between 0.14 and 5.13*

comprising a tablet being formed with 0 to 8% graphite powder substantially free of chromium,

the catalyst comprising a tablet having a pore volume from greater than 0.25 ml/g to 0.6 ml/g and a bulk density of 0.8 g/ml to 1.5 g/ml,

the solid catalyst having a bimodal pore size distribution centering around 100Å and around 1000Å to 2000Å and

the catalyst having a calculated alumina content 30% to 60% by weight, the calculated CuO content is 70% to 40%

by weight,

the catalyst having a promoter being present in an amount not greater then 25% by weight of the catalyst and being chosen from the group consisting of salts and oxides of Ce, Mn, Ba and Ni,

wherein the Cu-Al-O catalyst has been calcined at a temperature of 400-700°C prior to tableting,

in a catalytic reaction chosen from the group consisting of hydrogenolysis of coconut fatty acid, hydrogenolysis of methyl laurate, hydrogenation of an amide, hydrogenation of a fatty acid via esterification and hydrogenolysis."

The Appellant also stated that the claims according to all requests submitted with the statement of grounds met the requirements of Articles 123(2) and 76(1) EPC.

V. In its reply of 9 July 2013 the Respondent (Opponent) submitted *inter alia* that the appeal was inadmissible since its scope ("Umfang") had not been clearly defined in the statement of grounds.

VI. The parties were summoned to oral proceedings. In a communication pursuant to Rule 100(2) EPC, dated 23 April 2015, the Board expressed its provisional view that the appeal did not appear to be admissible.

VII. In its letter of 2 July 2015, the Appellant stated *inter alia* that the wording of claim 1 of page 2 contained an evident clerical error. With the same letter it filed, as main claim request, claims 1 to 6 of 30 November 2010 held non-allowable by the Opposition Division in the decision under appeal. It expressed the view that there

could not be any doubt that the Main Request formulated in the statement of grounds referred to these claims 1 to 6.

VIII. In a further letter of 23 July 2015, the Respondent maintained that the appeal was inadmissible.

IX. Oral proceedings were held on 4 August 2015.

The issue of the admissibility of the appeal was exhaustively debated.

X. The Appellant requested that the appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of the claims according to the Main Request submitted by letter dated 2 July 2015 or, in the alternative, on the basis of the claims according to one of the auxiliary requests 1 to 19 filed with the statement of grounds of appeal dated 20 February 2013.

The Respondent requested that the appeal be rejected as inadmissible or, in the alternative, that the appeal be dismissed.

XI. The arguments of the parties of relevance here, i.e. regarding the admissibility of the appeal, can be summarised as follows.

The Respondent submitted in essence the following:

- The request to set aside the decision under appeal and to remit the case to the Opposition Division as formulated in the statement of grounds did not indicate explicitly on the basis of which claims the case was supposed to be remitted. Therefore, it was at least

unclear whether the main request for remittal concerned claims 1 to 6 of 30 November 2010, as argued by the Appellant, or the different independent claim 1 of page 2.

- Moreover, it could not be determined whether the independent claim 1 of page 2 was supposed to be an amended version of claim 1 of 30 November 2010 or contained a clerical error insofar as feature (c) was concerned. In fact, the reasons given in the statement of grounds as regards the compliance of claim 1 according to the Main Request with Articles 123(2) and 76(1) EPC related explicitly *inter alia* to the different feature (c) ("*2000 Å*" instead of "*between 500 and 2000 Å*") of claim 1 of page 2.

- Furthermore, in view of the absence in the statement of grounds of any reference and reasoning concerning dependent claims 2 to 6 of 30 November 2010 it was dubious whether the real intention of the Appellant had indeed been to request, as main claim request, further prosecution on the basis of the set of six claims of 30 November 2010, (re-)submitted by the Appellant only by letter of 2 July 2015.

- Since the Appellant's main request was unclear the statement of grounds did not comply with the requirements of Rule 99(2) EPC.

- As regards the auxiliary claim requests 1 to 7, which mostly contained the same feature (c) as the independent claim 1 quoted in the statement of grounds, the grounds merely indicated the support for each of the amended features incorporated into claim 1 individually, but lacked a discussion of the main reason given in the decision under appeal, namely that the combination of

all features found no basis in the application as filed and the parent application as filed.

- Moreover, the statement of grounds of appeal did not contain any reasoning at all concerning the allowability of the auxiliary requests 8 to 19.

- Therefore, without further investigations on the side of the Respondent it was not apparent whether the reasons for revoking the patent given in the decision under appeal were actually supposed to be overcome by the claim according to auxiliary request 9 highlighted by the Appellant, or by any of the other auxiliary requests filed with the statement of grounds.

- Hence, the appeal was inadmissible under Rule 99(2) EPC.

The arguments of the Appellant, submitted in writing and/or at the oral proceedings, are in essence as follows:

- The main request indicated in the statement of grounds of appeal was to set aside the decision under appeal and to remit the case to the Opposition Division. This amounted to an implicit request to remit the case on the basis of the only claim request that had been pending before the Opposition Division and upon which the Opposition Division had decided, i.e claims 1 to 6 of 30 November 2010.

- The wording of independent claim 1 of page 2 was intended to reproduce claim 1 of the patent in suit as granted, which was identical to claim 1 of 30 November 2010. It was thus evident that the wording of the independent claim 1 of page 2 contained a

clerical error as regards feature (c).

- Moreover, the statement of grounds addressed the main reasons for revocation of the decision under appeal insofar as it comprised indications concerning the support that could be found in the application as filed and in the parent application as filed, respectively, for every individual feature of independent claim 1 (allegedly claim 1 of 30 November 2010), as well as for the combination of all features (a) to (g). The same arguments were meant to apply to the dependent claims 2 to 6 of the intended main request.

- The additional indications submitted in the statement of grounds with respect to the auxiliary requests 1 to 7 also had to be read in combination with those given for the main claim request.

- It was directly apparent that amongst all the auxiliary requests 1 to 19 (each consisting of one claim only) filed with the statement of grounds, at least claim 1 according to auxiliary claim request 9 was intended to address all the deficiencies identified in the decision under appeal and thus to overcome the grounds for revocation.

- More particularly, claim 1 according to Auxiliary Request 9 contained a combination of amended features which were, at least individually, addressed in the statement of grounds in connection with the indications given regarding the preceding auxiliary claim requests 1 to 7. The reasoning provided in the statement of grounds with respect to the amended features in these claims implicitly also applied to auxiliary claim request 9.

- The appeal was thus admissible.

Reasons for the Decision

Admissibility of the appeal

1. Article 108, third sentence, EPC, requires that (emphasis added):

"*Within four months of notification of the decision, a* ***statement setting out the grounds*** *of appeal shall be filed in accordance with the Implementing regulations.*"

Rule 99(2) EPC stipulates that (emphasis added):

"*In the statement of grounds of appeal the appellant shall indicate the* ***reasons*** *for setting aside the decision impugned, or the* ***extent*** *to which it is to be amended, and the facts and evidence on which the appeal is based.*"

2. According to the established case law of the Boards of Appeal, for the appeal to be admissible, the statement of grounds must thus specify the legal and factual reasons on which the case for setting aside the decision under appeal is based, i.e. the reasons as to why the appellant disagrees with the contested decision or part of it. The arguments submitted in this respect have to be clearly presented to enable the Board and the respondent party to understand immediately, without first having to make investigations on their own, why the decision is considered to be incorrect (see, for example, T 220/83, 6, OJ 1986, 249, Reasons, 4 and 5, and T 1581/08 of 3 April 2009, Reasons, 3).

This principle is also reflected in Article 12(2) RPBA which requires that (emphasis added):

"*The **statement of grounds** of appeal and the reply shall contain a party's **complete case**. They shall set out **clearly and concisely the reasons why** it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on.*"

3. Further, according to established case law, for an appeal to be admissible, it must be sufficiently substantiated in the sense that the grounds of appeal must read on the main reasons given for the contested decision (see e.g. T 213/85, OJ 1987, 482, Reasons, 3; T 570/07 of 15 October 2009, Reasons, 2.4).

4. In addition, according to established case law, an appeal may be also admissible under certain circumstances even without a reasoned discussion of the decision under appeal if it is based on amended claims which deprive the contested decision of its basis, i.e. if it can be immediately recognised by the Board that the reasoning of the decision under appeal no longer applies to the amended claims (see, for example, T 934/02 of 29 April 2004, Headnote and Reasons, 2).

5. Finally, the Board holds that in accordance with the wording of Rule 99(2) EPC, the reasons given in the statement of grounds must determine the extent to which a decision is appealed. The grounds of appeal cannot be properly appreciated where it is not clear what the Appellant actually wants to achieve with its appeal. The "reasons" of an appeal brief can only be appreciated and understood once it is clear what the objective of the appeal actually is. The request that the decision under appeal should be set aside is a necessary condition in this respect, as it defines what the appellant is dissatisfied with, namely the decision under appeal.

Yet, in the present case, this request is, as such, insufficient. The Appellant's Main Request (whatever it may be) does not enable the Board and the responding party to appreciate what the decision under appeal should be replaced with, i.e. whether the patent should be upheld without further amendments, or upheld in a further amended version, and if so, in which. The Appellant's arguments can only be followed without undue burden provided the latter information is given in an unambiguous manner. Where the Appellant argues, as in the present case, that the decision under appeal was wrong to make a finding under Article 123(2) or 76(1) EPC, it is necessary for a sufficient reasoning to clarify the set of claims to be considered as well as the reasons why such set of claims should be considered to meet the requirements of the EPC. The mere filing of a new request, or the reference to an already existing request, is as such not a reasoned appeal, because it leaves the mental exercise of determining why such request is supposed to overcome the findings in the contested decision to the Board and the adverse party. And the mere filing of reasons why the decision under appeal is supposedly wrong is an incomplete reasoning to this end insofar as the Board and the respondent party is left in the dark as to the wording of the claim on which such reasoning should be read. Rule 99(2) EPC must thus be read in that both extent and reasons of an appeal must be clear to amount to a reasoned appeal under Article 108 EPC. The above-cited decisions did not need to elaborate on the requirement of clarifying the extent of an appeal, as the requests in these cases were clear and unambiguous. In the case at issue, this is not so for the Main Request, as is set out below.

6. In its statement setting out of the grounds of appeal (see point IV above), the Appellant formulated as its

"Main request", that the decision under appeal be set aside and the case be remitted to the Opposition Division. The Appellant did not file a separate paper copy of the claim(s) to be considered as its main claim request together with its statement of grounds.
In its view, it would be implicitly clear from the express request "to set aside the decision of the Opposition Division and to refer the case back to the Opposition Division (Main request) or on the basis of one of the Auxiliary Requests currently filed" that the case was to be remitted for further prosecution on the basis of the claims 1 to 6 of 30 November 2010 that had been pending before the Opposition Division.

6.1 The Board would be minded to agree with this argument but for the fact that the statement of grounds mentions an independent claim 1 (claim 1 of page 2) introduced as follows: "The patent contains one independent claim, which reads as follows:...", the full wording thereof (see IV, *supra*) being expressed *verbatim,* and differing from claim 1 of 30 November 2010 insofar as the definition of the "*bimodal pore size distribution*" of the catalyst used is concerned. According to the claim 1 of 30 November 2010 said distribution is "*centering around 100 Å* ***and between 500 Å and 2000 Å***" (emphasis added by the Board), whereas according to the wording of the claim 1 of page 2, it is cent*ering around 100Å* ***and 2000Å***".
Independent claim 1 of page 2 thus clearly differs from claim 1 of 30 November 2010 in an important feature.

The Main Request can thus be understood as a request for remittal of the case to the department of first instance based on, either, claim 1 of page 2, or claim 1 of 30 November 2010 (no dependent claims), or claims 1 to 6 of 30 November 2010.

6.2 As also noted in the Board's communication of 23 April 2015, the statement of grounds also contains the following statement (page 5, lines 5 to 7; emphasis added):

"Further support for the values for the pore size distribution can be found in Figures 7 and 8, which clearly show that the distribution is bimodal (having two maximums), with the **first maximum around 2000 Å and the second maximum around 100 Å**".

As emphasised by the Respondent, this passage appears to address the bimodal pore size distribution, feature (c), of the independent claim 1 of page 2, and not the different bimodal pore size distribution feature of claim 1 of 30 November 2010.

6.3 It is worth noting in this connection that the same feature "*centering around 100 Å* ***and 2000 Å***" contained in the wording of the independent claim 1 recited in the statement of grounds is also contained in each claim 1 according to auxiliary requests 1 to 4, 6 and 7 filed together with said statement, giving weight to the Respondent's argument that the different definition of the bimodal pore size distribution in independent claim 1 of page 2 could have been intended.

6.4 In view of these considerations, the Board is not persuaded by the appellant's allegation that it was evident from the statement of grounds that the different definition of of the bimodal pore size distribution in independent claim 1 of page 2 would necessarily be due to a mere clerical error rather then constituting a deliberate amendment of claim 1.

7. Moreover, the Board notes that the statement of grounds

does not contain any express indication as to whether or not the Appellant's main claim request should contain the same dependent claims 2 to 6, if any, as the set of claims of 30 November 2010.

The statement of grounds is also silent as to why such dependent claims, if deemed to be part of the Appellant's main request, should be considered to comply with the requirements of Articles 123(2) and 76(1) EPC, although claims 2 to 6 of 30 November 2010 were found to be objectionable under Articles 123(2) and 76(1) EPC (decision under appeal, page 5, last full sentence).

8. Taking into account all the above aspects, the Board concludes that it is not possible to understand, with certainty, whether the Appellant's main claim request consists of the set of claims of 30 November 2010, as maintained by the Appellant in writing and during oral proceedings, or of the independent claim 1 of page 2, alone or together with dependent claims 1 to 6 of 30 November 2010.

Therefore, as regards the Appellant's main request, the statement of grounds does not enable the Board and the respondent party to understand the **extent to which the decision under appeal is to be amended**.

9. Even assuming, for the sake of argument only, that the intended main claim request of the Appellant consisted of claims 1 to 6 of 30 November 2010, the statement of grounds, which does not explicitly address the main reasons given in the decision under appeal with respect to the dependent claims 2 to 6, does not enable the Board and the respondent party to understand immediately and without first having to make investigations on their own why the decision would be incorrect in this respect.

10. The Board thus concludes that as far as it relates to the Main Request (whatever it may be) of the Appellant, the statement of grounds does not make the appeal compliant with the requirements of Rule 99(2) EPC, since the statement neither permits to unambiguously establish the extent of the appeal (which claims are to be considered), nor, as a consequence, the reasons for which the grounds for revocation are supposed to be overcome by the claim(s) according such Main Request.

11. Each of the auxiliary requests 1 to 19 consists of a single claim 1 only, as expressly indicated in the statement of grounds (page 8, first sentence).

11.1 During the oral proceedings, the Appellant submitted, in reply to a corresponding question by the Board, that amongst **all** the Auxiliary Requests filed with the statement of grounds, **Auxiliary Request 9** was the one most suitable to establish the admissibility of the appeal. In particular, it would be directly apparent that this auxiliary claim request addressed all the deficiencies addressed in the decision under appeal and thus overcomes the grounds for revocation under Articles 123(2) and 76(1) EPC.

11.2 Claim 1 according to auxiliary request 9 differs from claim 1 of 30 November 2010 (see points III and IV above) insofar as (emphasis added)

- the solid Cu-Al-O catalyst to be used has
  - the "*formula $nCuO{\cdot}Al_2O_3$ wherein n is between 0.14 and 5.13*";
  - a pore volume which is "*greater than 0.25 ml/g to 0.6 ml/g and a bulk density of 0.8 g/ml to 1.5 g/ml*; and

- a "*bimodal pore size distribution centering around 100Å* ***and around 1000Å to 2000Å***";
- the catalyst "*has been calcined at a temperature of 400-700°C prior to tableting*";
- the surface area values for the used solid catalyst are deleted; and
- the itemisation by means of indexes (i) to (iv) of the catalytic reactions in which the chosen solid catalyst is used are omitted.

It is to be noted that the definition of the pore size distribution differs from the one according to claim 1 of 30 November 2010 and from the one according to claim 1 of page 2.

12. The statement of grounds does not contain any reasoning addressing explicitly and specifically the allowability of any of the respective amended claims 1 according to auxiliary requests 8 to 19 under Articles 123(2) and 76(1) EPC. In fact, the statement of grounds (last page, first two lines) just states the following:

"Auxiliary Requests 8 and further are combinations of the additional features described above for Auxiliary requests 1-7."

No further indications are contained in the statement of grounds regarding the question of whether such combinations could overcome the main reasons given in the decision under appeal for the revocation of the patent.

13. However, assessing whether claim 1 according to auxiliary request 9, or according to one of the other auxiliary requests, complies with the requirements of Articles 123(2) and 76(1) EPC would require a comparison

to be made between the wording of the particular claim considered and the whole contents of the application as filed and the parent application as filed, respectively. In this respect,the statement of grounds does not contain any directly apparent indications concerning such a comparison or the specific passages of the application documents to be considered as supporting such an amended claim, which consists of a **combination of multiple amended features** and differs in several aspects from claim 1 of 30 November 2010 (see point 11.2, *supra*). Indicating the support for such a **combination of multiple amended features is however necessary bearing in mind** the established principle that the content of an application may not be considered as a reservoir from which features pertaining to separate embodiments of the application could be freely combined in order to artificially create and claim a particular embodiment (see e.g. T 1206/01 of 23 September 2004, Reasons, 3.1.3).

14. For the Board the claims according to Auxiliary Requests 8 to 19 as such, and the scarce comments relating to them in the statement of grounds are not sufficient to make the appeal admissible.

15. The same deficiency permeates the grounds of appeal provided as regards Auxiliary Requests 1 - 7. The indications concerning auxiliary requests 1 to 7 given in the statement of grounds (pages 8 and 9) are insufficient in this respect, since they address essentially the alleged support for additional, individually amended features of the respective claims, but not the main issue, i.e. why **the combination of all the features** of the respective claim 1 should be considered allowable under Article 123(2) EPC and 76(1) EPC.

16. Also the Appellant's view that the arguments given with respect to the incorporation of these individual additional amended features into claim 1 had to be read in combination with the arguments given with respect to the independent claim 1 of the Main Request quoted in the statement of grounds cannot convince the Board.

In fact, as regards the Auxiliary Requests, the following is said in the statement of grounds (page 8, first two lines):

"All Auxiliary requests consist of a single claim. Further differences between the Main request and the Auxiliary requests are discussed below."

The statement of grounds does not contain any more specific indications as to how the reasons presented, respectively, regarding each of the auxiliary requests 1 to 7, would have to be amalgamated with the reasons presented on the preceding pages 3 to 7 of the statement of grounds with regard a claim 1 (Main Request) which is itself unclear as regards an essential feature (the bimodal pore size distribution). In other words, the ambiguity of the extent of the Appellant's Main Request also has repercussions on the immediate intelligibility of the reasons submitted as regards these Auxiliary Requests. In this respect it is noted that in the respective claim of each of Auxiliary Requests 1 to 4, 6 and 7, the definition of the pore size distribution is the one that the Appellant qualified as an evident clerical error in connection with claim 1 of the intended main request. Moreover, the Board observes, for instance, with respect to claim 1 of Auxiliary Request 5, which was also briefly addressed during the oral proceedings, that the statement of grounds merely indicates where a basis is to be found for the amended

feature "*centering around 100 Å and* ***around 1000 Å to 2000 Å***" and why this feature is disclosed for both the tablet and the extrudate form of the catalyst to be used according to the claim. However, it is not indicated where and/or why the combination of all the features of this claim could also be considered to be disclosed in the relevant original application documents.

17. According to established case law, the filing of amended claims does not exonerate the appellant from the task of expressly specifying in the statement of grounds of appeal the relevance of the amendments for overcoming the objections on which the decision under appeal was based (T 933/09, Reasons, 4 and 7). In other words, it cannot be expected from the Board or the respondent party to find out whether, and for which specific reasons, the newly filed amended claims would overcome the grounds for the revocation of the patent (T 922/05 of 7 March 2007, Reasons 14 to 16).

18. The Board holds that in a case like the present one, where the new requests filed with the statement of grounds each consist of a claim differing from the claim found to be non-allowable under Articles 123(2) and 76(1) EPC in the decision under appeal, and comprising, compared to the claims contained in the original application documents to be considered, a multitude of amended features to be read in combination, the statement of grounds must, in order to be sufficiently reasoned, contain a complete presentation of the reasons why the Appellant considers that at least one of the claims in question would no longer be objectionable on the grounds having led to the appealed decision to revoke the patent.

However, as apparent from the above considerations, the

statement of grounds does not contain such a complete presentation, neither regarding Auxiliary Request 9, nor any of the other Auxiliary Requests 1 to 19 not specifically relied upon by the Appellant during the oral proceedings in its attempt to establish the admissibility of the appeal.

19. The Board thus concludes that the statement of grounds of appeal, including the claim requests presented, is insufficient as regards the required indications concerning the reasons for setting aside the decision under appeal and the extent to which it is to be amended. Hence, the appeal does not comply with the requirements of Article 108 in combination with Rule 99(2) EPC.

20. In the Board's judgement the appeal is, thus, inadmissible (Rule 101(1) EPC).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

D. Magliano B. Czech

Decision electronically authenticated