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Datasheet for the decision of 8 September 2015

Case Number: T 0399/13 - 3.3.05

Application Number: 04728201.7

Publication Number: 1613417

IPC: B01D53/94

Language of the proceedings: EN

Title of invention:
METHOD OF DECOMPOSING NITROGEN DIOXIDE

Patent Proprietor:
Johnson Matthey PLC

Opponent:
Umicore AG & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 108, 112(1)(a)
EPC R. 99(2), 101(1)
RPBA Art. 12(2)

Keyword:
Admissibility of appeal (no) -
no sufficient link between the contested decision and the gro unds of appeal
Referral to the Enlarged Board of Appeal - (no)

Decisions cited:
T 0220/83, T 0213/85, T 0145/88, T 0169/89, T 0045/92, T 0570/07, T 2532/11, G 0009/91, G 0010/91, G 0001/99

Catchword:
see reasons 1.3 to 1.7

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Case Number: T 0399/13 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 8 September 2015

Appellant: (Patent Proprietor)	Johnson Matthey PLC 5th Floor 25 Farringdon Street London EC4A 4AB (GB)
Representative:	Turberville, Simon Johnson Matthey PLC Gate 20 Orchard Road Royston, Herts SG8 5HE (GB)
Respondent: (Opponent)	Umicore AG & Co. KG Rodenbacher Chaussee 4 63457 Hanau-Wolfgang (DE)
Representative:	Vossius & Partner Patentanwälte Rechtsanwälte mbB Siebertstrasse 3 81675 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 2 January 2013 revoking European patent No. 1613417 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	G. Raths
Members:	J-M. Schwaller
	C. Vallet

Summary of Facts and Submissions

I. The present appeal lies from the decision of the opposition division dated 2 January 2013 to revoke European patent No. 1 613 417.

II. According to the contested decision:

(a) Claim 1 as granted (main request), reading:

"*1. A method of decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) in an exhaust gas of a diesel internal combustion engine, which method comprising adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio of the exhaust gas to from 0.1 to 2 and contacting this gas mixture with a particulate acidic refractory oxide selected from the group consisting of zeolites, tungsten-doped titania, silica-titania, zirconia-titania, amorphous silica-alumina and mixtures of any two or more thereof and passing the effluent gas to atmosphere.*"

lacked novelty over document

E1: translation into English of JP 62 163731.

(b) Claim 1 of the first auxiliary request, reading:

"1. Use of an exhaust system for a diesel internal combustion engine to decompose nitrogen dioxide (NO_2) to nitrogen monoxide (NO) in an exhaust gas of a diesel internal combustion engine, which system comprising a catalyst for decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) with a suitable reductant, and means, in use, for

adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio in an exhaust gas upstream of the catalyst to from 0.1 to 2, which catalyst consisting of a particulate acidic refractory oxide selected from the group consisting of zeolites, silica-titania, zirconia-titania, amorphous silica-alumina and mixtures of any two or more thereof optionally supporting a metal or a compound thereof, which metal being selected from the group consisting of rhodium, palladium, iron, copper and mixtures of any two or more thereof."

lacked novelty over document

E2: EP 0 582 743 A1.

(c) The second auxiliary request filed during the oral proceedings was not admitted into the opposition proceedings because its claims 1 and 12 *prima facie* did not overcome the novelty objection (over document E2).

These claims read as follows:

"*1. Use of an exhaust system for a diesel internal combustion engine to decompose nitrogen dioxide (NO_2) to nitrogen monoxide (NO) in an exhaust gas of a diesel internal combustion engine, which system comprising a catalyst for decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) with a suitable reductant, and means, in use, for adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio in an exhaust gas upstream of the catalyst to from 0.1 to 2, which catalyst consisting of a particulate acidic refractory oxide consisting of zeolites optionally supporting*

a metal or a compound thereof, which metal being selected from the group consisting of rhodium, palladium, iron, copper and mixtures of any two or more thereof, and wherein at least one zeolite is β-zeolite."

"12. An exhaust system for a diesel internal combustion engine, which system comprising a catalyst for decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) with a suitable reductant, and means, in use, for adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio in an exhaust gas upstream of the catalyst to from 0.1 to 2, which catalyst consisting of a particulate acidic refractory oxide selected from the group consisting of zeolites optionally supporting a metal or a compound thereof, which metal being selected from the group consisting of rhodium, palladium, iron, copper and mixtures of any two or more thereof, wherein at least one zeolite is β-zeolite."

III. With its grounds of appeal dated 13 May 2013, the patent proprietor ("the appellant") filed a new main request and three new auxiliary requests.

Claims 1 and 4 of the main request read as follows:

"*1. A method of decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) in an exhaust gas of a diesel internal combustion engine, which method comprising adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio of the exhaust gas to from 0.1 to 2 and contacting this gas mixture with* ***a NO_2 decomposition catalyst*** *consisting of a particulate acidic refractory oxide and a metal or a compound thereof, wherein the*

*particulate refractory oxide is **β-zeolite** and supports the metal or the compound thereof, which metal being selected from the group **consisting of iron and copper, and wherein the catalyst contains from 1 to 10 wt% copper or from 1 to 10 wt% iron, based on the total weight of the particulate refractory oxide**, and passing the effluent gas to atmosphere.*"

"*4. An exhaust system for a diesel internal combustion engine, which system comprising a catalyst for decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) with a suitable reductant, and means, in use, for adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio in an exhaust gas upstream of the catalyst to from 0.1 to 2, which catalyst consisting of a particulate acidic refractory oxide and a metal or a compound thereof, wherein the particulate refractory oxide is **β-zeolite** and supports the metal or the compound thereof, which metal being selected from the group **consisting of iron and copper, and wherein the catalyst contains from 1 to 10 wt% copper or from 1 to 10 wt% iron**, based on the total weight of the particulate refractory oxide.*"

Claims 1 and 4 of the auxiliary request 1 read as follows:

"*1. A method of decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) in an exhaust gas of a diesel internal combustion engine, which method comprising adjusting the C1 hydrocarbon: nitrogen oxides (C1 HC: NO_x) ratio of the exhaust gas to from 0.1 to 2 and contacting this gas mixture with a NO_2 decomposition catalyst consisting of a particulate acidic refractory oxide and a metal or a compound thereof, wherein the particulate refractory oxide is **β-zeolite** and supports*

the metal or the compound thereof, which metal being ***iron, and wherein the catalyst contains from 1 to 10 wt% iron,*** *based on the total weight of the particulate refractory oxide, and passing the effluent gas to atmosphere.*"

"*4. An exhaust system for a diesel internal combustion engine, which system comprising a catalyst for decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) with a suitable reductant, and means, in use, for adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio in an exhaust gas upstream of the catalyst to from 0.1 to 2, which catalyst consisting of a particulate acidic refractory oxide and a metal or a compound thereof, wherein the particulate refractory oxide is* ***β-zeolite*** *and supports the metal or the compound thereof, which* ***metal being iron, and wherein the catalyst contains from 1 to 10 wt% iron,*** *based on the total weight of the particulate refractory oxide.*"

Claim 1 of auxiliary request 2 reads:

"*1.* ***Use of an exhaust system*** *for a diesel internal combustion engine to decompose nitrogen dioxide (NO_2) to nitrogen monoxide (NO) in an exhaust system of a diesel internal combustion engine, which system comprising a catalyst for decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) with a suitable reductant, and means, in use, for adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio in an exhaust gas upstream of the catalyst to from 0.1 to 2, which catalyst consisting of a particulate acidic refractory oxide and a metal or a compound thereof, wherein the particulate refractory oxide is* ***β-zeolite*** *and supports the metal or the compound thereof, which metal being*

selected from the group ***consisting of iron and copper, and wherein the catalyst contains from 1 to 10 wt% copper or from 1 to 10 wt% iron,*** *based on the total weight of the particulate refractory oxide,* ***wherein the adjustment means is controlled, in use, to operate when the exhaust gas temperature is above 250°C up to 500°C.***"

Claims 1 and 4 of auxiliary request 3 read as follows:

"*1. A method of decomposing nitrogen dioxide (NO_2) to nitrogen monoxide (NO) in an exhaust gas of a diesel internal combustion engine, which method comprising adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio of the exhaust gas to from 0.1 to 2 and contacting this gas mixture with* ***a NO_2 decomposition catalyst*** *consisting of a particulate acidic refractory oxide and a metal or a compound thereof, wherein the particulate refractory oxide is* ***β-zeolite*** *and supports the metal or the compound thereof, which metal being selected from the group* ***consisting of iron and copper, and wherein the catalyst contains from 1 to 10 wt% copper or from 1 to 10 wt% iron, based on the total weight of the particulate refractory oxide, and wherein the NO_2 decomposition catalyst is disposed downstream of an oxidation catalyst comprising at least one PGM and additional HC is introduced into the exhaust system upstream of the NO_2 decomposition catalyst and downstream of the oxidation catalyst,*** *and passing the effluent gas to atmosphere.*"

"*4. An exhaust system for a diesel internal combustion engine, which system comprising a catalyst for decomposing nitrogen dioxide (NO_2) to nitrogen monoxide*

(NO) with a suitable reductant, and means, in use, for adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NO_x) ratio in an exhaust gas upstream of the catalyst to from 0.1 to 2, which catalyst consisting of a particulate acidic refractory oxide and a metal or a compound thereof, wherein the particulate refractory oxide is ***β-zeolite*** *and supports the metal or the compound thereof, which metal being selected from the group* ***consisting of iron and copper, and wherein the catalyst contains from 1 to 10 wt% copper or from 1 to 10 wt% iron****, based on the total weight of the particulate refractory oxide* ***and wherein the NO_2 decomposition catalyst is disposed downstream of an oxidation catalyst comprising at least one PGM and additional HC is introduced into the exhaust system upstream of the NO_2 decomposition catalyst and downstream of the oxidation catalyst****."*

IV. By letter of 27 September 2013, the opponent ("the respondent") objected that none of the requests filed with the grounds of appeal underlay the contested decision. Further, it argued that the claimed invention was insufficiently disclosed and that the claimed subject-matter infringed the requirements of Articles 123(2), 54(1)(2) and 56 EPC.

V. With letter dated 7 August 2015, the respondent further requested that the requests filed with the grounds of appeal should not be into the appeal proceedings. This request was based on Article 12(4) RPBA.

VI. By a letter dated 7 August 2015, the appellant filed observations, in particular regarding the admissibility of the new requests.

VII. In a communication dated 17 August 2015, the board drew the appellant's attention to the fact that it had not indicated in the statement of grounds of appeal any reasons why it did not agree with the decision but had limited itself to providing reasons why the newly filed set of claims fulfilled the requirements of the EPC. Hence, the appeal could be regarded as inadmissible because the clear link which was needed between the decision and the newly filed set of claims was missing.

VIII. With a letter dated 3 September 2015, the appellant argued that the link between the decision and the new claims was to be found in item 2.2 of the decision, where the opposition division referred to the absence of a (structural or operational) feature in the claims that facilitated the selective conversion of NO_2 into NO.

The claims filed with the grounds of appeal were linked to those underlying the decision, in particular to those of the second auxiliary request filed during the oral proceedings before the opposition division, in that they highlighted a restricted definition of the catalyst by defining it as being a beta-zeolite supporting a metal selected from iron or copper.

As an auxiliary measure the appellant requested that the board refer one or more questions to the Enlarged Board of Appeal concerning the admissibility of an appeal with new claim requests due to divergent case law in that respect. The appellant did not provide the text of the questions to be referred to the Enlarged Board of Appeal.

IX. At the oral proceedings, which took place on 8 September 2015, the discussion focused on the

admissibility of the appeal and of the requests filed with the grounds of appeal. At the very end of the oral proceedings, the appellant indicated that it maintained its request for referral to the Enlarged Board of Appeal and submitted the text of the questions as follows:

a) Is a statement of grounds of appeal insufficiently substantiated for the sole reason that it does not state any specific reason why the appealed decision is contested ?

b) If no is it permissible to file amended claims with the statement of grounds of appeal to change the subject of the proceedings and so that the reasons for the decision are no longer relevant?

X. After closing the debate, the chairman established the parties' requests as follows:

The appellant 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 one of the sets of claims filed as main and auxiliary requests 1 to 3 with letter dated 13 May 2013.

The respondent requested that the appeal be dismissed.

Reasons for the Decision

1. Admissibility of the appeal

1.1 The legal framework

1.1.1 Formal requirements

The notice of appeal and the statement of grounds of appeal were filed within the time limit laid down in Article 108 EPC, and the appeal fee was paid in due time.

Hence, the formal requirements have been met.

1.1.2 The statement of grounds of appeal

For an appeal to be admissible, the statement of grounds of appeal has to comply with the requirements of Article 108, Rule 99(2) and Rule 101(1) EPC.

Under Rule 99(2) EPC, in the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the impugned decision, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based.

Rule 101(1) EPC provides that if the appeal does not comply in particular with Rule 99(2) EPC, the board shall rejected it as inadmissible.

Moreover, according to Article 12(2) RPBA the statement of grounds of appeal must set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld.

1.1.3 The case law

The case law of the boards of appeal has consistently considered it to be incumbent on an appellant, in order to meet the admissibility requirements, to explain in detail why it considers the decision under appeal to be wrong, be it entirely or in part, thus requiring a clear and direct link between the contested decision and the grounds of appeal.

In decisions G 9/91 and G 10/91, point 18 of the reasons, the Enlarged Board of Appeal held that "*the purpose of the appeal procedure is mainly to give the losing party the possibility of challenging the decision of the Opposition Division on its merits*".

The same wording was used in decisions G 4/93, point 5 of the reasons and G 1/99, point 6.1 of the reasons.

In G 1/99, the Enlarged Board further pointed out that "*indeed, issues outside the subject-matter of the decision under appeal are not part of the appeal*" and further, that "… *within the limits of what in the subject-matter of the decision under appeal adversely affects it, it is the appellant who in the notice of appeal determines the extent to which amendment or cancellation of the decision under appeal is requested*."

It follows from this that the appeal proceedings are directed to the subject-matter of the first-instance proceedings and that, therefore the statement of grounds of appeal should at least discuss this subject-matter. The need for the above-mentioned link (see 1.4, paragraph 1) between the decision and the grounds of appeal is thus clearly confirmed.

The case law further defines the content of the statement of grounds of appeal (see Case Law of the Boards of Appeal of the European Patent Office, 5th edition 2006, VII.D.7.5.1) in such a way that it must specify the legal or factual reasons why the impugned decision should be set aside. The arguments must be clearly and concisely presented to enable the board (and the other party) to understand immediately why the decision is alleged to be incorrect, and on which facts the appellant bases its arguments (see in particular decisions T 220/83 (OJ EPO 1986, 249); T 213/85 (OJ EPO 1987, 482); T 145/88 and T 169/89).

Moreover, it is also established case law that grounds sufficient for the admissibility of an appeal must be analysed in detail vis-à-vis the main reasons given for the contested decision (see T 213/85; T 169/89; T 45/92 and T 570/07).

In decision T 2532/11 of 14 October 2013, reasons 2, the present board developed in detail the reasons underlying the requirement for a link between the statement of grounds and the impugned decision.

1.2 The present case in view of the cited case law

In the case at issue, on 13 May 2013 the appellant submitted a document called "Grounds of Appeal" which, however, did not contain any explanation why the decision was incorrect and why it should be set aside.

The board understands from the content of the grounds of appeal that the appellant did not contest the findings of the opposition division, which had rejected its requests to maintain the European patent at issue as granted or in amended form. In particular, the

grounds of appeal contained no argument contesting the novelty objection, on the one hand, over document E1 as regards the main request and, on the other hand, over document E2 as regards the first auxiliary request.

Therefore, applying the above-cited legal provisions and case law, the appeal should be rejected as inadmissible in that it did not raise any argument against the impugned decision.

1.3 The present case in view of the newly filed requests, to be seen as implicit grounds of appeal

A statement of grounds of appeal supported by amended claims may define, at least implicitly, the extent to which the appellant wishes the decision under appeal to be set aside.

The issue is, however, whether the grounds of appeal are understandable and sufficiently linked to the contested decision to form an admissible appeal.

1.3.1 Link between the impugned decision and the second auxiliary request filed before the opposition division

In the case at issue, the board understands that the newly filed requests aim at overcoming the objections raised by the opposition division, and so the statement of grounds of appeal is intended to convince the board that the newly filed requests fulfill the requirements of the EPC and especially that their subject-matter is novel over the cited documents.

In the board's view, the four new sets of claims filed with the statement of grounds of appeal are directed to subject-matter different from that discussed in the

first-instance proceedings.

In the opposition proceedings, the main and first auxiliary requests focused on the decomposition of nitrogen dioxide to nitrogen monoxide by adjusting the C1 hydrocarbon: nitrogen oxides (C1HC: NOx) ratio of the exhaust gas to from 0.1 to 2 and on the contacting of this gas mixture with a particulate acidic refractory oxide selected from a list of various oxides, among them zeolites. The opposition division however held the combination of these features to be anticipated by the prior art.

Thereupon, the appellant introduced a second auxiliary request (which consisted of use claims and system claims) which then focused on the nature of the acidic refractory oxide, which was restricted to zeolites, with one of the zeolites being beta-zeolite, the catalyst **optionally** further supporting a metal. The appellant thus redefined the core of the invention as lying mainly in the choice of a specific oxide possibly supporting a metal. So the invention was no longer mainly linked to the adjustment of the C1 hydrocarbon: NO_x ratio of the exhaust gas and the contacting of the gas with a particulate acidic refractory oxide.

This second auxiliary request was however not admitted into the proceedings by the opposition division.

In its last submissions, the appellant argued that the link between the contested decision and the claims filed at the appeal stage was to be found in the wording of the second auxiliary request filed before the opposition division, in particular in the presence of a metal selected from rhodium, palladium, iron or copper, which was deemed to be mandatory, but the word

"optionally" was inadvertently retained as the result of an oversight that it had discovered afterwards.

The board cannot follow this argument.

Firstly, it is to be noted that in the statement of grounds of appeal, the appellant did not contest the admissibility of the second auxiliary request in the proceedings. It follows that the board has not been called upon to assess whether the opposition division made appropriate use of its discretion in this respect. Because of the principle of free party disposition, the scope of the appeal proceedings is defined by the appellant. The board therefore may not call into question a part of the impugned decision where the appellant does not do so and consequently provides no argument in this respect. At the oral proceedings, the appellant gave no reason why it had not included this issue in its statement of grounds of appeal.

Secondly, the appellant in essence contested the finding that the second auxiliary request was *prima facie* not novel (cf. point 1.9 of the letter dated 3 September 2015). However, the opposition division did not decide on novelty but only gave its reasons for not admitting the request into the proceedings. No decision as to the substance was made by the opposition division in that respect.

Hence, the second auxiliary request being outside the scope of the appeal, it cannot provide the necessary link between the contested decision and the statement of grounds in the form of newly filed requests.

1.3.2 Link between the impugned decision and the four requests filed before the board of appeal

The claims of the main request filed with the grounds of appeal - which have the broadest scope of protection among the requests filed in appeal - require that the **catalyst consists of a β-zeolite supporting from 1 to 10 wt% copper or iron.**

In contrast, the claims of the second auxiliary request filed before the department of first instance required that the catalyst **consisted of zeolites, wherein at least one zeolite was β-zeolite, and optionally supporting a metal selected from rhodium, palladium, iron and/or copper, or a compound thereof.**

So these claims do not require that the catalyst:
i) **consists** of a β-zeolite, nor that it
ii) **supports 1 to 10 wt% copper or iron as a metal or a compound thereof.**

According to the main request before the board, the presence of a metal, i.e. copper or iron, is now mandatory and the catalyst consists of β-zeolite supporting 1 to 10 wt% copper or iron as a metal or a compound thereof. In the board's view, the fact that the presence of copper or iron was not mandatory in the claims intended to overcome the opposition division's objection as indicative of the absence of a link between the contested decision and the claims of the main request filed with the grounds of appeal.

It is noted that in claim 1 of the first, second and third auxiliary requests at issue before the board, the presence of iron or copper is also mandatory.

It follows from the above that since the requests filed with the statement of grounds of appeal aim at defining a substantially different invention, the board has *de*

facto to decide on new subject-matter and, even more, on subject-matter pointing in a divergent direction as compared to the issue debated in the substance before the opposition division.

Yet appeal proceedings are, in essence, second-instance proceedings and are therefore not intended to examine for the first time sets of claims different from those submitted at first instance, except in cases to which Article 111(1), second sentence, EPC applies.

According to Article 111(1) EPC, the board has first to decide on the allowability of the appeal. Then, and only if the board has found the appeal allowable, the board may decide to exercise any power within the competence of the department which was responsible for the decision appealed.

However, since in the present case the board does not reverse the first-instance findings, Article 111(1), second sentence, EPC does not apply.

For the sake of completeness the board notes that the present situation is not comparable with that underlying decision T 848/09 cited by the appellant. In that case, the appellant filed new requests with the statement of grounds of appeal but said new requests did not follow a set of claims held inadmissible by the opposition division.

Accordingly, even when considering the issue of admissibility in the light of the less strict case law, the board is of the view that in the present case the statement of grounds of appeal does not comply with the above-mentioned legal provisions of the EPC.

1.4 The objection based on Article 12(4) RPBA

In accordance with Article 12(4) RPBA, the board has the discretion "*to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings*".

The board having considered the appeal inadmissible, this issue raised by the respondent does not need to be addressed.

2. Referral to the Enlarged Board of Appeal

The first question the appellant requested to be submitted to the EBA is whether "*a statement of grounds of appeal (*can be considered as) *insufficiently substantiated for the sole reason that it does not state any specific reason why the appealed decision is contested* ".

Rule 99(2) EPC gives a clear answer to this issue: "*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.*"

Rule 101(1) EPC provides that *"[i]f the appeal does not comply with (...) Rule 99, (...) paragraph 2, the Board of Appeal shall reject it as inadmissible* (...)."

These legal provisions are particularly clear, so that the present board is able to conclude without any doubt that the answer to this first question can only be positive.

In both rules the EPC legislator used the "shall" form, which indicates that the appellant cannot escape its duty to give reasons why the decision should be set aside. By the same token this also means that the board has no discretion as to the outcome, which is that if the statement of grounds does not rely on the impugned decision in order to explain why it has to be regarded as incorrect, the appeal is not admissible. As a matter of principle, a legal provision which is clear should not be interpreted.

As a consequence, the first question to be submitted to the Enlarged Board of Appeal, at least as it has been formulated, does not meet the requirements of Article 112(1)(a) EPC.

Therefore, the second question, being conditional on a negative answer to the first question, is no longer applicable.

The request for referral is thus not justified and should be rejected.

Order

For these reasons it is decided that:

The appeal is inadmissible.

The Registrar: The Chairman:

C. Vodz G. Raths

Decision electronically authenticated