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**Datasheet for the decision
of 8 November 2016**

Case Number: T 2502/13 - 3.3.09

Application Number: 07733624.6

Publication Number: 2010385

IPC: B32B17/10, C03C27/12, B60Q3/02

Language of the proceedings: EN

Title of invention:
Laminated glazing

Patent Proprietor:
Pilkington Group Limited

Opponents:
RESEARCH FRONTIERS INCORPORATED
AGC Flat Glass Europe SA

Headword:

Relevant legal provisions:
RPBA Art. 12(1), 12(2), 12(4), 13(1)
EPC Art. 123(2), 100(c), 54, 111(1)

Keyword:

Main request and first to third auxiliary requests: Admitted (yes)

First auxiliary request B and second auxiliary request B: Admitted (no)

Main request: Added subject-matter (no); novelty (no)

First and second auxiliary requests: Added subject-matter (yes)

Third auxiliary request: Added subject-matter (no); novelty (yes)

Remittal: yes

Decisions cited:

G 0001/03

Catchword:



Beschwerdekammern
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Case Number: T 2502/13 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 8 November 2016

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 14 October 2013
revoking European patent No. 2010385 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: J. Jardón Álvarez
 D. Prietzel-Funk

Summary of Facts and Submissions

I. This decision concerns the appeal filed by the proprietor of European patent No. 2 010 385 against the decision of the opposition division to revoke the patent.

II. The patent was granted with 10 claims, claim 1 reading as follows:

"1. A laminated glazing for use as an automotive window comprising two panes of glazing material joined together by at least three (first, second and third) plies of interlayer material, and an electrical device located between the panes of glazing material, and an infrared radiation reflecting means provided between the panes of glazing material for reducing the amount of infrared radiation that may otherwise be incident upon the electrical device, wherein the electrical device is a liquid crystal film device or a suspended particle device, the infrared radiation reflecting means is an infrared reflective film provided on a surface of a ply of interlayer material, and the electrical device is located in a cut-out region in the third ply of interlayer material, which is located between the first and second plies of interlayer material."

III. With the notice of opposition the two opponents had requested revocation of the patent in its entirety on the grounds that the claimed subject-matter was neither novel nor inventive (Article 100(a) EPC) and that it extended beyond the content of the application as filed (Article 100(c) EPC).

The documents cited during the opposition proceedings include *inter alia* the following document:

A8: WO 2007/122428 A1.

- IV. The opposition division's decision was based on a main request (claims as granted) and five auxiliary requests. It can be summarised as follows:
- The subject-matter of claim 1 of all requests extended beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.
 - The opposition division further stated that it concurred with the opponents that the term "curved" used in the then pending auxiliary requests 1 and 2 lacked clarity.
 - Although the opposition division stated that its decision was taken without further discussing substantive matter raised in the opposition proceedings, it made some comments as *obiter dictum* on priority, novelty and inventive step.
- V. The patent proprietor (in the following: the appellant) lodged an appeal. With the statement setting out the grounds of appeal it requested that the decision under appeal be set aside and that the patent be maintained on the basis of claims 1 to 10 of a new main request, subsidiarily, on the basis of the claims of any of auxiliary requests 1 to 9, all requests filed with the statement of grounds of appeal.

- VI. With their replies both opponents (in the following: respondent 01 and respondent 02) requested that the appeal be dismissed. They further requested that, should any of the requests of the appellant be seen as not being filed too late and as complying with the requirements of Articles 123(2) and 84 EPC, the case be remitted to the opposition division for further consideration.
- VII. In a communication in preparation for the oral proceedings, the board expressed its preliminary view that there was no good reason for not admitting the main request into the proceedings. The board also indicated the points to be discussed and that it would appear appropriate to deal at least with the issue of novelty during the appeal proceedings.
- VIII. All parties replied to the communication of the board. The submission of the appellant included two further auxiliary requests labelled "first auxiliary request B" and "second auxiliary request B". The appellant additionally requested that if any of the requests were seen as fulfilling the requirements of Articles 123(2) and 84 EPC, the case be remitted to the opposition division for further prosecution.
- IX. On 8 November 2016 oral proceedings before the board were held. During the oral proceedings all parties agreed to the proposal of the board to discuss the novelty of the claimed subject-matter before considering the requests for remittal.
- X. Claim 1 of the main request reads as follows:
- "1. A laminated glazing for use as an automotive window comprising

two panes of glazing material joined together by at least three (first, second and third) plies of interlayer material, and an electrical device located between the panes of glazing material, and an infrared radiation reflecting means provided between the panes of glazing material for reducing the amount of infrared radiation that may otherwise be incident upon the electrical device, wherein the electrical device is a suspended particle device, the infrared radiation reflecting means is an infrared reflective film provided on a surface of a ply of interlayer material, and the electrical device is located in a cut-out region in the third ply of interlayer material, which is located between the first and second plies of interlayer material."

Claim 1 of the first auxiliary request is based on claim 1 of the main request and further states:

"further wherein the third ply of interlayer material comprises a plasticizer".

Claim 1 of the first auxiliary request B is based on claim 1 of the main request and further states:

"wherein the first and second plies of interlayer material are polyurethane or wherein the first and second plies of interlayer material are polycarbonate or wherein the first and second plies of interlayer material are polyvinyl butyral or wherein the first and second plies of interlayer material are polyvinyl chloride or wherein the first and second plies of interlayer material are a copolymer of ethylene and methacrylic acid".

Claim 1 of the second auxiliary request is based on claim 1 of the main request and further states:

"further wherein the first and second plies of interlayer material are polyvinyl butyral."

Claim 1 of the second auxiliary request B is based on claim 1 of the main request and further states:

"wherein the first, second and third plies of interlayer material are polyurethane or wherein the first, second and third plies of interlayer material are polycarbonate or wherein the first, second and third plies of interlayer material are polyvinyl butyral or wherein the first, second and third plies of interlayer material are polyvinyl chloride or wherein the first, second and third plies of interlayer material are a copolymer of ethylene and methacrylic acid".

Claim 1 of the third auxiliary request is based on claim 1 of the main request and further states that the material of the first to the third plies of interlayer material is polyvinyl butyral. It reads as follows:

"1. A laminated glazing for use as an automotive window comprising
two panes of glazing material joined together by at least three (first, second and third) plies of interlayer material, and
an electrical device located between the panes of glazing material, and
an infrared radiation reflecting means provided between the panes of glazing material for reducing the amount of infrared radiation that may otherwise be incident upon the electrical device,

wherein the electrical device is a suspended particle device, the infrared radiation reflecting means is an infrared reflective film provided on a surface of a ply of interlayer material, and the electrical device is located in a cut-out region in the third ply of interlayer material, which is located between the first and second plies of interlayer material, further wherein the first, second and third plies of interlayer material are polyvinyl butyral."

Claims 2 to 10 are directly or indirectly dependent of claim 1.

The claims of the fourth to ninth auxiliary requests are not pertinent to the present decision.

XI. The arguments of the appellant, insofar as they are relevant for the present decision, may be summarised as follows:

- The main request and the first to ninth auxiliary requests were filed with the statement of grounds of appeal; the first and second auxiliary requests B as a direct reaction to the board's communication. They should be admitted into the proceedings.
- The feature "at least three (first, second and third) plies of interlayer material" present in claim 1 of all the requests did not add subject-matter. There was a clear teaching in the application as filed that additional plies were covered by the claims. That was clear from the wording of claim 1 as filed, wherein the word "a" in the expression "a ply" was used to mean at least one, i.e. one or more. This was also reflected in

the application as filed, which indicated that it was preferable for the glazing to have an overall thickness of between 1.5 and 100 mm, thus envisaging multiple panes of glass and/or plies of interlayer material.

- There was no "singling out" of any embodiment, the claimed suspended particle device being one alternative out of three explicitly disclosed in claim 2 of the application as filed.
- The subject-matter of claim 1 of the first auxiliary request amounted to a disclaimer allowable in view of A8, which was prior art according to Article 54(3) EPC.
- The subject-matter of claim 1 of the second and third auxiliary requests was supported by the disclosure of the materials for the plies of interlayer in the application as filed. The subject-matter of claim 1 of the third auxiliary request was further supported by the figures.

XII. The relevant arguments of the respondents may be summarised as follows:

- None of the appellant's requests had ever been filed before the opposition division and they should not be admitted into the appeal proceedings. Additionally, the first and second auxiliary requests B had been filed less than one month before the oral proceedings, with no time for the respondents to prepare for the oral proceedings. Moreover, they raised complex new issues.

- The respondents supported the line of argumentation of the opposition division that there was no support in the application as filed for the now claimed indefinite number of interlayers provided by the term "at least three" and that the limitation to a suspended particle device represented a singling out from the application as filed.
- Additionally, respondent 01 argued that embodiments now covered by the claims, including an unlimited number of plies of interlayer, would not solve the problem underlying the patent.
- Concerning the auxiliary requests, the respondents pointed out that the specific combinations of materials now required by the claims were not disclosed in the application as filed.

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

The appellant requested that the decision under appeal be set aside and

- either that the patent be maintained on the basis of the claims according to the main request submitted on 24 February 2014 with the letter setting out the grounds of appeal, subsidiarily that the patent be maintained on the basis of the claims of any of the first auxiliary request, first auxiliary request B, second auxiliary request, second auxiliary request B, or third to ninth auxiliary requests, whereby the first to ninth auxiliary requests were filed with the letter setting out the grounds of appeal dated 24 February

2014 and the first and second auxiliary requests B were filed with the letter dated 10 October 2016,

- or that the compliance of the claims of any of the above requests with the requirements of Article 123(2), 84 and 54 EPC be acknowledged by the board and the case be remitted to the opposition division for further prosecution.

Both respondents requested that the appeal be dismissed (main request). Subsidiarily, they requested that, should any of the requests of the appellant be admitted and be seen as complying with Articles 123(2), 84 and 54 EPC, the case be remitted to the opposition division for further prosecution.

Reasons for the Decision

1. *Procedural matters*

- 1.1 With its statement of grounds of appeal the appellant filed a main request and nine auxiliary requests, and by letter dated 10 October 2016 two further requests, namely first and second auxiliary requests B. Both respondents requested that none of the requests be admitted into the appeal proceedings.
- 1.2 Main request and first to third auxiliary requests
 - 1.2.1 Article 12(4) RPBA requires the board to take into account everything presented by the parties under Article 12(1) RPBA if and to the extent that it relates to the case under appeal and meets the requirements in Article 12(2) RPBA. However, according

to the same Article 12(4) RPBA, the board has the discretionary power to hold inadmissible facts, evidence and requests that could have been presented at or were not admitted into the first instance proceedings.

1.2.2 The requests filed by the appellant with its statement of grounds of appeal are closely related to the requests already on file in the opposition proceedings. Thus, claim 1 of the main request corresponds to claim 1 of the main request before the opposition division, wherein the alternative that the electrical device is a liquid crystal film has been deleted. The requests also deal with the issues in the appealed decision and the further objections formulated by the opposition division as *obiter dictum*. For instance, claim 1 of the third auxiliary request corresponds to claim 1 of auxiliary request 1 before the opposition division, with the deletion of the word 'curved', that had been objected to under Article 84 EPC by the opposition division. Similar considerations apply to the other requests.

1.2.3 The amendments made to the claims were filed at the earliest time in the appeal proceedings, and can be considered to represent a reaction to the opposition division's decision.

1.2.4 Therefore, under Article 12(4) RPBA, the board saw no reason not to admit the main request and the first to third auxiliary requests into the appeal proceedings.

1.3 Admission of first and second auxiliary requests B

1.3.1 These requests were filed at a later stage in the appeal proceedings, namely after the oral proceedings

had been arranged. Thus, they do not form the basis of the appellant's appeal under Article 12(1) (a) RPBA and their admission is to be assessed in accordance with the provisions of Article 13(1) RPBA, that is to say, in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.

1.3.2 Compared with claim 1 of the main request, in claim 1 of the first auxiliary request B the material used for the first **and** the second ply of interlayer is polyurethane, polycarbonate, polyvinyl butyral, polyvinyl chloride or a copolymer of ethylene and methacrylic acid.

1.3.3 However, as pointed out by both respondents, there is no support for such amendment in the application as filed.

The appellant relied on the second paragraph of page 3 of the application as filed, which indicates that:

"The laminating interlayer may be any material known in the art that is suitable for forming a laminate. It may be an ethylene vinyl acetate copolymer, polyurethane, polycarbonate, polyvinyl butyral, polyvinyl chloride or a copolymer of ethylene and methacrylic acid."

According to this disclosure, any of the plies can be made from any of said materials. Contrary thereto, claim 1 specifically states that the first **and** the second ply are made from one and the same material, information which is not derivable from the list of materials cited above. In fact, the disclosure in the application as filed is more general and could also

mean that only the first ply, or only the second ply of interlayer material is made from any of said materials.

The requirement now in claim 1 that the first and the second plies of interlayer material be made from the same material is thus not directly and unambiguously derivable from the application as filed. Consequently, the amendment is not allowable under Article 123(2) EPC.

- 1.3.4 The same argumentation applies to claim 1 of the second auxiliary request B, which requires that the first, second **and** third plies of interlayer material be one (and always the same) of the materials listed in the second paragraph of page 3 of the application as filed, a requirement not derivable from the application as filed for the reasons given in point 1.3.3 for the first auxiliary request B.
- 1.3.5 It follows from the above that claim 1 of the first and second auxiliary requests B is at the very least not clearly allowable and that hence the filing of the two requests increased the complexity of the case within the meaning of Article 13(1) RPBA.
- 1.3.6 The appellant argued that the two requests had been filed in reaction to objections in the board's preliminary opinion. However, first and second auxiliary requests B differ from the second and third auxiliary requests, which were on file when the preliminary opinion was issued, only in that additional alternatives have been added for the plies of interlayer material. The board fails to see how the addition of further alternatives to a claim can qualify as a reaction to an objection in the board's

preliminary opinion. No arguments were put forward in this respect by the appellant.

1.3.7 Under these circumstances, the board decided not to admit the first and second auxiliary requests B into the proceedings.

1.4 Since the present decision is not concerned with the fourth to ninth auxiliary requests, the board did not need to decide on the admissibility of these requests.

MAIN REQUEST

2. *Amendments (Articles 100(c) and 123(2) EPC)*

2.1 Claim 1 is directed to a laminated glazing for use as an automotive window with the following features:

- (a) two panes of glazing material joined together by
- (b) at least three (first, second and third) plies of interlayer material, and
- (c) an electrical device located between the panes of glazing material, and
- (d) an infrared radiation reflecting means provided between the panes of glazing material for reducing the amount of infrared radiation that may otherwise be incident upon the electrical device, wherein
- (e) the electrical device is a suspended particle device,
- (f) the infrared radiation reflecting means is an infrared reflective film provided on a surface of a ply of interlayer material, and
- (g) the electrical device is located in a cut-out region in the third ply of interlayer material,

- (h) which is located between the first and second plies of interlayer material.

2.2 As in claim 1 as granted, claim 1 of the main request contains the feature of at least three plies of interlayer material (feature (b)). Although no objection was raised against the lower limit of three plies of interlayer material, the respondents objected to this feature under Article 100(c) EPC because it implied an indefinite upper limit not disclosed in the application as filed.

Respondent 01 further argued that the amendment "at least three" in feature (b) resulted in claim 1 now embracing embodiments that did not solve the problem underlying the patent in suit and therefore extended beyond the content of the application as filed.

2.3 The board agrees with the appellant that the wording "at least three" in feature (b) is based on the application as filed.

2.3.1 Claim 1 as filed was directed to "a laminated glazing for use as an automotive window **comprising** two panes of glazing material joined by **a ply** of interlayer material, and..." (emphasis by the board). According to the Case Law of the Boards of Appeal, 8th Edition, July 2016, under II.A.6.2., and as also stated in the Guidelines for Examination in the European Patent Office, November 2016, Part F, Chapter IV.21, in patent claims the term "comprising" is interpreted in a broad meaning as "including", "containing" or "comprehending", meaning that it does not exclude the presence of additional plies of interlayer material. This is supported by the indefinite article

"a" in relation to "ply", which leaves the number of plies open.

- 2.3.2 It is furthermore clear from the construction of the claims of the application as filed that the wording of claim 1 allowed for further plies of interlayer material being present in the laminated glazing (see claim 3: comprising a second ply of interlayer and claim 5: comprising a third ply of interlayer material). Moreover, according to the description, further plies of interlayer material could be present (see page 4, lines 8 to 10).
- 2.3.3 Thus, claim 1 as filed implied an indefinite upper limit for the number of plies of interlayer material. The fact that the wording "at least three" in amended claim 1 also implies such an indefinite upper limit does not add anything new over what was disclosed in the application as filed.
- 2.3.4 The board cannot accept the argument of the respondents that the allocation of a specific function for the plies in the specification as filed implied a limitation to the number of plies to be used. As explained above, the wording of claim 1 as filed (see "comprising") allows for an indefinite number of plies without any limitation to only the embodiments discussed in the specification, wherein the plies of interlayer material have a specific function.
- 2.3.5 As to the further argument of respondent 01 that the presence of an indefinite number of plies would embrace embodiments which would not solve the problem underlying the invention or would lead to additional problems, the board cannot see how this argument can be related to the question of whether the amendment

extends beyond the content of the application as filed. In fact this concerns rather the issue of inventive step.

- 2.4 Both respondents raised the additional objection that the definition of the electrical device as a suspended particle device (feature (e)) was not allowable under Article 123(2) EPC, as it resulted in a singling out of an embodiment not specifically disclosed in the application as filed.

Claim 1 as granted defines the electrical device as "a liquid crystal film device or a suspended particle device". Claim 1 of the main request thus differs from claim 1 as granted in that the alternative of the electrical device being a liquid crystal film device has been deleted. The board considers that this deletion fulfils the requirements of Article 123(2) EPC.

- 2.4.1 The use of a suspended particle device as an electrical device is disclosed in claim 2 as filed as one of three preferred electrical devices, namely an electroluminescent lamp, a liquid crystal film device and a suspended particle device. The suspended particle device is therefore one embodiment explicitly disclosed in the application as filed.

- 2.4.2 The board also cannot accept the argument of the respondents that the subject-matter of claim 1 includes technical information not directly and unambiguously derivable from the application as filed as a result of several selections within the disclosure of the application, namely of the suspended particle device and the further features of claim 1 of the main request.

2.4.3 Claim 1 of the main request results from the combination of claim 1 as filed with dependent claims 3, 5, 7, 9 and the alternative of a suspended particle device of claim 2 as filed. The subject-matter of claim 1 of the main request thus relates to an embodiment specifically disclosed in the claims of the application as filed and not from various selections within the broad disclosure of the application as filed. In view of the direct or indirect dependence of claims 2, 3, 5, 7 and 9 on claim 1 as filed, there is also a pointer to combining the features of all these claims of the application as filed.

2.5 For these reasons the amendments made to claim 1 are based on the application as filed.

3. *Novelty (Article 54 EPC)*

3.1 The board indicated in its communication in preparation for oral proceedings that it agreed with the opposition division and the respondents that the laminated glazing of Figures 5 and 6 in conjunction with the corresponding passages in the description of A8, a document being uncontestedly prior art according to Article 54(3) EPC, anticipated the subject-matter of claim 1 of the main request.

3.2 As this finding has not been contested by the appellant either in the written or the oral proceedings - in fact, it did not comment on the novelty of claim 1 of the main request - there is no need for the board to elaborate in detail on this issue.

- 3.3 The main request is therefore not allowable, because the subject-matter of claim 1 lacks novelty over the disclosure of A8.

FIRST AUXILIARY REQUEST

4. Amendments (Article 123(2) EPC)
- 4.1 Claim 1 differs from claim 1 of the main request in that it includes the additional feature "wherein the third ply of interlayer material comprises a plasticizer".
- 4.2 There is no explicit or implicit disclosure in the application as filed as regards the presence of a plasticizer in the third ply of interlayer material. In fact, the application as filed does not indicate that any ply of interlayer material being the first, second or third ply of interlayer material comprises a plasticizer.
- 4.3 The appellant did not dispute that, but argued that this feature should be read as a disclaimer over A8, and was therefore allowable in accordance with G 1/03.
- 4.4 The board notes, however, that the additional feature is a positive feature, which teaches which subject-matter has to be included in the scope of the claim. It is not drafted as a disclaimer to exclude any specific embodiment of A8. Decision G 1/03 therefore does not apply.
- 4.5 The first auxiliary request is thus not allowable, because the subject-matter of claim 1 extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

SECOND AUXILIARY REQUEST

5. *Amendments (Article 123(2) EPC)*

5.1 Claim 1 of this request corresponds to claim 1 of the main request except for the additional feature "further wherein the first and second plies of interlayer material are polyvinyl butyral".

5.2 This feature is not disclosed in the application as filed and contravenes Article 123(2) EPC. The appellant referred to page 3, second paragraph disclosing the materials that can be used for the interlayer material. As already set out above when discussing the first and second auxiliary requests B, this passage indicates that the interlayer material may be any material known in the art, such as ethylene vinyl acetate copolymer, polyurethane, polycarbonate, polyvinyl butyral, polyvinyl chloride or a copolymer of ethylene and methacrylic acid. There is no disclosure in the application as filed that from the above list polyvinyl butyral should be used as the material for the first **and** second plies, as now claimed. This information is neither explicitly disclosed nor implicitly derivable from the application as filed.

5.3 The appellant argued that the material used for the interlayers of the laminated glazings shown in the figures of the application as filed was polyvinyl butyral. The figures thus provided a pointer to the selection of this material for the first and second ply of interlayer material.

The application as filed contains two figures, namely Figures 2 and 3, that show a specific sequence of the

laminated glazing, namely the first, second and third ply of interlayer material being made of polyvinyl butyral (page 6, lines 18 to 19 and page 7, line 23). The figures of the application as filed thus do not provide a basis for only the first and second ply of interlayer material being polyvinyl butyral.

- 5.4 The second auxiliary request is therefore not allowable, because the subject-matter of claim 1 extends beyond the content of the application as filed, contrary to Article 123(2) EPC.

THIRD AUXILIARY REQUEST

6. *Amendments (Articles 123(2) and 84 EPC)*

- 6.1 Claim 1 of this request differs from claim 1 of the main request by the additional feature that "further wherein the first and second and third plies of interlayer material are polyvinyl butyral".
- 6.2 This amendment is based on the application as filed. As set out above, page 3, second paragraph of the application as filed discloses polyvinyl butyral as one of several options for the interlayer material. Furthermore, the application as filed provides a pointer towards the use of polyvinyl butyral as the preferred material for the first, second and third plies of interlayer. In all the glazings in the specification, the first, second and third plies are made of polyvinyl butyral (see Figure 2, layers 24, 25 and 26 and Figure 3, layers 34, 35 and 36). Although in these figures the electrical device is not a suspended particle device as now claimed but an electroluminescent lamp, the skilled person is taught by the figures that polyvinyl butyral is the preferred

material to be used for the first, second and third plies.

6.3 Thus, the subject-matter of claim 1 is directly and unambiguously derivable from the application as filed.

6.4 Claims 2 to 10 are based on claims 4, 6 and 10 to 16 as filed, respectively, of the application as filed and also fulfil the requirements of Article 123(2) EPC.

6.5 Lastly, no objection under Article 84 EPC was raised against the claims of the third auxiliary request and the board does not have any either. It is also noted that the claims do not include the term "curved" objected to under Article 84 EPC by the opposition division in its decision.

7. *Novelty (Article 54 EPC)*

7.1 The subject-matter of claim 1 of the third auxiliary request is also novel over A8. The laminated glazing of A8 requires that at least one of the first, second and third sheets of interlayer material be one of ethylene vinyl acetate copolymer, polyurethane, polycarbonate, poly vinyl chloride or a copolymer of ethylene and methacrylic acid (see page 3, 4th paragraph) and it is therefore no longer covered by the claims of the third auxiliary request of the patent in suit. In fact, no novelty objections were raised by the respondents against the claims of the third auxiliary request.

7.2 The board thus concludes that the claims of the third auxiliary request are novel.

8. *Remittal (Article 111 EPC)*

- 8.1 The board finds that the claims of the third auxiliary request fulfil the requirements of Articles 123, 54 and 84 EPC (see points 6 and 7 above).

Taking into account the fact that the opposition division did not take a decision on inventive step and that all the parties to the proceedings requested remittal for further consideration, the board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the opposition division for further prosecution on the basis of claims 1 to 10 of the third auxiliary request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution on the basis of claims 1 to 10 filed as third auxiliary request on 24 February 2014.

The Registrar:

The Chairman:



K. Boelicke

M. O. Müller

Decision electronically authenticated