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Datasheet for the decision of 11 August 2016

Case Number: T 1005/14 - 3.5.05

Application Number: 07789432.7

Publication Number: 2137657

IPC: G06F19/00, A61M1/16

Language of the proceedings: EN

Title of invention:
Fluid processing medical apparatus and method for setting-up a fluid processing medical apparatus

Patent Proprietor:
Gambro Lundia AB

Opponents:
B. Braun Melsungen AG
Fresenius Medical Care Deutschland GmbH (until 7 May 2015)

Headword:
Setting up a medical device/LUNDIA

Relevant legal provisions:
EPC Art. 56, 83, 84, 114(2), 123(2)
RPBA Art. 12(4), 13(1), 13(3)

Keyword:
Allowable amendments - (yes)
Admission of fresh ground under Article 83 EPC - (no)
Admission of objections under Article 84 EPC - (no)
Inventive step - (yes, after amendment)

Decisions cited:
G 0010/91, G 0007/93, G 0007/95, G 0003/14

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Case Number: T 1005/14 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 11 August 2016

Appellant I: (Patent Proprietor)	Gambro Lundia AB Magistratsvägen 16 220 10 Lund (SE)
Representative:	Ponzellini, Gianmarco PGA S.r.l. Via Mascheroni, 31 20145 Milano (IT)
Appellant II: (Opponent 1)	B. Braun Melsungen AG Carl-Braun-Str.1 34212 Melsungen (DE)
Representative:	dompatent von Kreisler Selting Werner - Partnerschaft von Patent- und Rechtsanwälten mbB Deichmannhaus am Dom Bahnhofsvorplatz 1 50667 Köln (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 11 March 2014 concerning maintenance of European Patent No. 2137657 in amended form.**

Composition of the Board:

Chair	A. Ritzka
Members:	K. Bengi-Akyuerek
	D. Prietzel-Funk

Summary of Facts and Submissions

I. The appeals of the patent proprietor (appellant I) and the opponents (appellants II and III) were lodged against the interlocutory decision of the opposition division to maintain the present European patent as amended according to the claims of a "fourth auxiliary request". The notice of opposition had relied solely on the opposition grounds of lack of novelty and inventive step (Article 100(a) EPC). Moreover, the opposition division did not admit into the opposition proceedings the late-filed ground of insufficiency of disclosure (Article 83 EPC), which the opponents submitted for the first time at oral proceedings before the division against the patent as amended.

II. The prior-art documents cited in the opposition proceedings include the following:

E1: DE 201 13 789 U1;
E4: US-A-2002/0038392.

III. With its statement setting out the grounds of appeal, appellant I filed amended claims according to a main request and a first auxiliary request. It requested that the decision under appeal be set aside and that the patent be maintained on the basis of the claims of the main or first auxiliary request or, as its second auxiliary request, that the appeals of appellants II and III be dismissed (i.e. that the patent be maintained on the basis of the claims as maintained by the opposition division). Furthermore, it requested that the late-filed ground of insufficiency of disclosure (Article 83 EPC) not be admitted into the appeal proceedings.

IV. With its statement setting out the grounds of appeal, appellant II requested that the decision under appeal be set aside and that the patent as amended be revoked on the grounds of added subject-matter (Article 123(2) EPC), insufficiency of disclosure (Article 83 EPC) and lack of inventive step (Article 56 EPC).

V. By a letter dated 7 May 2015, appellant III withdrew both its opposition against the patent and its appeal against the impugned decision.

VI. In an annex to the summons to oral proceedings pursuant to Article 15(1) RPBA, the board expressed its preliminary opinion on the appeal. In particular, it made observations with regard to the grounds of Articles 123(2) and 83 EPC and the question of inventive step (Article 56 EPC), mainly having regard to E1 and E4.

VII. By a letter of reply, appellant II advanced arguments in support of non-compliance with Articles 123(2), 83, 84 and 56 EPC of all claim requests on file.

VIII. With its letter of reply, appellant I submitted counter-arguments on the submissions of appellant II and made observations on the board's communication under Article 15(1) RPBA.

IX. Oral proceedings were held on 11 August 2016, during which appellant I filed a new set of claims as its new main request and withdrew all the former claim requests on file.

The final request of appellant I was that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of claims 1 to

15 according to the main request as filed at the oral proceedings before the board.

The final request of appellant II was that the decision under appeal be set aside and that the patent be revoked.

At the end of the oral proceedings, the decision of the board was announced.

X. **Claim 1** of the main request (i.e. appellant I's sole claim request) reads as follows:

"Method for setting-up a fluid processing medical apparatus (1), the apparatus (1) being of the type comprising:
a support structure (32) for receiving a plurality of replaceable components (4, 9, 10, 23, 25, 37) of different categories in correspondence of respective operating areas of said apparatus (1), wherein said replaceable components comprise a plurality of components of different categories, each component of a same category having respective mechanical connection to a corresponding operating area on the medical apparatus (1), different from that of components of other categories and wherein said medical apparatus (1) includes a plurality of different types of engaging means, each type of engaging means being designed for mechanically engaging, in a respective operating area, a component of one corresponding category only,
at least a user interface (30) for enabling setting of a plurality of parameters pertinent to operation of said apparatus (1) or pertinent to a process to be performed by said apparatus (1), the user

interface (30) including at least a screen (31), the method comprising the following steps:

- providing a reader (35) having a reading portion for reading information concerning the components,
- selecting a desired treatment procedure,
- reading the information of a new component (4; 9; 10; 23; 25; 37) to be installed on the apparatus (1) by relatively approaching the reading portion to a carrier of said new component (4; 9; 10; 23; 25; 37) information,
- checking if the new component (4; 9; 10; 23; 25; 37) fits with the selected treatment procedure,
- signaling if the new component (4; 9; 10; 23; 25; 37) does not fit with the selected treatment procedure, wherein the above steps of selecting a desired treatment procedure, checking if the new component (4; 9; 10; 23; 25; 37) fits with the selected treatment procedure, and signaling if the new component (4; 9; 10; 23; 25; 37) does not fit with the selected treatment procedure are performed before the step of coupling the new component (4; 9; 10; 23; 25; 37) with the apparatus (1),
- coupling the new component (4; 9; 10; 23; 25; 37) with the apparatus (1) in correspondence of a respective of said operating areas, the reading portion being distinct and spaced from said operating areas and accessible for reading the information irrespective of the components being engaged or not with apparatus (1), the component when coupled leaving the reading portion accessible for reading the information, and wherein, for reading the information, the carrier of said information and the reading portion are approached to a distance less than 30 cm, wherein

the medical apparatus comprises a control system (18) programmed for executing the following steps:

- receiving selection of the desired treatment procedure,
- said checking if the new component fits with the selected treatment procedure,
- said signaling if the new component does not fit with the selected treatment procedure,
- allowing the step of coupling the new component with the apparatus only after the step of checking if the new component fits with the selected treatment procedure."

Independent **claim 9** of the main request reads as follows:

"Fluid processing medical apparatus (1), comprising:

a support structure (32),

a plurality of replaceable components (4, 9, 10, 23, 25, 37) of different categories engaged to the support structure (32) in correspondence of respective operating areas, wherein said components comprise a plurality of components of different categories, each component of a same category having respective mechanical connection to a corresponding operating area on the apparatus (1), different from that of components of other categories and wherein said apparatus (1) includes a plurality of different types of engaging means, each type of engaging means being designed for mechanically engaging, in a respective operating area, a component of one corresponding category only,

at least a user interface (30) enabling setting of a plurality of parameters pertinent to operation of said apparatus (1) or pertinent to a process to be

performed by said apparatus (1), the user interface (30) including at least a screen (31),

a reader (35), distinct from said user interface (30), having a reading portion for reading information concerning the components, wherein the reader comprises an optical reader adapted to detect said information when the component and the reading portion are approached one another at a distance less than 30 cm,

a control system (18) for controlling operation of said medical apparatus (1) and responsive to actions by a user on said user interface (30), said control system (18) also communicating with the reader (35) and being programmed for receiving and storing at least said information concerning the components every time the reader (35) reads information concerning a new component (4; 9; 10; 23; 25; 37) to be installed on the apparatus (1), wherein the control system (18) is programmed for executing the following steps:

- receiving selection of a desired treatment procedure,
- checking if the new component (4; 9; 10; 23; 25; 37) fits with the selected treatment procedure,
- signaling if the new component (4; 9; 10; 23; 25; 37) does not fit with the selected treatment procedure,

wherein the control system (18) is programmed for allowing the step of coupling the new component (4; 9; 10; 23; 25; 37) with the apparatus (1) only after the step of checking if the new component (4; 9; 10, 23; 25; 37) fits with the selected treatment procedure, the reading portion being spaced from said operating areas and accessible for reading the information irrespective of the components being engaged or not to the support structure (32)."

Reasons for the Decision

1. CLAIMS OF MAIN REQUEST

Claim 1 of the present main request comprises the following limiting features (as labelled by the board):

Method for setting up a fluid-processing medical apparatus, the apparatus being of the type comprising:

A) a support structure for receiving a plurality of replaceable components of different categories in correspondence of respective operating areas of said apparatus;

B) wherein said replaceable components comprise a plurality of components of different categories, each component of a same category having respective mechanical connection to a corresponding operating area on the apparatus, different from that of components of other categories;

C) a plurality of different types of engaging means, each type of engaging means being designed for mechanically engaging, in a respective operating area, a component of one corresponding category only;

D) at least a user interface for enabling setting of a plurality of parameters pertinent to operation of said apparatus or pertinent to a process to be performed by said apparatus, the user interface including at least a screen;

E) a control system;

the method comprising the following steps:

a) providing a reader having a reading portion for reading information concerning the components, wherein the reading portion is distinct and spaced from said operating areas and accessible for reading the information irrespective of the components being engaged or not with the apparatus;
b) selecting a desired treatment procedure;
c) receiving, by the control system, selection of the desired treatment procedure;
d) reading the information of a new component to be installed on the apparatus by relatively approaching the reading portion to a carrier of said new component information;
e) wherein, for reading the information, the carrier of said information and the reading portion are approached to a distance less than 30 cm;
f) checking, by the control system, if the new component fits with the selected treatment procedure;
g) signaling, by the control system, if the new component does not fit with the selected treatment procedure;
h) coupling the new component with the apparatus in correspondence of a respective of said operating areas, wherein the component when coupled leaves the reading portion accessible for reading the information;
i) said selecting, checking and signaling steps being performed before the coupling step;
j) allowing, by the control system, the step of coupling the new component with the apparatus only after the step of checking if the new component fits with the selected treatment procedure.

1.1 *Admission of the main request into appeal proceedings*

1.1.1 Appellant II requested that the new main request not be admitted into the appeal proceedings. It argued that this claim request should have been submitted earlier to fix the known problems raised under Article 123(2) EPC.

1.1.2 According to the present factual situation, the claims of the new main request were filed for the first time during the oral proceedings before the board (cf. point IX above), i.e. at a very late stage of the overall procedure. In appeal proceedings, the admissibility of claim requests filed *after* an appellant has filed its statement setting out the grounds of appeal or its corresponding reply is governed by Article 13(1) RPBA, while the admissibility of claim requests filed *after* a board has arranged oral proceedings is subject to Article 13(3) RPBA.

By virtue of Article 13(1) RPBA, a board's discretion in admitting any amendment to a party's case "shall be exercised 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". Pursuant to Article 13(3) RPBA, amendments are not to be admitted "if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings".

1.1.3 In the light of the above and contrary to appellant II's request, the board decided to admit the claims of the main request into the appeal proceedings under Article 13(1) and (3) RPBA, in consideration of

the following observations and facts:

- the amendments to independent claims 1 and 9 were made as a direct reaction to the board's communication under Article 15(1) RPBA, in particular to overcome the objections raised by the board and appellant II under Article 123(2) EPC, so that they were occasioned by developments during the oral proceedings before the board;
- the amendments to claims 1 and 9 are minor amendments relating to making reference to the previously defined "checking" and "signaling" steps, and further limit the subject-matter claimed;
- they do not give rise to further objections under Articles 123(2) and 84 EPC; nor do they raise complex issues, in particular as to the assessment of inventive step, so that the board and appellant II could reasonably be expected to deal with them without having to adjourn the oral proceedings before the board;
- the present claims do not extend the scope of discussion as determined by the statement setting out the grounds of appeal and the corresponding reply.

1.2 *Added subject-matter (Article 123(2) EPC)*

1.2.1 Appellant II contended that present claim 1 infringed Article 123(2) EPC since, due to the missing article "the" before the word "selection" in the wording of feature c), a selection of *any* treatment procedure was supposed to be received rather than the desired and previously selected one.

1.2.2 The board, however, is satisfied that the skilled reader understands feature c) to mean that the information about the selected and desired treatment procedure is indeed received by the control system, as originally disclosed e.g. by page 11, lines 1-3 of the corresponding application as filed. Thus, the board holds that present independent claims 1 and 9 comply with Article 123(2) EPC.

1.3 *Admission of objections under Article 83 EPC into appeal proceedings*

1.3.1 Appellant II submitted at the oral proceedings before the board that present claim 1 did not comply with Article 83 EPC, since

1) as regards feature j), it was not clear to the skilled person from the opposed patent how a programmable control system should be able to allow or disallow the user to couple the corresponding replaceable component *mechanically* with the medical apparatus;
2) the skilled person would not know how to resolve the contradiction arising from the "allowing" step of feature j) and the "coupling" step of feature h), according to which the coupling step could be performed irrespective of the outcome of the "allowing" step.

1.3.2 It appears from the file that objection 1) had essentially been raised for the first time at the oral proceedings before the opposition division on 23 September 2013 (see minutes of those oral proceedings, sections 3.1 and 3.2). Thus, it had not been raised in due time within the meaning of Article 114(2) EPC in conjunction with Rule 76(2)(c)

EPC and must be considered a "fresh ground for opposition" (cf. G 7/95, OJ EPO 1996, 626, Reasons 5.4 and G 10/91, OJ EPO 1993, 420, Reasons 18). Moreover, the opposition division did not admit that fresh ground into the opposition proceedings on the grounds that it *prima facie* did not prejudice the maintenance of the opposed patent (cf. appealed decision, Reasons 22). Nevertheless, appellant II resubmitted this objection in its statement setting out the grounds of appeal (cf. section 3) and its letter of reply dated 20 May 2016 (cf. section 7, first paragraph).

In appeal proceedings, the admissibility of submissions filed with the statement setting out the grounds of appeal is subject to Article 12(4) RPBA, according to which a board has the discretionary power "to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings". Further, it is established jurisprudence of the Boards of Appeal that for the assessment of the admissibility in the appeal proceedings under Article 12(4) RPBA of submissions not admitted by the first-instance department, only the exercise by that first-instance department of its discretion in not admitting those submissions is to be reviewed by the board in accordance with G 7/93 (OJ EPO 1994, 775, Reasons 2.6).

In the present case, the board holds that the opposition division exercised its discretion on the basis of the relevant facts (i.e. submission of a fresh ground for opposition), according to the right principle (i.e. criterion of "*prima facie* relevance"), and in a reasonable way (i.e. by taking into account that the objection related to features of a claim as granted; see appealed decision, Reasons 22). Hence, the

board does not see any reason to overrule the way in which the opposition division exercised its discretion in the case at issue.

1.3.3 Objection 2) was raised by appellant II for the first time in the appeal proceedings in its letter of 20 May 2016 (cf. section 7, second paragraph) in response to the board's communication under Article 15(1) RPBA. Thus, it is likewise late-filed within the meaning of Article 114(2) EPC. Moreover, it is apparent that features j) and h) are taken from dependent claims 14 and 17 as granted and, consequently, this objection has likewise to be considered a "fresh ground for opposition". However, in appeal proceedings, such an objection may only be admitted if the patent proprietor (i.e. appellant I) agreed to it (G 10/91, Reasons 18). This was not the case here.

1.3.4 In view of the above, the board decided not to admit objections 1 and 2) under Article 83 EPC into the appeal proceedings pursuant to Article 12(4) RPBA and Article 114(2) EPC.

1.4 *Admission of objections under Article 84 EPC into appeal proceedings*

1.4.1 Appellant II further submitted that present claim 1 did not comply with Article 84 EPC, since

3) it was unclear to the skilled reader in view of various possible interpretations of feature j) how the control system should actually be able to allow or disallow the user to couple the corresponding replaceable component to the medical apparatus (see also objection 1) above);

4) the "coupling" step according to feature h) and the "allowing" step according to feature j) were contradictory to each other and thus introduced a lack of clarity (see also objection 2) above).

1.4.2 According to G 3/14, the claims of an opposed patent as amended may be examined for compliance with Article 84 EPC only when, and then only to the extent that, the corresponding amendments *introduce* non-compliance with Article 84 EPC (cf. G 3/14, OJ EPO 2015, 102, Order).

1.4.3 In the present case, added feature j) underlying objection 3) is taken from claim 14 as granted, while the combination of features h) and j) underlying objection 4) arises from claims 14 and 17 as granted. Thus, those amendments to present claim 1 amount to a literal insertion of certain elements of dependent claims (namely claims 14 and 17) as granted into an independent claim (so-called "Type A(ii) amendment") within the meaning of G 3/14 (see Reasons 3 and 84).

1.4.4 As to the question whether the above amendments indeed introduce a lack of clarity, the board notes that the skilled reader would understand from the wording of claim 1 and his common general knowledge that allowing the coupling of a replaceable component according to feature j) is not considered to be confined to allowing (or disallowing) the coupling of a component in a *mechanical* (i.e. hardware-based) manner but also covers, for example, a visual or audible (i.e. software-based) indication through the user interface to the user as to whether or not the coupling of a certain component is generally allowed. Also, the skilled reader would comprehend that the coupling step according to feature h) is merely further specified by a definition of conditions under which the coupling is

indeed performed within the terms of feature j) of claim 1.

1.4.5 In view of the foregoing, the board decided that present claim 1 is not open to examination and objections under Article 84 EPC.

1.5 *Novelty and inventive step (Articles 54 and 56 EPC)*

1.5.1 *Prior art*

As regards the assessment of novelty and inventive step, appellant II relied only on prior-art document **E1** during the oral proceedings before the board. Document E1 is also concerned with a fluid-processing medical apparatus ("Dialysegerät") comprising a support structure ("Basiseinheit") for replaceable components ("Zusatzgeräte") to be mechanically connected to the apparatus, a control unit ("Steuereinheit"), a user interface for setting of medical parameters ("Behandlungsparameter") and a radio-frequency reader ("Abfragegerät"). The control unit may also check the compatibility ("Plausibilitätsprüfung") of a coupled replaceable component with a certain selected treatment procedure ("Behandlungsvorschlag") and output an alarm signal if appropriate (see e.g. abstract; page 3, lines 11-24; page 7, antepenultimate line to page 8, line 2 in conjunction with Fig. 1).

1.5.2 *Distinguishing features*

It was common ground during the written and oral appeal proceedings that E1 did not disclose directly and unambiguously feature e) of claim 1, i.e. that the information carrier and the reading portion are approached to a distance less than 30 cm for reading

said information. Rather, E1 teaches that for reading data of a replaceable component the corresponding distance should be no more than 10 cm (see page 6, lines 6-8).

As to feature h), i.e. the step of coupling a certain component with the medical apparatus, the board subscribes to the view of appellant II that it may be interpreted as encompassing both *mechanical* coupling (including a physical connection with the apparatus) and *electrical* coupling (including an RF-based connection without direct physical contact). However, the board does not accept that "coupling" could also mean "putting into operation" in the present context, as submitted by appellant II. Concerning the coupling step, appellant II made particular reference to the following passage of E1 (see page 3, lines 11-17; emphasis added by the board):

> *"... Wenn die Basiseinheit des Medizingeräts mit Zusatzgeräten* ***ausgerüstet*** *ist, gelangen diese Zusatzgeräte, die jeweils einen Transponder tragen, automatisch in die räumliche Nähe zum Abfragegerät, so dass sie ihre Informationen an das Abfragegerät übermitteln. Dies bedeutet, dass die Basiseinheit zu jedem Zeitpunkt weiß, mit welchen Zusatzgerãten sie* ***bestückt*** *ist ..."*

The board understands from that teaching that the medical apparatus of E1 detects that it is coupled with a replaceable component ("ausgerüstet"; "bestückt" in the terminology of E1) when it is capable of electrically reading the information of that component (see also page 5, last paragraph to page 6, line 4).

As regards features f), g), i) and j) relating to the steps of checking/signaling and allowing, E1 goes on to teach the following (see page 3, lines 17-24; emphasis added by the board):

> *"In Abhängigkeit von diesen Zusatzgeräten bestimmt die Basiseinheit Parameter eines von ihr durchzuführenden Betriebes. Es kann auch beispielsweise eine Plausibilitätsprüfung durchgeführt werden, bei der ermittelt wird, ob die Zusatzgeräte, mit denen die Basiseinheit* ***bestückt wurde*** *zueinander passen oder eine bestimmte Betriebsart ermöglichen. Wenn dies nicht der Fall ist, wird ein Betrieb durch die Basiseinheit verweigert."*

The board infers from the above that an operation ("Betrieb") of the medical apparatus is to be denied in the event that the *already coupled* removeable components are not compatible either with each other or with a certain operation mode. This means that the steps of checking and signaling a component's suitability are executed *after* and not *before* the coupling step in E1 and that the allowing/disallowing step is related to the *operation* ("Betrieb") or *operation modes* ("Betriebsarten") of the medical apparatus rather than to the coupling of the replaceable components.

Thus, besides feature e), E1 also fails to disclose features g), i) and j) of claim 1. Consequently, the subject-matter of present claim 1 is novel having regard to E1 (Article 54 EPC).

1.5.3 *Technical effect of distinguishing features*

The board accepts that distinguishing features e), g), i) and j), in particular the step of checking the compatibility of replaceable components one by one with any selected treatment procedure *before* rather than *during* or *after* coupling of that replaceable component with the medical apparatus, reliably and synergistically yield the technical effect of avoiding that a certain replaceable component is inadequately connected with the medical apparatus and thus that it must subsequently be dismounted at the cost of additional time loss. In this context, contrary to the view of appellant II, the allowing step according to feature j) equally contributes to that effect and thus cannot be considered as being devoid of any technical effect. Hence, the objective technical problem may be formulated as "how to reduce the overall set-up time in respect of the medical apparatus of E1".

1.5.4 *Obviousness*

The board first notes that it agrees with the finding of the decision under appeal (cf. page 15, third paragraph) that feature e), i.e. setting the maximum reader distance value to 30 cm (rather than to 10 cm as in E1), alone cannot contribute to an inventive step. The pivotal question with regard to the remaining distinguishing features g), i) and j) is now whether the skilled person would have indeed been motivated to apply a component-by-component compatibility check as claimed *before* rather than *after* connecting the respective replaceable component with the medical apparatus.

It is true that such one-by-one compatibility pre-check

could technically be also performed *before* connecting the replaceable components with the medical apparatus in the system of E1 (see e.g. page 6, lines 2-4: "*... sämtliche Transponder, die sich im Wirkungsbereich befinden, abgefragt bzw. mit Daten versorgt werden ...*"). This would however be merely an immediate consequence of the fact that information about a replaceable component is read out by the reader every time a new component approaches sufficiently (≤ 10 cm) for the reader to read that information (see e.g. page 6, lines 6-8).

However, the board holds that the skilled person trying to solve the above objective problem *would* rather take up the hint provided by the above-cited passage at page 3, lines 17-24 ("*... ermittelt wird, ob die Zusatzgeräte, mit denen die Basiseinheit bestückt wurde zueinander passen oder eine bestimmte Betriebsart ermöglichen ...*") and would in fact ensure that the corresponding compatibility checks are performed iteratively - taking into account all the already coupled components - to detect, after each coupling step, whether a newly coupled component fits with the other, already coupled components or, enables - in combination with the other, already coupled components - a certain operation mode. Thus, the skilled person would be led away from performing those checks for each individual replaceable component independently of the other components connected, as required by claim 1.

1.5.5 The above observations also apply to independent apparatus claim 9, which corresponds to claim 1 (see point X above). The board therefore holds that present independent claims 1 and 9 involve an inventive step (Article 56 EPC) in view of E1.

1.5.6 Given that appellant II did not rely on or discuss any other prior-art document for the assessment of inventive step at the oral proceedings before the board, the board sees no reason to arrive at a different conclusion based on the other documents on file.

2. In conclusion, since none of the invoked opposition grounds is found to prejudice the maintenance of the present patent as amended, the opposed patent is to be maintained on the basis of claims 1 to 15 of the present main 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 with the order to maintain the patent in amended form on the basis of claims 1 to 15 submitted at the oral proceedings before the board as the main request and a description and drawings to be adapted.

The Registrar: The Chair:

P. Martorana A. Ritzka

Decision electronically authenticated