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# Datasheet for the decision of 11 September 2019

**Case Number:** T 2051/16 - 3.2.01

**Application Number:** 05804236.7

**Publication Number:** 1807280

**IPC:** B60K15/04

**Language of the proceedings:** EN

**Title of invention:**
ANTI SIPHON TANK INLET AND METHOD

**Patent Proprietor:**
Tiss Limited

**Opponent:**
FuelDefend Global Limited

**Headword:**

**Relevant legal provisions:**
EPC Art. 54(1), 56, 100(a), 100(b), 100(c), 123(2)
RPBA Art. 13(1)

**Keyword:**

Sufficiency of disclosure - (yes)
Evidence of alleged public prior use - not sufficiently proven
Amendments - main request - extension beyond the content of the application as filed (yes) - first auxiliary request - allowable (yes)
Admissibility of first auxiliary request (yes)
Novelty - first auxiliary request (yes)
Admissibility of new line of attack on inventive step - (no)
Inventive step - first auxiliary request (yes)

**Decisions cited:**

**Catchword:**

Europäisches Patentamt
European Patent Office
Office européen des brevets

**Beschwerdekammern**

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**Case Number: T 2051/16 - 3.2.01**

# D E C I S I O N
# of Technical Board of Appeal 3.2.01
# of 11 September 2019

| | |
|---|---|
| **Appellant:** (Opponent) | FuelDefend Global Limited<br>Upper First Floor<br>Bishops House<br>Market Place<br>Chalfont St Peter, Buckinghamshire SL9 9HE (GB) |
| **Representative:** | Abel & Imray<br>Westpoint Building<br>James Street West<br>Bath BA1 2DA (GB) |
| **Respondent:** (Patent Proprietor) | Tiss Limited<br>330 Lytham Road<br>Blackpool,<br>Lancashire FY4 1DW (GB) |
| **Representative:** | Kenrick, Mark Lloyd<br>Marks & Clerk LLP<br>1 New York Street<br>Manchester M1 4HD (GB) |
| **Decision under appeal:** | **Decision of the Opposition Division of the European Patent Office posted on 27 June 2016 rejecting the opposition filed against European patent No. 1807280 pursuant to Article 101(2) EPC.** |

**Composition of the Board:**

| | |
|---|---|
| **Chairman** | G. Pricolo |
| **Members:** | W. Marx |
| | S. Fernández de Córdoba |

## Summary of Facts and Submissions

I. The appeal is directed against the decision posted 27 June 2016 rejecting the opposition against European patent No. 1 807 280.

II. The appellant relied, *inter alia*, on the following evidence filed during the opposition procedure:

D1: Extract from Mirriam-Webster online dictionary;
D2: Extract from Chambers Dictionary, 1993 Edition;
D3: Witness statement of Russell Fowler;
D4: Invoice, dated 12 November 2004, relating to sale of device to R. Constable Limited;
D5: Photographs of Constable device;
D6: US 3951297;
D7: US 1512065;
D12: US 4345694;
D13: Extract from Aide Automotive website, June 2004, obtained using the Wayback Machine internet archive;
D16: Extract from TISS Limited website, dated 23 October 2005, obtained from the Internet Archive website (www.archive.org) using the Wayback search tool.

III. At oral proceedings held on 11 September 2019 the appellant (opponent) requested that the decision under appeal be set aside and the European patent be revoked. The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained according to the first auxiliary request filed with the letter dated 21 March 2017. The respondent withdrew all other auxiliary requests.

IV. Claim 1 as granted, remaining unamended in the first auxiliary request, reads as follows:

"A method of:
fitting an anti-siphon inlet assembly (1) to a fluid tank inlet (13) having an extending neck (14);
the inlet assembly comprising a generally tubular body (5) having an inlet aperture at a first end and depending from a mounting means (2) located at or adjacent said first end;
one or more apertures (7;20) remote from said first end to allow the passage of fluid through the tubular body (5) into said tank;
means (8) disposed within said tubular body (5) to block the passage of a siphon tube through said tubular body (5);
wherein the mounting means (2) comprises at least one skirt (31) spaced from a portion (32) of the tubular member (5) to define a gap (33) therebetween which is open to receive the neck (14) of the tank inlet;
the method comprising:
passing the tubular body (5) in to said tank inlet so that the tank inlet (13) neck (14) is slidably received within the or each gap (33) such that at least a portion of said at least one skirt (31) overlaps at least a portion of the inlet neck (14), and
securing the or each skirt (31) to the inlet neck (14)."

Claim 8 as granted reads as follows (amendments with respect to claim 8 as filed marked by strike-through for deletions and underlining for additions):

"A fluid tank inlet assembly adapted for fitting to a tubular neck (14) of a fluid tank inlet (13), the inlet assembly comprising:
a generally tubular body (5) having an inlet aperture at a first end and depending from a mounting means (2) located at or adjacent said first end;

one or more apertures (7;20) remote from said first end to allow the passage of fluid through the tubular body (5) into said tank; and
means (8) disposed within said tubular body (5) to block the passage of a siphon tube through said tubular body (5); wherein,
the mounting means (2) comprises at least one skirt (31) spaced from a portion (32) of said tubular body (5), a gap (33) being defined between said portion (32) of the tubular body (5) and said at least one skirt (31), the or each gap (33) having an open end for slidably receiving a portion of the neck (14) of a tank inlet, the or each gap (33) having a radial width and a length extending from said open end to receive a neck portion of the same length~~, wherein the length of the or each gap is not less than half its radial width~~;
**characterised in that** said portion of the tubular body has a greater outer diameter than at least the majority of the tubular body depending therefrom; and the or each gap (33) has a radial width sufficient to accommodate a range of different diameter tank inlet necks."

As compared to granted claim 8, the characterising feature of claim 8 of the first auxiliary request was amended as follows (added feature underlined):
"...
**characterised in that** said portion of the tubular body has an enlarged radial thickness relative to a radial thickness of at least the majority of the tubular body depending therefrom and a greater outer diameter than at least the majority of the tubular body depending therefrom; and
the or each gap (33) has a radial width sufficient to accommodate a range of different diameter tank inlet necks."

## Reasons for the Decision

***Patent as granted***

*1. Sufficiency of disclosure (Article 100(b) EPC)*

1.1 The appellant's challenge of the sufficiency of disclosure of the patent in suit under Article 100(b) EPC is rejected.
According to the established case law, sufficiency of disclosure must be assessed on the basis of the application as a whole, including the description and claims, and not on the claims alone. The skilled person may even use his common general knowledge to supplement the information contained in the application or correct errors. If at least one way to carry out the invention is clearly indicated, the non-availability of some particular variants of a functionally defined component feature of the invention is immaterial to sufficiency as long as there are suitable variants known to the skilled person through the disclosure or common general knowledge providing the same effect for the invention.

1.2 Feature "*said portion of the tubular body has a greater outer diameter than at least the majority of the tubular body depending therefrom*"

1.2.1 The appellant submitted that, in the event that the board found that there was a technical effect associated with this feature in granted claim 8, the disclosure was insufficient because there was no guidance as to what degree of difference between the diameter of the different parts of the tubular body was required in order to achieve such an effect.

1.2.2 According to the patent specification (para. [0016]: "*the enlarged portion of the tubular member ensuring that the radial width of the gap ... is not so great as to present a problem in centering the inlet assembly within the inlet neck*"), the greater outer diameter in a region of the tubular body helps in centering the inlet assembly within the inlet neck, so a technical effect cannot be denied.

A clear teaching on how to dimension the collar of the tubular body for a typical tank inlet neck is also provided (see paragraph [0040]: "*outside diameter of 77.5 mm ... for tank inlet apertures having a neck with a typical interior diameter of 78-80 mm*"), i.e. an example is disclosed which describes a certain dimensional play between the portion of the tubular body having a greater outer diameter and the inlet neck which helps in inserting and centering the inlet assembly within the inlet neck. Moreover, the patent specification states (paragraph [0039]) that the collar is useful for embodiments of the invention designed for fitting to inlet necks of a diameter in the region of 80 mm, but not necessary for inlet neck diameters of the order of 60 mm, thereby defining the limit which would no longer require a greater outer diameter of the tubular body (and thus would not fall under the wording of claim 8). Further, the collar 32 is sized so that it extends only a limited distance along the tubular body 5, in view of an internal rim 13 that might be provided on the tank inlet aperture (see paragraph [0039]; also Figure 3). The skilled person understands that whilst the collar 32 can be sized to have a larger outer diameter (such as 77.5 mm) than the opening of the internal rim 13, the portion of the tubular body 5 depending from the collar must be sized so that it has a narrower (outer) diameter than the opening of the

internal rim 13 (i.e. smaller than 60 mm, as no collar is required for inlet neck diameters of about 60 mm) in order to allow the tubular body to extend past the rim. Finally, the patent specification states (again in paragraph [0039]) that the "*internal diameter of the tubular body is a minimum required to accommodate a fuel filling nozzle to avoid backflow of fuel past the nozzle when filling the tank*".

1.2.3 In view of this teaching in the patent specification, the board cannot see that the patent lacks guidance with regard to the diameters of different parts of the tubular body, namely of the collar and the majority of the tubular body depending therefrom, as argued by the appellant. The skilled person would choose the diameters to suit a particular type or range of fuel tank inlet necks accordingly.

1.3 Feature "*the or each gap has a radial width sufficient to accommodate a range of different diameter tank inlet necks*"

1.3.1 According to the appellant, as the specification did not disclose how wide the gap should be (no indication as to the lower and upper limits of the radial width of the gap), the patent did not disclose the invention of claim 8 as granted in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art across the whole scope of the claims.

1.3.2 The wording of claim 8 might be silent on concrete dimensional values for the gap. However, the patent specification shows a concrete embodiment for typical tank inlet necks having a typical outside diameter of 104 - 106.5 mm and an interior diameter of 78 - 80 mm (see paragraph [0040]). In this example, the gap is

defined by an outside diameter of 77.5 mm of the collar and an inside diameter of the skirt of 107.8 mm. Based on this example given in the description it is clear to the skilled person that the gap receives the tank inlet neck with some play (according to the example at least 0.5 mm distance from the collar and 1.3 mm from the skirt), so that the gap can **slidably** receive a portion of the neck, as further specified in the preamble of claim 8. Moreover, the patent specification also states (paragraph [0040]) that "*the inlet assembly illustrated in Figures 1 to 3 can be fitted to any inlet neck that can be received within the recess 33*" and "*can accommodate inlet necks of a range of sizes*". The skilled person thus gets the teaching that the radial width of the gap is dimensioned to suit fuel tank inlet necks of a range of sizes. The board cannot see that, for a given size range of tank inlet necks, the skilled person using his common general knowledge should not be able to dimension the fluid tank inlet assembly accordingly and to reproduce the invention over the whole range claimed. The fact that claim 8 does not further define the gap by way of dimensional values or a range comprising lower and upper limits, but merely by its functionality of slidably receiving a portion of the neck, relates to the broadness of the claimed subject-matter and might be an issue under Article 84 EPC, which cannot be raised in opposition appeal proceedings.

*2. Alleged prior use of "Constable device" (D3 to D5)*

2.1 The alleged public prior use of the "Constable device" cannot be regarded as being sufficiently proven by the evidence D3 to D5 provided by the appellant and is therefore not taken into consideration as 'state of the art' in the appeal proceedings.

2.2 The appellant argued that the Constable device was purchased from Tiss Limited, i.e. the patentee, and in this case the standard of proof required was not 'to the hilt' but closer to 'balance of probabilities'. An invoice (D4) showing that a sale of a 'TankSafe device' occurred in November 2004, and pictures of said device (D5) along with a statement (D3) linking the device of D5 with the invoice of D4, provided credible evidence that the patentee was selling the device of D5. The patentee had access to the material of which public prior use was alleged, so the burden of proof was shifted to the patentee, who e.g. knew why the invoice did not show any specific header.

2.3 Admittedly, the standard of proof to be applied might be lower than 'to the hilt'. However, the board cannot see any specific reference or link in the invoice D4 marked RF1 (apart from mentioning a 'TankSafe Fuel Theft Device') to the product represented in the photographs RF2 and RF3 of D5 (not showing any product or revision number, nor any label which could identify the product), nor to the company selling the product. The written statement (D3) by Mr Russell Fowler, CEO of TruckProtect Limited, submitted in this respect, refers to a test purchase by R. Constable Transport (a further party) of a device from Tiss Limited (the patentee). According to D3, Mr Russell Fowler only states that "*There is shown to me marked RF1 a copy of the invoice for that product...*", and that "*There is shown to me marked RF2 and RF3 photographs of the device supplied in completion of that purchase...*". These statements only refer to documentary evidence "shown" to the witness and could not convince the board that a link between the invoice D4 of the Constable device and the

photographs of D5 allegedly showing this device was at least most probable.

2.4 The board therefore considers D3 to D5 to be poor evidence to make credible that the alleged sale (according to D4 of a device shown in D5) took place.

*3. Objection under Article 100(c) EPC*

3.1 Claim 8 as granted has been amended to extend beyond the content of the application as filed, so the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent in its granted form.

The board agrees with the appellant that there is no basis in the application as filed for the first feature in the characterising portion of granted claim 8, which specifies a portion of the tubular body (as previously defined in the preamble with regard to the at least one skirt, which is said to be spaced from this portion) having a greater outer diameter, without specifying an increased thickness of the tubular body in that region.

3.2 The respondent referred to claims 11 and 15 of the application as filed, disclosing a portion of the tubular body having an enlarged thickness relative to a radial thickness of at least the majority of the tubular body depending therefrom, which encompassed an embodiment in which the portion of the tubular body had a greater outer diameter as claimed. Moreover, such an embodiment was allegedly clearly disclosed within Figures 3 and 4, as identified by the opposition division, and in particular in Figures 1 and 2 which did not contain any information on the internal diameter of the portion of greater outer diameter. The top portion of the tubular body showing an increased

outer diameter was only associated with engaging with the inlet neck, whereas the internal diameter concerned the insertion of a standard fuel pump nozzle and was associated with the depending portion. According to the application as filed (page 9, lines 9-11), the collar provided a reinforcement of the inlet assembly in the region of its attachment to the inlet, whereas the greater outer diameter provided other advantages, namely helped in centering the inlet assembly within the inlet neck (page 5, lines 9-15, describing this primary effect). Although disclosed in combination, these two effects were distinct from each other.

3.3 However, the board cannot see that the application as filed provides a basis for a portion of the tubular body having a greater outer diameter than the majority of the tubular body depending therefrom which is not inextricably linked to its thickness. It is explicitly stated in the application as filed (page 6, lines 26-27) that both Figures 1 and 2 relate to the same embodiment as further shown in the cut away cross sectional view of Figure 3, which clearly shows a greater outer diameter of the tubular body only in a region of increased thickness. Contrary to the respondent's allegation, Figures 1 and 2 cannot support the disclosure of an embodiment showing a greater outer diameter of a top portion of the tubular body without increased thickness. Moreover, the passages in the application as filed, literally disclosing an "*enlarged portion of the tubular member*" (page 5, line 10) or a "*collar*" (page 9, line 9), refer either to embodiments previously described as having "*an enlarged radial thickness*" (page 5, line 6, which is referred to in line 9 by "*such embodiments*"), or to the description of Figure 3 (page 8, line 6 ff) showing a tubular body having "*a region of increased thickness, i.e. collar*

*32, adjacent to the skirt 31*" (lines 9-10) which "...*reinforces the inlet assembly in the region of its attachment to the inlet*" (page 9, lines 9-10).

Therefore, the only structure disclosed in the application as filed with regard to the tubular member or tubular body having a greater outer diameter is a portion of the tubular body which has an increased thickness, i.e. both structural characteristics are inextricably linked and cannot be isolated without that the skilled person would be presented with new technical information on embodiments which were not originally disclosed. Allowing the wording of granted claim 8 would specify an anti-siphon inlet assembly wherein a portion of the tubular body has a greater outer diameter, irrespective of its thickness, for which there is no teaching in the application as filed. It would also mean that one of the two distinct effects described by the respondent, namely the reinforcement in the top portion of the tubular body helping in centering the inlet assembly in the inlet neck and avoiding at the same time an undesirably large internal diameter (which also helps in accommodating a standard fuel pump nozzle), would be dispensed with, although both effects are always described in combination in the application as filed (page 5, lines 9-15: as expressed by "*whilst on the other hand ensuring...*"; also page 8, lines 21-24: "*whilst avoiding...*") and related to embodiments having an increased thickness (see above). For this reason, the respondent's argument that a portion of the tubular body having an enlarged thickness (as originally disclosed e.g. in claims 11 and 15 as filed) encompassed a portion of the tubular body having a greater outer diameter and provided a basis for the amendment in claim 8 as granted could not convince the board.

***First auxiliary request***

*4. Admissibility of the first auxiliary request*

4.1 The respondent filed its first auxiliary request on 21 March 2017 with its reply to the grounds of appeal, thereby addressing the appellant's objection under Article 100(c) EPC with regard to claim 8 as granted.

4.2 The appellant objected for the first time during the oral proceedings to the admissibility of the first auxiliary request as being late filed. The board observes that this objection has been made at a very late stage, in particular when taking into account that the board in its preliminary opinion (see communication of the board dated 11 July 2019) already acknowledged that the respondent's first auxiliary request was apparently filed to meet the appellant's objection under Article 100(c) EPC against granted claim 8. However, irrespective of whether the appellant's late-filed objection might be admitted and considered only at the board's discretion (under Article 13(1) RPBA; Rules of Procedure of the EPO, OJ EPO 2007, 536), the board cannot see, and the appellant has not argued, why this filing should not be considered as a direct response to the appellant's appeal, as brought forward by the respondent.

Moreover, according to the preliminary opinion of the opposition division concerning the objection under Article 100(c) EPC raised in the notice of opposition (see annex to the summons to oral proceedings of 3 November 2015, page 3, point 2.), independent claim 8 of the opposed patent did not extend beyond the content of the application as filed. Thus, the board cannot

recognise that the patent proprietor could have been expected to file an auxiliary request earlier to address the objection under Article 100(c) EPC.

Therefore, the first auxiliary request filed with the respondent's reply to the grounds of appeal is admitted into the appeal proceedings, as the board sees no reason why it should exercise its discretion under Article 12(4) RPBA to hold inadmissible this request.

*Note:* In view of a single remaining auxiliary request, the issue of convergency of requests raised by the appellant does not apply and needs not to be addressed.

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

5.1 The amendments made to claim 8 of the first auxiliary request comply with Article 123(2) EPC.

5.2 The appellant argued that the wording of claim 8 did not require an enlarged thickness of the tubular body and a greater outer diameter in the same area (of the skirt), and no constant thickness. Regarding the respondent's argument that both characteristics were defined with regard to the portion of the tubular body which was spaced apart from the skirt (and not to 'any portion') and thus co-located, the appellant argued that a region of said portion could have a larger diameter, and another region of said portion could have an increased thickness. A new technical teaching concerning the gap width was presented.
Moreover, the added feature was only disclosed in combination with a flange to form the recess.

5.3 The board holds that claim 11 as originally filed (which is dependent from independent claim 8 as filed)

forms a basis for the added feature of an enlarged radial thickness of a specific portion of the tubular body, namely of "said portion" specified in claim 8 which together with a skirt of the mounting means defines a gap. The area of enlarged thickness as originally disclosed and now defined in claim 8 relates to the entirety of "said portion" or the entirety of the gap area. Moreover, according to Figures 3 and 4 this portion has a greater outer diameter than at least the majority of the tubular body depending therefrom and is referred to in the description as filed (pages 8 and 9) using the term "*collar 32*" (which corresponds to the region of enlarged thickness). Therefore, the board finds that a collar of greater outer diameter being greater than at least the majority of the tubular body, in combination with an enlarged thickness of the collar (which might be variable, see Figures 3 and 4) is originally disclosed. The wording of claim 8 as amended, by referring in both cases to "said portion", makes clear that it is the same area or region which shows an enlarged thickness and a greater outer diameter. Thus, the appellant's objection in this respect could not be followed.
For the same reason, the board cannot see that claim 8 as amended should provide a new technical teaching concerning the gap width.

Moreover, the board considers that specifying an enlarged thickness of a portion of the tubular body (which forms the gap or recess) without including the flange does not amount to an unallowable intermediate generalisation, as alleged by the appellant. The functionality of the gap is described in claim 1 as originally filed rather broadly ("...*such that at least a portion of said at least skirt overlaps*..."), and the general description of the invention in the application

as filed (page 5, first and second paragraphs) only relates to the gap without specifying a flange, i.e. without establishing a structural link between the flange and the claimed invention. Therefore, the board cannot see that the added feature of the tubular body having an enlarged radial thickness, which further specifies the gap's function of centering the inlet assembly within the inlet neck, is inextricably linked to a flange of the mounting means (as described on page 8, line 9: "*mounting flange 30 which extends in the radial direction of the assembly*").

*6. Novelty (Article 54(1) EPC)*

6.1 The subject-matter of claim 1 according to the first auxiliary request is new over the disclosure of documents D16 and D6. Moreover, the subject-matter of claim 8 of the first auxiliary request is not anticipated by document D16 (Article 54(1) EPC).
*Note*: Novelty of the subject-matter of claim 8 over D6 (which does not show a portion of the tubular body having greater outer diameter) was not contested.

6.2 The question of novelty depends in the first place on the interpretation of the terms "*tank inlet neck is slidably received within the or each gap*" (claim 1) or "*the or each gap having an open end for slidably receiving a portion of the neck*" (claim 8).

6.2.1 According to the appellant, there was no clear teaching in the contested patent on what was meant by "*slidably received*". It was clear from D1 and D2 that the normal meaning of 'slide' was "*to move or pass smoothly or easily*", which was also achieved when screwing a device, so the opposition division erred in concluding that a screw-threaded engagement did not anticipate a

slidable reception. Paragraph [0042] of the patent explicitly stated that "*The existence of the screw thread will have no impact on the method of fitting the inlet assembly according to the invention*". Paragraph [0040] of the patent specification did not provide a special teaching on how the relative movement was performed; paragraph [0045] even showed an embodiment with an o-ring or annular seal member located around the tubular body within the recess, so it was not clear from the contested patent that a special meaning of the term "*slidably received*" had to apply. The respondent itself had stated in its reply to the appeal (see para. 11) that the tubular body must move past an inner surface of the tank inlet neck, which amounted to a sliding motion. Moreover, the respective feature in claim 8 only required a gap "*suitable for*" slidably receiving a tank inlet neck.

6.2.2 However, the board follows the respondent as regards the meaning and limitation provided by the terms in question ("*slidably received/receiving")*. The whole teaching of the patent specification is about a tank inlet assembly which does not require a one-to-one correspondence between a tank inlet neck and the inlet assembly (see paragraph [0011]: "*not limited to one particular size or configuration of inlet neck*"; also paragraph [0040]: "*can be fitted to any inlet neck that can be received within the recess 33. Accordingly, a single inlet assembly can accommodate inlet necks of a range of sizes.*"). The dimensions recited in the specification (paragraph [0040]; see also Figures 3, 4) show that no intimate connection or mating/threaded engagement is required. It is clear to the skilled person that a threading action is not contemplated within the meaning of the terms "*slidably received*" or *"for slidably receiving*". Contrary to the appellant's

argument, paragraph [0042] of the patent specification does not include a threaded engagement in case of fuel tank inlet necks provided with a screw thread, as this paragraph refers to the same embodiment of a tank inlet assembly as depicted in Figure 3. The embodiment of Figure 4 might show an o-ring (to provide a seal), as argued by the appellant, but still does not require a mating engagement as in case of a threaded connection. The o-ring only increases the frictional force when inserting the tank inlet neck into the gap provided on the mounting means.

Therefore, the board concludes that the skilled person (with a mind willing to understand) when reading "*slidably received/receiving*" will understand a kind of movement which is to be distinguished from a screwing movement. A threaded engagement of two parts might imply a sliding movement while turning. However, the wording of claim 8 requires a gap "*having an open end for slidably receiving a portion of the neck (14) of a tank inlet*". In the board's view, this implies a gap which is suitable for slidably inserting the tank inlet neck into the inlet assembly and passing the neck at least to some extent into the gap without getting obstructed (so that a portion of the neck is "received" in the gap). This is even explicitly defined in method claim 1 by specifying "*passing the tubular body (5) in to said tank inlet so that the tank inlet (13) neck (14) is slidably received within the or each gap (33) such that at least a portion of said at least one skirt (31) overlaps at least a portion of the inlet neck (14)*". According to the board's interpretation, a threaded engagement of the inlet assembly and the tank inlet neck does not fall under the wording of claims 1 and 8.

6.3 - Novelty over D16:

6.3.1 According to the appellant, D16 ("TankSafe" image of webpage, describing a "*Fuel anti-siphoning system that prevents theft of diesel from your tanks*") disclosed a fluid tank inlet assembly adapted for fitting to a tubular neck of a fluid tank inlet comprising all the features of claim 8. The device of D16 comprised, in particular, an annular gap between the skirt and a portion of the tubular body, said portion having a greater outer diameter than at least the majority of the tubular body depending therefrom, and the gap having a radial width suitable for accommodating a range of different tank inlet necks. Appropriately and differently sized tank necks could be slidably received in the gap (it was only a matter of dimensions of the inlet neck), so the assembly of D16 comprised all of the features required by claim 8.

Any use of the device of D16 would also inevitably anticipate the method of claim 1. The skilled reader would clearly and unambiguously derive from D16 that installing the assembly disclosed therein would necessarily comprise passing the tubular body into a tank inlet so that the tank inlet neck was slidably received within the or each gap such that at least a portion of said at least one skirt overlapped at least a portion of the inlet neck. In order for the assembly disclosed in D16 to fulfil its stated function of preventing theft, the skilled person would also clearly and unambiguously derive from D16 that the assembly was secured to the tank.

6.3.2 The board finds that the thumb-nail sized picture in D16, or its enlarged version provided by the appellant on a separate sheet, only shows an exterior view of a

'TankSafe' device without any annotations or directions for use. It does not allow to derive information therefrom on how the device is mounted or on the design of the annular recess that might be visible in D16. In particular, D16 leaves open whether the shown device has a gap (suitable) for slidably receiving a tank inlet neck, i.e. whether it provides the functionality defined in claim 8 and also the corresponding method step specified in claim 1. It would be purely speculative to read these features into D16, so the board follows the respondent in that D16 cannot take away novelty of the subject-matter of claims 1 and 8.

*Note:* In view of the above, there is no need to decide on the validity of the priority date for the claims of the patent and whether D16 (published after that date) qualifies as prior art to the opposed patent.

6.4 - Novelty over D6:

6.4.1 The appellant argued that the device of D6 fell within the definition for the term 'slide' given in D1 and D2. There was no basis for putting a special construction on the term "slidably" to exclude the motion of D6 (showing spout 42 sliding into the gap as the adapter 2 was screwed onto the spout), particularly when that construction went against the teaching of the patent itself at paragraph [0042] (see above). Accordingly, D6 disclosed all the features of claim 1.

6.4.2 However, the board agrees with the respondent that the clear teaching for a tight screw fit in D6 is inconsistent with the general teaching in the patent of the claimed invention and what the skilled person would understand under "*slidably received*". On a fair interpretation of this term in the light of the patent

specification (see further above), the board finds that the decision of the opposition division has to be confirmed that the threaded engagement known from D6 does not anticipate a slidable reception of a portion of the neck as claimed, i.e. as required by the feature "*passing the tubular body (5) in to said tank inlet so that the tank inlet (13) neck (14) is slidably received within the or each gap (33) such that at least a portion of said at least one skirt (31) overlaps at least a portion of the inlet neck(14)* " in claim 1.

The subject-matter of claim 1 is therefore new over the disclosure of D6.

*7. Admissibility of inventive step objection over D16*

7.1 The new line of attack on inventive step in view of D16 as the closest prior art was not admitted into the appeal proceedings under Rule 13(1) RPBA.

7.2 In its grounds of appeal, the appellant has not argued lack of inventive step of the subject-matter of independent claims 1 and 8 with regard to document D16. Putting forward this objection for the first time during the oral proceedings, the appellant merely stated that D16 had been cited in the grounds of appeal with respect to dependent claims.

7.3 Admittedly, additional features specified in dependent claims have been argued in the grounds of appeal relying on document D16. However, as found already further above, D16 does not disclose clearly and unambiguously a gap designed for, and thus providing the functionality of, slidably receiving a portion of the tank inlet neck as defined in claim 8 and the corresponding method step as defined in claim 1. In

view of this deficiency in the disclosure of D16, the discussion would have to move in an even more vague field of speculation (as compared to judging on novelty) when starting to discuss inventive step of the subject-matter of claims 1 and 8 over D16.

In view of the state of the proceedings and the need for procedural economy, the board has therefore exercised its discretion under Rule 13(1) RPBA not to admit this new line of attack presented for the first time during the oral proceedings.

*8. Inventive step (Article 56 EPC)*

8.1 The subject-matter of independent claims 1 and 8 of the first auxiliary request involve an inventive step (Article 56 EPC).

8.2 - starting from D6 as the closest prior art

8.2.1 On the assumption that D6 failed to disclose that the neck was slidably received within the or each gap, the appellant disagreed with the formulation of the objective technical problem in the contested decision, since there was no link between being slidably received and being able to accommodate tank inlets of different dimensions (no dimensions were specified in claim 1). Claim 1 covered any method in which the tank inlet neck was slidably received within the or each gap, i.e. covered apparatus sized and configured such that only a single size of inlet was received in the gap. The objective technical problem could be formulated as how to increase the versatility of the method of claim 1. One common design of filler neck and fuel cap was the bayonet fitting, as shown in D14 or D15. It was an obvious desire for the skilled man to use the device of

D6 with the bayonet fitting as exemplified by D14 or D15 to increase the versatility of the device of D6. In order to do this, by simply pushing the device of D6 over a neck comprising slots for a bayonet fitting (without the thread of D6 engaging with anything, which would not result in any technical issue as the adaptor of D6 was subsequently expoxy bonded or welded), there was no absolute requirement to adapt the device of D6. If this proved difficult, it was obvious to remove the thread from the adaptor of D6.

In contrast to claim 1, claim 8 only required a gap having an opening (suitable) for slidably receiving a portion of the neck. The open end of the gap in D6 was suitable for this purpose. An appropriately sized neck could be received in the gap of D6 having a radial width and a length to receive a neck portion of the same length. D6 further disclosed a gap having a radial width sufficient to accommodate a range of different diameter tank inlet necks; different diameters of a neck having a wall thinner than the neck shown in D6 could be accommodated in the gap of D6.
D6 failed to disclose a portion of the tubular body having a greater outer diameter than at least the majority of the tubular body depending therefrom, but there was no technical effect associated with this difference. Claim 8 did not place any limitation on the difference in diameter which appeared to be simply an arbitrary design choice not giving rise to an inventive step. Moreover, providing such geometry in the device of D6 was not inventive in view of D12 (Figure 3) and D13, which both showed devices in which the top had a greater diameter than the lower portion.

8.2.2 As found above as regards novelty over D6, claim 1 requires a step of "*passing the tubular body in to said*

*tank inlet so that the tank inlet neck is slidably received within the or each gap such that at least a portion of said at least one skirt overlaps at least a portion of the inlet neck*", which is not known from D6. This difference provides the technical effect that no mating features between the tubular body and the tank inlet neck are required. As stated in the patent specification (see e.g. paragraph [0011]), the inlet device is thus not limited to a particular size or configuration of the inlet neck.

The board agrees with the respondent that the appellant's formulation of the technical problem cannot be accepted, as it regards the subject-matter of claim 1 as forming part of the technical problem. Avoiding any pointer to the solution, the board finds that the technical problem underlying the inventive method of claim 1 can be seen in increasing the versatility of fitting an anti-siphon inlet assembly.

Starting from document D6 as the closest prior art, there is nothing in D6 to teach or suggest a solution to this problem, since D6 only discloses a mated engagement of an anti-siphon assembly to a tank inlet neck via correspondingly threaded portions. The board agrees with the respondent that there is no indication or prompting in D6 to deviate from the principle teaching of D6 to use a threaded engagement (which does not encompass a tank inlet neck which is slidably received within the gap, as argued further above), i.e. to contemplate a modification of the inlet assembly of D6 so that it would fall under the wording of claim 1. A bayonet fitting between fuel cap and filler neck might be known, as shown e.g. in D14 or D15. However, the appellant has failed to identify any teaching within the prior art as to why the skilled person would

be motivated to contemplate pushing the anti-siphon fluid tank adaptor of D6 (with its internally threaded extension 22) over a tank inlet neck having a bayonet fitting, or even to remove the thread from the adaptor of D6, as argued by the appellant.

The board therefore concludes that the subject-matter of method claim 1 involves an inventive step over D6, taking into account the knowledge of the skilled person and also the disclosure of D14 or D15 on bayonet fittings between fuel cap and filler neck.

8.2.3 Similarly, the board finds that there is no teaching in D6 that the adaptor of D6, which is designed for threaded engagement with a specific tank inlet neck, should be suitable for slidably receiving a portion of a tank inlet neck which only needed to be appropriately sized, as alleged by the appellant. According to the board's understanding of this feature, as set out further above, it requires a movement which excludes a screwing action. This would mean that a neck having a considerably thinner wall than the neck shown in D6 had to be provided so that it could be slidably received (and accommodated) in the gap of the adaptor of D6. However, the board was not convinced that such a neck could still be considered as a tubular neck of a fluid tank inlet, as required by the wording of claim 8 (see feature "*inlet assembly adapted for fitting to a tubular neck of a fluid tank inlet*"). A fluid tank inlet neck, which might additionally be equipped with an inlet assembly to block the passage of a siphon tube (i.e. an anti-siphon device) as specified in claim 8, will always be designed to receive a cap which is fixed to the neck typically via a bayonet fitting or threaded engagement, i.e. requires a certain thickness so that screw threads or slots/lugs (of a bayonet fitting) can

be provided without compromising its stability. Admittedly, D6 shows a small gap between the opening of the tank inlet neck and the tubular body inserted therein, which might suggest that either a certain tolerance with respect to the thickness of the wall of the inlet neck or of the tubular body was considered in D6, i.e. a certain range of (inner!) diameters of the tank inlet neck might be accommodated in the gap of D6, as argued by the appellant. This can, however, not be considered as an indication for the skilled person to give up the threaded engagement between inlet assembly and tank inlet neck as taught in D6.

Thus, with similar reasoning as for method claim 1, the presence of an inventive step has to be acknowledged for claim 8, irrespective of further features of claim 8 which are not known from D6 (such as a portion of enlarged thickness and greater outer diameter).

8.3 - starting from D7 as the closest prior art:

8.3.1 According to the appellant, D7 disclosed all of the features of claim 1 apart from the blocking means disposed within the conduit, which was a trivial modification. The assembly of D7 was mounted by a screwing action, which caused the neck to be slidably movable into the groove. A portion of the skirt overlapped a portion of the neck (see Figure 2), and the inlet neck was secured to the skirt by a pin. In the event that the feature "slidably received" was not disclosed in D7, it was obvious to use the device of D7 in the way required by claim 1 as discussed with respect to D6 as the closest prior art.

8.3.2 D7 only shows that a skirt (Figure 2: lower collar 17) of the mounting means of an anti-siphon inlet assembly

is attached to a tank inlet neck via a screw thread, as acknowledged by the appellant. However, mounting the inlet assembly by a screwing action to the tank inlet neck and providing for a threaded engagement as shown in D7 does not disclose the respective features of claims 1 and 8 (i.e. a method step of passing the tubular body into a tank inlet so that the tank inlet neck is slidable received within the gap, or a gap having an open end for slidably receiving a portion of the neck), in view of the board's understanding of the the terms "slidably received/receiving" as set out already above with respect to D6.

As the appellant's arguments regarding inventiveness of claims 1 and 8 in light of D7 correspond to those made in regard to D6, with same reasoning the subject-matter of claims 1 and 8 is considered inventive when starting from D7 as the closest prior art.

9. It follows from the above considerations that the subject-matter of claims 1 and 8 involves an inventive step (Article 56 EPC). Similar considerations apply also in respect of dependent claims 2-7 and 9-12. In addition, the description has been adapted so as to meet the relevant requirements of the EPC.

The board therefore concludes that the first auxiliary request provides a basis for the grant of a patent.

**Order**

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

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent in amended form in the following version:
   - claims 1 to 12 according to the first auxiliary request filed with the letter dated 21 March 2017;
   - description: columns 1 and 2, 5 to 8 of the patent specification; columns 3 and 4 as filed during oral proceedings;
   - figures 1 to 4 of the patent specification.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated