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**Datasheet for the decision
of 24 May 2022**

Case Number: T 2494/17 - 3.2.03

Application Number: 06755854.4

Publication Number: 1877534

IPC: C12M1/00, C12M1/34, C12M1/38,
C12M3/00

Language of the proceedings: EN

Title of invention:
HYPERBARIC CRIOGENESIS CHAMBERS

Applicant:
Verri Lima, Gaston Jeronimo

Headword:

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 15(3), 15(2)(c)
EPC R. 115(1)

Keyword:

Summons to oral proceedings - continuation of proceedings
without duly summoned party

Change of date of oral proceedings - serious reasons (no)

Amendments - extension beyond the content of the application
as filed (yes) - allowable (no)

Decisions cited:

G 0002/10

Catchword:



Beschwerdekammern
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Chambres de recours

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Case Number: T 2494/17 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 24 May 2022

Appellant:
(Applicant)

Verri Lima, Gaston Jeronimo
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Montevideo (UY)

Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 12 June 2017
refusing European patent application No.
06755854.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman C. Herberhold
Members: B. Miller
N. Obrovski

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse European patent application No. 06 755 854.4 on the grounds of added subject-matter (Article 123(2) EPC) and lack of clarity (Article 84 EPC). The division further commented on the requirements of Article 54 EPC (novelty) and Article 56 EPC (inventive step).

- II. The examining division's decision was appealed by the applicant (the "appellant"). The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims of the main request or, alternatively, on the basis of the set of claims according to one of auxiliary requests I to VI, all having been submitted with the statement setting out the grounds of appeal (letter dated 22 October 2017). In addition it was requested that a patent be granted on the basis of auxiliary request VII, this request corresponding to auxiliary request VI but with independent claim 2 having been deleted (see statement of grounds of appeal, pt. IX, 1.1).

- III. Although each of the requests submitted by the appellant contains one or more independent claims, only the wording of the independent claims discussed in the present decision is given in the following paragraphs.

(a) Claim 1 of the main request reads

A hyperbaric cryogenesis chamber, which consists of a compartment with the capacity to be pressurized to pressures of up to 10 kg/cm² and depressurized intermittently, with whatever mixture of gases; inside there are containers, preferably made of glass, with the capability to store physiological fluids, cells, complete or incomplete organic tissues, complete organs or their fractions, and/or human bodies or dead animals; with an internal or external hermetic system, in order to lower the environmental temperature down to approximately minus 70°C.

(b) Claim 1 of auxiliary request I reads

A hyperbaric cryogenesis chamber system for use with an extracorporeal induction of the proliferation of at least one cell or for use with an extracorporeal induction of the lysis of at least one disorganized cell, comprising:

- said hyperbaric cryogenesis chamber having at least one compartment, said at least one compartment of said hyperbaric cryogenesis chamber is configured to be pressurized to pressures up to 10 kg per square centimeter, said at least one compartment of said hyperbaric cryogenesis chamber is configured to be depressurized intermittently;
- a solution having at least one physiological fluid, a plurality of nutrients, and said at least one cell or said at least one disorganized cell;
- at least one receptacle, whereby, said at least one receptacle retaining said solution, whereby, said at least one compartment of said hyperbaric cryogenesis chamber is configured to retain said at least one receptacle;

- a hermetic cooling system having a refrigeration unit, said refrigeration unit is connected to an end of an insulated tubing, said insulated tubing having a first tubing and a second tubing, said second tubing is located inside of said first tubing, said second tubing is isolated from said first tubing by an insulating material, a portion of said second tubing is in thermal communication with said hyperbaric cryogenesis chamber, a force generated from the propulsion of a motor is configured to circulate a refrigerant within said second tubing from said refrigerating unit to said portion of said second tubing in thermal communication with said hyperbaric cryogenesis chamber, said refrigerant absorbs heat within said hyperbaric cryogenesis chamber, thereby, cooling said hyperbaric cryogenesis chamber, and then returning said refrigerant back to said refrigerating unit, said hermetic cooling system is configured to lower a temperature value inside of said at least one compartment of said hyperbaric cryogenesis chamber to approximately -70° C; and
- a vessel, said vessel is connected to said hyperbaric cryogenesis chamber, said vessel retaining at least one compressed gas, wherein said at least one compressed gas is or comprises oxygen.

(c) Claim 1 of auxiliary request II reads

A hyperbaric cryogenesis chamber, which consists of a compartment with the capacity to be pressurized to pressures of up to 10 kg/cm^2 and depressurized intermittently, with a mixture of gases selected from pure oxygen, compressed air, Nitrox, Heliox, Trimix, and/or anesthetic gases, wherein the hyperbaric cryogenesis chamber is built with certified steel or

aluminum plate pursuant to ISO norms on hyperbaric chambers A, B or C; inside, there are containers, preferably made of glass, with the capability to store physiological fluids, cells, complete or incomplete organic tissues, complete organs or their fractions, and/or dead animals; with an internal or external hermetic system, in order to lower the environmental temperature down to surpass minus 70°C.

(d) Claim 3 of auxiliary request II reads

A hyperbaric cryogenesis chamber system, comprising:

- a hyperbaric cryogenesis chamber;
- a system inside the hyperbaric cryogenesis chamber, wherein the system contains in a liquid or semi-liquid element: cells, complete or incomplete organic tissue, and/or complete organs or fractions of them;
- an hermetic system inside or outside the hyperbaric cryogenesis chamber in order to lower the environment temperature to values less than 37°C that surpass minus 70°C;
- an observation system;
- a pressure manometer;
- over-pressure valves;
- a thermometer to register the temperature of the internal environment of the hyperbaric cryogenesis chamber; and
- a supply system of gases at higher pressure interchangeable with pure oxygen or of exclusive supply of pure oxygen under pressure,

wherein the hyperbaric cryogenesis chamber must include a compartment with the capacity to be pressurized to pressures superior to the equivalent of an atmosphere of pressure, 760mmHg,

wherein the hermetic system is a refrigerating system including a first hermetic steel or aluminum tubing able to bear pressure and permit the installation of a second tubing preferably of copper in its inside, wherein the second tubing preferably of copper is the one which allows the circulation of refrigerating gas in its inside, wherein the second tubing preferably of copper is isolated from the steel or aluminum by a compacted cotton net, and wherein the second tubing preferably of copper is connected to a motor for the circulation of gas under electric propulsion, wherein the observation system comprises an optic visualization, a microscopic visualization, an optic fibroscopy or a chamber fibroscopy, and wherein the supply system of gases at higher pressure comprises decompression valves, an exhaust system or decompression, a compression system with corresponding valves, and a circulating system of gases under pressure, wherein the hyperbaric cryogenesis chamber is configured with a closed circuit of the hermetic system and the circulating system of gases under pressure.

(e) Claim 1 of auxiliary requests III and IV reads

A hyperbaric cryogenesis chamber, which consists of a compartment with the capacity to be pressurized to pressures superior to the equivalent of an atmosphere of pressure, 760 mmHg, and depressurized intermittently, with a mixture of gases selected from pure oxygen, compressed air, Nitrox, Heliox, Trimix, and/or anesthetic gases, wherein the hyperbaric cryogenesis chamber is built with certified steel or aluminum plate pursuant to ISO norms on hyperbaric chambers A, B or C; inside, there are containers, preferably made of glass, with the capability to store physiological fluids, cells, complete or incomplete

organic tissues, complete organs or their fractions, and/or dead animals; with an internal or external hermetic system, in order to lower the environmental temperature down to surpass minus 70°C.

(f) Claim 1 of auxiliary request V reads

A hyperbaric cryogenesis chamber system, comprising:

- a hyperbaric cryogenesis chamber;
- a system inside the hyperbaric cryogenesis chamber, wherein the system contains in a liquid or semi-liquid element: cells, complete or incomplete organic tissue, and/or complete organs or fractions of them;
- an hermetic system inside or outside the hyperbaric cryogenesis chamber in order to lower the environment temperature to values less than 37°C that surpass minus 70°C;
- an observation system;
- a pressure manometer;
- over-pressure valves;
- a thermometer to register the temperature of the internal environment of the hyperbaric cryogenesis chamber; and
- a supply system of gases at higher pressure interchangeable with pure oxygen or of exclusive supply of pure oxygen under pressure,

wherein the hyperbaric cryogenesis chamber includes a compartment with the capacity to be pressurized to pressures superior to the equivalent of an atmosphere of pressure, 760mmHg,

wherein the hermetic system is a refrigerating system including a first hermetic steel or aluminum tubing able to bear pressure and permit the installation of a second tubing preferably of copper in its inside,

wherein the second tubing preferably of copper is the one which allows the circulation of refrigerating gas in its inside, wherein the second tubing preferably of copper is isolated from the steel or aluminum by a compacted cotton net, and wherein the second tubing preferably of copper is connected to a motor for the circulation of gas under electric propulsion, wherein the observation system comprises an optic visualization, a microscopic visualization, an optic fibroscopy or a chamber fibroscopy, and wherein the supply system of gases at higher pressure comprises decompression valves, an exhaust system or decompression, a compression system with corresponding valves, and a circulating system of gases under pressure, wherein the hyperbaric cryogenesis chamber is configured with a closed circuit of the hermetic system and the circulating system of gases under pressure, wherein the pressurization in the hyperbaric cryogenesis chamber is configured to reach pressures up to 7 atmospheres, wherein the pressurization is realized with pure oxygen or with gases selected from compressed air or mixtures of anesthetic gases, nitric oxide, Trimix, Heliox, and Nitrox to be substituted by pure oxygen one hundred percent.

(g) Claim 1 of auxiliary requests VI and VII reads

A hyperbaric cryogenesis chamber system, comprising:

- a hyperbaric cryogenesis chamber;
- a system inside the hyperbaric cryogenesis chamber, wherein the system contains in a liquid or semi-liquid element: complete or incomplete organic tissue;
- an hermetic system inside or outside the hyperbaric

cryogenesis chamber in order to lower the environment temperature to values less than 37°C that surpass minus 70°C;

- an observation system;
- a pressure manometer;
- over-pressure valves;
- a thermometer to register the temperature of the internal environment of the hyperbaric cryogenesis chamber; and
- a supply system of gases at higher pressure interchangeable with pure oxygen or of exclusive supply of pure oxygen under pressure,

wherein the hyperbaric cryogenesis chamber includes a compartment with the capacity to be pressurized to pressures superior to the equivalent of an atmosphere of pressure, 760mmHg,

wherein the hermetic system is a refrigerating system including a first hermetic steel or aluminum tubing able to bear pressure and permit the installation of a second tubing preferably of copper in its inside, wherein the second tubing preferably of copper is the one which allows the circulation of refrigerating gas in its inside, wherein the second tubing preferably of copper is isolated from the steel or aluminum by a compacted cotton net, and wherein the second tubing preferably of copper is connected to a motor for the circulation of gas under electric propulsion, wherein the observation system comprises an optic visualization, a microscopic visualization, an optic fibroscopy or a chamber fibroscopy, and wherein the supply system of gases at higher pressure comprises decompression valves, an exhaust system or decompression, a compression system with corresponding valves, and a circulating system of gases under pressure, wherein the hyperbaric cryogenesis chamber is

configured with a closed circuit of the hermetic system and the circulating system of gases under pressure, wherein the pressurization in the hyperbaric cryogenesis chamber is configured to reach pressures up to 7 atmospheres, wherein the pressurization is realized with pure oxygen or with gases selected from compressed air or mixtures of anesthetic gases, nitric oxide, Trimix, Heliox, and Nitrox to be substituted by pure oxygen one hundred percent.

- IV. With the summons to oral proceedings dated 10 May 2021, the board sent a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA 2020). That communication indicated to the appellant its preliminary, non-binding opinion that the amendments were not allowable in any of the requests submitted in the appeal under Article 123(2) EPC.

- V. With an e-mail dated 18 May 2022 the appellant's representative confirmed that she had received the link to attend the oral proceedings via Zoom. In addition she stated that she had no information concerning whether the appellant was still interested in pursuing the appeal proceedings, but that she was trying to contact him up until the last possible day.

- VI. On 23 May 2022, at 12:50 hrs, the appellant's representative called the registrar, stating that the appellant was in hospital and announcing that a request would be filed for postponement of the oral proceedings. After receiving instructions from the board, the registrar called the representative and informed her that under Article 15(2) RPBA 2020 only serious reasons justified the fixing of a new date, and that in the present case such serious reasons had to

relate to the representative. The latter was also referred to Article 15(2)(c)(iii) RPBA 2020, according to which the unavailability of a duly represented party does not, as a rule, justify a change of date for oral proceedings.

VII. On 23 May 2022 at 21:21 hrs, i.e. during the evening before the oral proceedings, the appellant filed a request for postponement of the oral proceedings. To support its request the appellant filed:

Annex 1: Letter from the National Police Health Directorate, Police Hospital, Dpt. of Medical Records, dated 23 May 2022

Annex 2: Negative test result for the presence of a certain viral antigen from ATGen Diagnostica, dated 21 May 2022

Annex 3: Record of admission to hospital dated 22 May 2022

VIII. Oral proceedings were held on 24 May 2022 as a videoconference.

Although duly summoned, the appellant was not represented at the oral proceedings. At the board's request the registrar telephoned the appellant's representative and informed her of the board's intention not to allow the request for postponement. The registrar further informed the representative that the board had started the oral proceedings but would wait for her to join the oral proceedings if she wanted to. The representative replied that she would not be attending the oral proceedings before the board.

In accordance with the provisions of Article 15(3) RPBA 2020 and Rule 115(2) EPC the proceedings were continued in the absence of the party.

IX. The appellant's written arguments can be summarised as follows.

(a) Request for postponement

The representative had not been able to make contact to the appellant for months due to the communication problems that the appellant had as a result of his work and his availability, the appellant also being a member of the Uruguayan army.

On the day before the oral proceedings, the appellant had informed the representative by phone that he had been admitted to hospital in a serious condition, as confirmed by an annexed certificate (Annex 3). The appellant had intended to fly to Spain to prepare the appeal and to present arguments in defence of his patent application. Due to his state of health, the applicant had had to cancel the flight ticket to Spain.

In view of the above, the oral proceedings should be postponed.

In the request for postponement, reference was also made to the copy of a flight ticket to Spain. However, the copy referred to was not annexed to the request for postponement.

(b) Allowability of the amendments

The application as a whole was directed to one and the same hyperbaric cryogenesis chamber. Therefore, the

content of the disclosure provided on pages 1 to 3 of the application as filed referred to the same embodiment and could be freely combined.

Moreover, literal basis was not required by Article 123(2) EPC. An amendment had to be considered allowable if it was based on the teaching of the application as a whole and if a skilled person would seriously contemplate combining the different features disclosed in the application.

The amendments to claim 1 as proposed in the various requests were based on the technical teaching provided on page 1, lines 3 to 13, on page 2, lines 20 to 30, and on page 3, in connection with the (single) Figure 1.

Reasons for the Decision

1. Applicable Rules of Procedure of the Boards of Appeal

The appeal was filed before the entry into force of the revised version of the Rules of Procedure of the Boards of Appeal (RPBA 2020) on 1 January 2020. In accordance with the transitional provisions laid down in Article 25 RPBA 2020, the RPBA 2020 are applicable to appeals already pending on the date of entry into force as well as to appeals filed thereafter (Article 25 (1) RPBA 2020).

2. Request for postponement

2.1 Under Article 15(2) RPBA 2020, the request of a party for a change in the date fixed for oral proceedings may be allowed if the party has put forward serious reasons which justify the fixing of a new date. If the party is represented, the serious reasons must relate to the representative. The request must be filed in writing, reasoned and - where appropriate - supported by documentary evidence. Under Article 15(2)(c)(iii) RPBA 2020, the unavailability of a duly represented party does not justify a change of the date for oral proceedings.

2.2 The reasons put forward in the appellant's request for postponement of the oral proceedings do not relate to the appellant's representative but to the appellant himself, i.e. to the unavailability of a duly represented party. This does not justify a change of date for oral proceedings. No exceptional circumstances present themselves which would justify a deviation from this principle.

2.3 In the present case, the appellant is not only duly represented by a professional representative. In fact, having no residence in a Contracting State, he must also act through his professional representative in all proceedings under the EPC (Article 133(2) EPC).

2.4 If a party is duly represented, it is first and foremost the representative (rather than the party itself) who has the duty to pursue and defend the application. Moreover, the statement in the request for postponement that the appellant "wished to present arguments in defense of his patent application" is vague and does not specify the subject on which the

appellant supposedly wished to comment. It does not therefore convince the board of the necessity for the appellant's presence in person in the oral proceedings.

2.5 It is stated in the request for postponement that the representative could not reach the appellant for months before the oral proceedings, due to his work in the Uruguayan army. However, in the preparation of the oral proceedings a detailed preliminary opinion under Article 15(1) RPBA 2020 was issued to the appellant as early as 10 May 2021, i.e. more than a year before the date of the oral proceedings. It seems unlikely that it was impossible during all this time for communication - orally or in writing - to be established between the appellant and his representative. Even if that had been the case, it would be the appellant himself who was responsible for such a lack of communication and this would not constitute a serious reason which could justify the postponement of the oral proceedings.

2.6 It is also stated in the request for postponement that the appellant had booked a flight to Spain to prepare the appeal but then had to cancel the flight due to his admission to hospital on 22 May 2022. It seems unlikely that the appellant would have planned the preparation of the oral proceedings, including the booking of a flight from Uruguay to Spain, without any involvement of his Spanish representative, not even communicating with her to fix an appointment. However, this must have been the case if the appellant had indeed not contacted his representative for months before 23 May 2022, as explicitly stated in the request for postponement. The board further notes in this context that a copy of the flight ticket - which constitutes required documentary evidence within the meaning of Article 15(2)
(a) RPBA 2020 - was not submitted with the request for

postponement. Ultimately, however, it is not necessary to address the accuracy of the statements concerning the purported flight to Spain as it has not even been established that the appellant's presence at the oral proceedings before the board was required anyway.

2.7 Finally, the oral proceedings before the board on 24 May 2022 were held by videoconference. After receipt of the request for postponement, the board contacted the appellant's representative on 24 May 2022, informed her of the board's intention not to allow that request and gave her the opportunity to still attend the oral proceedings. The appellant's representative stated that she would not be attending.

2.8 In view of all of the above, the board rejected the appellant's request for postponement of the oral proceedings.

3. General remarks concerning the amendments in the requests on file

The "gold standard" (G 2/10, OJ 2012, 376) for assessing compliance with Article 123(2) EPC is as follows: any amendment to the parts of a European patent application is subject to the mandatory prohibition on extension laid down in Article 123(2) EPC and can therefore, irrespective of the context of the amendment made, only be made within the limits of what a skilled person would derive directly and unambiguously from the application as filed. After the amendment the skilled person may not be presented with new technical information - see Case Law of the Boards of Appeal, 9th edition, 2019, Chapter II.E.1.1.

Hence, a criterion relating to whether the person skilled in the art would "seriously contemplate" combining features, as argued by the appellant, is not in accordance with the gold standard as established by the Enlarged Board in G 2/10.

The content of an application must not be considered to be a reservoir from which features pertaining to separate or specific embodiments of the application can be combined in order to artificially create a particular embodiment - see Case Law of the Boards of Appeal, 9th edition, 2019, Chapter II.E.1.6.

A list of citations from the application as presented in the statement of grounds of appeal (see e.g. point II. 2.3 for the main request) is not therefore sufficient to demonstrate that a completely new claim wording is based on the teaching of the application as filed. It is necessary, moreover, to demonstrate that the resulting amendment provides the same technical teaching as the corresponding passage of the application as filed from which the individual and specific features have been taken, and to show that the combination of features created by each amended claim as defined in the various claim sets is directly and unambiguously derivable from the application as filed.

In particular, an intermediate generalisation based on features originally disclosed in context is justified only in the absence of any clearly recognisable functional or structural relationship between the features of the specific combination or if the extracted feature is not inextricably linked with those features (cf. *supra*, Chapter II.E.1.9).

4. Main request - Article 123(2) EPC

4.1 Claim 1 as filed merely refers to "The Hyperbaric Cryogenesis Chamber." and is not defined by any further technical features.

On page 1, lines 3 to 10, the application as originally filed (in this regard reference is made to the corresponding International publication WO 2006/117658 A2, the "application") specifies that the hyperbaric cryogenesis chamber "consists of a compartment with the capacity to be pressurized to pressures superior to the equivalent of an Atmosphere of pressure (760 mmHg) and depressurized in an intermittent way, with whatever mixture of gases as pure oxygen, compressed air, Nitrox, Heliox, Trimix, and/or anaesthetic gases. Inside it there is a system which contains in a liquid or semi-liquid element: cells, complete or incomplete organic tissues, complete organs or fractions of them, and/or human bodies or dead animals. They have inside or outside an hermetic system in order to lower the environment temperature."

4.2 Compared to the above general statement on page 1, claim 1 of the main request requires further features to be present, in particular that the compartment has the "capacity to be pressurized to pressures of up to 10 kg/cm²".

The sole basis for this feature can be found in a sentence on page 2, lines 20 to 25 (emphasis added):

"To build Hyperbaric Cryogenesis Chambers **is necessary** to build chambers apt to be pressurized to pressures up to 10 Kg per square centimeter **with certified steel or aluminum plate (pursuant to ISO norms on Hyperbaric**

Chambers types A, B or C) that in its inside or outside has a refrigerating system, characterized by an hermetic steel or aluminium tubing able to bear pressure and permit the installation of another tubing preferably of copper in its inside."

Hence, the hyperbaric chamber described on page 2 of the application is not only characterised by its suitability to withstand a certain amount of pressure but also by the material to be used and the presence of a specific refrigeration system with a hermetic steel or aluminium tubing. These features appear to be structurally and functionally linked.

The board therefore agrees with the finding in point II.2.1.2 of the contested decision that claim 1 of the main request does not reflect the teaching on page 2 of the application and therefore extends beyond its content.

- 4.3 The board further agrees with the reasoning in point II.2.1.2 of the contested decision that the application does not provide an unambiguous basis for the use of any mixture of gases as further defined by claim 1.

In the context of the expression "with whatever mixture of gases as pure oxygen, compressed air, Nitrox, Heliox, Trimix, and/or anaesthetic gases" the term "as" can only be interpreted as "of" or "selected from", since "pure oxygen" cannot be an example of a gas mixture and therefore the term "as" cannot be interpreted as "such as" or "for example". This interpretation is also in accordance with the disclosure on page 4, lines 15 to 17 of the application.

- 4.4 Moreover, claim 1 specifies that a hermetic system is present to lower the temperature to approximately minus 70°C.

This is not disclosed in the application, which instead teaches on page 4, lines 3 and 11, that the temperature may surpass -70°C.

- 4.5 The amendments to claim 1 according to the main request therefore extend beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

5. Auxiliary request I - Article 123(2) EPC

Similarly to claim 1 of the main request, claim 1 of auxiliary request 1 requires the compartment to have the "capacity to be pressurized to pressures of up to 10 kg per square centimeter".

The sole basis for this feature can be found on page 2, lines 20 to 25. The feature is presented in context of further specific requirements for building the hyperbaric cryogenesis chambers, as set out above with regard to the main request.

Claim 1 of auxiliary request I does not reflect the teaching of the application with regard to the specific materials to be used for building the chamber and therefore extends beyond its teaching for the same reasons as claim 1 of the main request.

6. Auxiliary request II - Article 123(2) EPC

6.1 Claim 1

Similarly to claim 1 of the main request, claim 1 of auxiliary request II requires the compartment to have the "capacity to be pressurized to pressures of up to 10 kg/cm²".

The sole basis for this feature can be found on page 2, lines 20 to 25. The feature is presented in context of further specific requirements for building the hyperbaric cryogenesis chambers, as set out above with regard to the main request.

Claim 1 does not reflect this teaching of the application, since it does not require the use of a hermetic steel or aluminium tubing, which characterises the chamber according to the teaching on page 2 of the application.

6.2 Article 123(2) EPC - Claim 3

6.2.1 Claim 3 is directed to a hyperbaric cryogenesis system. The system is defined to a certain extent by the general features for the hyperbaric cryogenesis chamber on pages 1 and 3 as filed and features A to L as disclosed on page 3 of the application.

6.2.2 However, certain features have been omitted from the wording of claim 3 or have been further amended without there being an appropriate basis for the amendment in the application:

- o Features D, E are missing in the wording of claim 3, without any indication in the application that these features can be omitted.
 - o Claim 3 refers to an observation system in general despite the fact that the corresponding part of the application requires on page 3, lines 11 to 12, the observation system to comprise "glass resistant to 10 kg/cm² of pressure or ...".
- 6.2.3 The system according to claim 3 is not characterised as being suitable to be pressurised and depressurised **in an intermittent way**, as required according to page 1, lines 5 to 6. Nor is it characterised by the chamber being adapted to be pressurised up to 10 kg per square centimetre, as required according to page 2, lines 20 to 21.
- 6.3 The amendments to claims 1 and 3 according to auxiliary request II therefore extend beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.
7. Auxiliary request III, Article 123(2) EPC
- 7.1 Similarly to claim 1 of auxiliary request II, claim 1 of auxiliary request III requires the chamber to be built with certified steel or aluminum plate (pursuant to ISO norms on Hyperbaric Chambers types A, B or C).

The sole basis for this feature can be found on page 2, lines 20 to 25, where further specific requirements for building the hyperbaric cryogenesis chambers are disclosed, as set out above with regard to claim 1 of the main request.

Claim 1 of auxiliary request III does not reflect this teaching of the application, since it does not require the chamber

- to be adapted to be pressurised to pressures up to 10 Kg per square centimetre and
- to be characterised by a hermetic steel or aluminium tubing.

7.2 The amendments to claim 1 according to auxiliary request III therefore extend beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

8. Auxiliary request IV

Claim 1 of auxiliary request IV corresponds to claim 1 of auxiliary request **III**.

Claim 3 of auxiliary request IV essentially corresponds to a combination of claims 3 and 4 of auxiliary request **II** (with a further amendment from "must include" to "includes").

Therefore, the same objections apply as indicated above in points 7.1 and 6.2.

The amendments to claims 1 and 3 according to auxiliary request IV therefore extend beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

9. Auxiliary request V

Claim 1 of auxiliary request V corresponds to a combination of claims 3 and 4 of auxiliary request **II** (with a further amendment from "must include" to "includes").

Therefore, the same arguments apply as indicated above in point 6.2.

The amendments to claim 1 according to auxiliary request V therefore extend beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

10. Auxiliary requests VI and VII

10.1 Claim 1 of auxiliary requests VI and VII corresponds to a combination of claims 3 and 4 of auxiliary request II with the sole amendment that certain alternatives to the content of the liquid or semi-liquid element have been deleted.

Therefore, the same arguments apply as indicated above in point 6.2.

The amendments to claim 1 according to auxiliary requests VI and VII therefore extend beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

11. It follows from the above that none of the requests submitted by the appellant is allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Chavinier-Tomsic

C. Herberhold

Decision electronically authenticated