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**Datasheet for the decision
of 16 February 2022**

Case Number: T 1453/19 - 3.2.07

Application Number: 14168954.7

Publication Number: 2805926

IPC: C03B27/04, C03B29/08

Language of the proceedings: EN

Title of invention:

Glass tempering furnace and method for heating glass sheets

Patent Proprietor:

HEGLA TaiFin Glass Machinery Oy

Opponent:

Glaston Finland Oy

Headword:

Relevant legal provisions:

EPC Art. 114(2), 100(a), 54, 56

EPC R. 103(4) (a)

RPBA Art. 12(4)

RPBA 2020 Art. 12(2), 15(1)

Keyword:

Discretionary decision of the opposition division overruled -
(no)

Main request and auxiliary requests 1 and 2 - novelty (no)

Auxiliary request 3 - inventive step (no)

Reimbursement of appeal fee - at 25% after withdrawal of
appeal

Decisions cited:

T 0617/16, T 2603/18

Catchword:



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Case Number: T 1453/19 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 16 February 2022

Appellant: HEGLA TaiFin Glass Machinery Oy
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 March 2019 concerning maintenance of the
European Patent No. 2805926 in amended form.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Beckman
S. Watson

Summary of Facts and Submissions

- I. The patent proprietor lodged an appeal within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 2 805 926 in amended form.

The opponent also appealed against the decision, this appeal was however subsequently withdrawn (see point IV below).

- II. In preparation for oral proceedings, scheduled at the parties' requests, the Board gave its preliminary assessment of the case by means of a communication pursuant to Article 15(1) RPBA 2020. The Board indicated that both appeals were likely to be dismissed.

- III. Neither party filed a substantive response to this communication.

- IV. Oral proceedings before the Board took place by videoconference on 16 February 2022.

The opponent withdrew its appeal before the decision was announced at the conclusion of the oral proceedings (see the minutes of the oral proceedings on page 5/6, first paragraph).

Further details of the proceedings can be found in the minutes thereof.

V. The final requests of the parties are as follows:

for the patent proprietor in support of its appeal

that the decision under appeal be set aside and
that the patent be maintained as granted (main
request),

or alternatively,

that the patent be maintained in amended form on
the basis of one of the sets of claims filed as
first to fourth auxiliary requests with the
statement of grounds of appeal dated 16 July 2019,
wherein the main request and the first to fourth
auxiliary request were decided upon in the decision
under appeal, whereby the fourth auxiliary request
was held by the opposition division to meet the
requirements of the EPC.

for the opponent

that the appeal be dismissed.

VI. The following documents are referred to in this
decision:

D1: EP 2 368 855 A2

D2: EP 0 937 687 A2

D3: JP 4400158 (and English machine translation)

D4: WO 2004/087593 A1

D14: CN 201338988Y (and English machine translation
D14a).

VII. Claims 1 and 8 of the main request, *i.e.* of the patent
as granted, read as follows:

"1. A method for heating glass sheets, in which the glass sheets (4) are fed through a tempering furnace (1) in which the glass sheet (4) is heated both from above and below whereby the glass sheet (4) is heated by means of blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and by means of heating resistor rows (9) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4), the heating resistor row (9) having at least three separately controllable parts (10), the heating resistor rows (9) being arranged in the blowing channels (5) to heat the air being blown, the blowing channels (5) being divided into compartments according to the separately controllable parts (10), and the temperature profile of the glass sheet (4) is adjusted in the transverse direction by separately adjusting the different parts (10) of the heating resistor row (9)."

"8. A glass tempering furnace for heating glass sheets, the heating furnace (1) having means for heating the glass sheets (4) from above and below, and a conveyor to convey the glass sheets (4) through the tempering furnace (1), whereby the heating means comprise blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and heating resistor rows (9) arranged at a 70 -110 degree angle with respect to the direction of travel of the glass sheets (4), whereby the heating resistor row (9) has at least three separately controllable parts (10), the heating resistor rows (9) being arranged in the blowing channels (5) to heat the air being blown, and the blowing channels (5) having platelike pieces (14) to divide the blowing channel (5) into compartments according to the separately controllable parts (10)."

VIII. Claims 1 and 8 of the first auxiliary request read as follows (amendments underlined with respect to claims 1 and 8 of the main request):

"1. A method for heating glass sheets, in which the glass sheets (4) are fed through a tempering furnace (1) in which the glass sheet (4) is heated both from above and below whereby the glass sheet (4) is heated by means of blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and by means of heating resistor rows (9) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4), the heating resistor row (9) having at least three separately controllable parts (10), the heating resistor rows (9) being arranged in blow parts (13) in the blowing channels (5) to heat the air being blown, the blow parts (13) in the blowing channels (5) being divided into compartments according to the separately controllable parts (10), and the temperature profile of the glass sheet (4) is adjusted in the transverse direction by separately adjusting the different parts (10) of the heating resistor row (9)."

"8. A glass tempering furnace for heating glass sheets, the heating furnace (1) having means for heating the glass sheets (4) from above and below, and a conveyor to convey the glass sheets (4) through the tempering furnace (1), whereby the heating means comprise blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and heating resistor rows (9) arranged at a 70 -110 degree angle with respect to the direction of travel of the glass sheets (4), whereby the heating resistor row (9) has at least three separately controllable parts

(10), the heating resistor rows (9) being arranged in blow parts (13) in the blowing channels (5) to heat the air being blown, and the blowing channels (5) having platelike pieces (14) to divide the blow parts (13) in the blowing channel (5) into compartments according to the separately controllable parts (10)."

IX. Claims 1 and 8 of the second auxiliary request read as follows (amendments underlined with respect to claims 1 and 8 of the first auxiliary request):

"1. A method for heating glass sheets, in which the glass sheets (4) are fed through a tempering furnace (1) in which the glass sheet (4) is heated both from above and below whereby the glass sheet (4) is heated by means of blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and by means of heating resistor rows (9) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4), the heating resistor row (9) having at least three separately controllable parts (10), the blowing channel (5) having, in its top part, a channel feed part (11) and on the bottom surface of the channel feed part (11) a perforated plate (12) through which air flows to a blow part (13) of the blowing channel (5), the heating resistor rows (9) being arranged in the blow parts (13) in the blowing channels (5) to heat the air being blown, the blow parts (13) in the blowing channels (5) being divided into compartments according to the separately controllable parts (10), and the temperature profile of the glass sheet (4) is adjusted in the transverse direction by separately adjusting the different parts (10) of the heating resistor row (9)."

"8. A glass tempering furnace for heating glass sheets, the heating furnace (1) having means for heating the glass sheets (4) from above and below, and a conveyor to convey the glass sheets (4) through the tempering furnace (1), whereby the heating means comprise blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and heating resistor rows (9) arranged at a 70 -110 degree angle with respect to the direction of travel of the glass sheets (4), whereby the heating resistor row (9) has at least three separately controllable parts (10), and the blow channel (5) has, in its top part, a channel feed part (11) and on the bottom surface of the channel feed part (11) a perforated plate through which air flows to a blow part (13) of the blowing channel (5), the heating resistor rows (9) being arranged in the blow parts (13) in the blowing channels (5) to heat the air being blown, and the blowing channels (5) having platelike pieces (14) to divide the blow parts (13) in the blowing channel (5) into compartments according to the separately controllable parts (10)."

X. Claims 1 and 8 of the third auxiliary request read as follows (amendments underlined with respect to claims 1 and 8 of the main request):

"1. A method for heating glass sheets, in which the glass sheets (4) are fed through a tempering furnace (1) in which the glass sheet (4) is heated both from above and below whereby the glass sheet (4) is heated by means of blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and by means of heating resistor rows (9) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4), the heating resistor row (9) having at least three

separately controllable parts (10) whereby there are several successive elongated resistors in the heating resistor row (9), the heating resistor rows (9) being arranged in the blowing channels (5) to heat the air being blown, the blowing channels (5) being divided into compartments according to the separately controllable parts (10), and the temperature profile of the glass sheet (4) is adjusted in the transverse direction by separately adjusting the different parts (10) of the heating resistor row (9)."

"8. A glass tempering furnace for heating glass sheets, the heating furnace (1) having means for heating the glass sheets (4) from above and below, and a conveyor to convey the glass sheets (4) through the tempering furnace (1), whereby the heating means comprise blowing channels (5) arranged at a 70 - 110 degree angle with respect to the direction of travel of the glass sheets (4) and heating resistor rows (9) arranged at a 70 -110 degree angle with respect to the direction of travel of the glass sheets (4), whereby the heating resistor row (9) has at least three separately controllable parts (10) whereby there are several successive elongated resistors in the heating resistor row (9), the heating resistor rows (9) being arranged in the blowing channels (5) to heat the air being blown, and the blowing channels (5) having platelike pieces (14) to divide the blowing channel (5) into compartments according to the separately controllable parts (10)."

XI. Auxiliary request 4 does not form part of this decision so that it is unnecessary to reproduce it here.

XII. The lines of argument of the parties are dealt with in detail in the reasons for the decision.

Reasons for the Decision

1. *Review of the discretionary decision of the opposition division with respect to admittance of document D14 into the proceedings*
 - 1.1 The opposition division decided to admit late-filed document D14 into the proceedings as being *prima facie* relevant for the assessment of inventive step of the subject-matter of claim 1 of the patent as granted (see decision under appeal, point II.3.3).
 - 1.2 The patent proprietor contested the admittance of D14 into the proceedings as document D14 was late-filed and failed to disclose a number of features of the independent claims of the patent as granted. Therefore, D14 could not be considered to be *prima facie* relevant for evaluating novelty or inventive step of independent claims 1 and 8 of the main request. Thus, the opposition division exercised its discretion in an unreasonable way.
 - 1.3 Document D14 was filed for the first time in opposition proceedings with letter dated 4 May 2018, *i.e.* after the expiry of the opposition period according to Article 99(1) EPC, and thus is considered to be late-filed, so that its admittance into the proceedings was at the discretion of the opposition division.
 - 1.4 The Board does not see from the patent proprietor's argumentation that the opposition division did not correctly exercise its discretion under Article 114(2) EPC with regard to admittance of D14 into the proceedings.

The patent proprietor's argumentation is not convincing as the patent proprietor did not assert a discretionary error of the opposition division, but based its argumentation on the fact that it did not share the opposition division's assessment with regard to novelty or possibly inventive step of the subject-matter of the granted independent claims in view of D14.

- 1.5 It is not the function of a Board of Appeal to review all the facts and circumstances of the case as if it was in the place of the department that had issued the contested decision, and to decide whether or not it would have exercised such discretion in the same way as the department of first instance. A Board should only overrule the way in which a department of first instance has exercised its discretion if the Board concludes it has done so according to the wrong principle, or without taking into account the right principles, or in an unreasonable way (see Case Law of the Boards of Appeal (CLB), 9th edition, 2019, V.A. 3.5.1b)).
- 1.6 This is clearly not the case here. The opposition division applied the right principles in a reasonable way in its discretionary decision to admit document D14 into the proceedings by assessing the *prima facie* relevance of D14 with regard to inventive step (decision under appeal, point II.3.3). According to established case law, this is a decisive criterion for admitting a late-filed document (see CLB, *supra*, IV.C. 4.5.3).
- 1.7 The Board further notes that the EPC does not provide a legal basis for excluding, in appeal proceedings, submissions (such as prior art documents) which were admitted into the opposition proceedings, in particular

when, as in the present case with respect to D14, the decision under appeal is based on them. In view of the very aim of the appeal proceedings to review the decision under appeal in a judicial manner according to Article 12(2) RPBA 2020, such submissions are automatically part of the appeal proceedings (see e.g. T 0617/16, point 1.1.1 of the reasons, and T 2603/18, point 1.1.1 of the reasons).

1.8 Hence, the Board sees no reason to overrule the discretionary decision of the opposition division to admit late-filed document D14 into the proceedings and to exclude document D14 from the appeal proceedings (Article 12(4) RPBA 2007).

2. *Main request (patent as granted) - Novelty - Articles 100(a) and 54 EPC*

2.1 The patent proprietor has argued that, contrary to point II.4.3.3 of the decision under appeal, the subject-matter of claims 1 and 8 is novel over the disclosure of D14, since D14 neither discloses any heating resistor row and especially the heating resistor row having at least three separately controllable parts, nor any blowing channel having platelike pieces to divide the blowing channel into compartments according to the separately controllable parts of the heating resistor row.

According to the patent proprietor, D14 discloses only a set of separate resistance band heaters, each single separate heating resistance being arranged in the respective separate partial chamber 15, but does not comprise any clarifying disclosure of the arrangement of the resistance band heaters in the glass tempering furnace (see statement of grounds of appeal, page 4).

The decision under appeal was incorrect in stating that "*[w]hen viewed from below, the row of partial chambers appears as one entity*" and therefore sees each transverse row of partial chambers 15 in D14 as a blowing channel divided into compartments.

However, even though a blowing channel looks like another blowing channel when viewed in one direction there may be substantial differences in the implementation of the inner structure as in the present situation.

According to the invention a blowing channel (that is one entity) is divided (by platelike pieces) into compartments. Thus, the structure is very simple having a blowing channel and a plurality of platelike pieces. In D14 separate partial chambers 15 are positioned one after the other. Each separate partial chamber 15 has four walls and one of the walls is positioned against one wall of the adjacent separate partial chamber 15. Thus, the inner structure of the solution disclosed in D14 is different and much more complicated than the inner structure of the claimed solution (see reply to the opponent's statement of grounds of appeal, page 6).

2.2 The Board does not share this view for the reasons given in the appealed decision, under point II.4.3.3. Contrary to the patent proprietor's opinion, each transverse row of partial chambers 15 in D14 represents a blowing channel divided into compartments. According to the embodiment with the resistance band heater, described on page 9, third paragraph, last sentence, of D14a, a row of heating resistors is disclosed, wherein a resistance band heater is arranged in each partial chamber/compartment of the blowing channel and

separately adjustable to control the temperature profile of the glass sheet in the transverse direction. The separations between the partial chambers 15 are platelike pieces to divide the blowing channel into compartments according to the separately controllable parts of the heating resistor row. Hence, D14 discloses all the contested features of claims 1 and 8.

2.3 Consequently, novelty of the claimed subject-matter over the disclosure of D14 cannot be acknowledged.

3. *Auxiliary request 1 - Novelty - Article 54 EPC*

3.1 With respect to claims 1 and 8 of the main request, claims 1 and 8 of auxiliary request 1 have been amended by the introduction of blow parts (13), such that the heating resistor rows (9) are arranged in blow parts (13) in the blowing channels (5) to heat the air being blown, the blow parts (13) in the blowing channels (5) being divided into compartments according to the separately controllable parts (10).

3.2 The patent proprietor has argued that the combination of a number of separate partial chambers 15 with the partial chamber specific passages 16 and the respective regulating valves 18 therein to provide actively controlled gas flow between the static pressure chamber 17 and the number of separate partial chambers 15, as disclosed in D14, does not provide a blowing channel structure straightforwardly comparable with the blowing channel structure according to independent claims 1 and 8 of auxiliary request 1. Additionally, D14 fails to disclose the division of the blow parts in the blowing channel into compartments according to the separately controllable parts of the heating resistor row (see

statement of grounds of appeal, page 6, last paragraph, to page 7, third paragraph).

3.3 The Board is not convinced by the patent proprietor's argumentation that the finding in the appealed decision, under point II.6.2, is incorrect that the feature added to claims 1 and 8 of auxiliary request 1 does not differentiate the claimed subject-matter from the glass tempering furnace shown in D14, and that "*The partial chambers 15 are seen as blow parts of the blowing channel.*" Since the partial chambers are the blow parts of the blowing channel, D14 discloses that the blow parts in the blowing channel are divided into compartments according to the separately controllable parts of the heating resistor row.

3.4 Hence, the subject-matter of claims 1 and 8 of auxiliary request 1 lacks novelty in view of the disclosure of document D14.

4. *Auxiliary request 2 - Novelty - Article 54 EPC*

4.1 With respect to claim 1 of auxiliary request 1, claim 1 of auxiliary request 2 comprises the further feature of "the blowing channel (5) having, in its top part, a channel feed part (11) and on the bottom surface of the channel feed part (11) a perforated plate (12) through which air flows to a blow part (13) of the blowing channel (5)". Claim 8 of auxiliary request 2 comprises the corresponding additional features.

4.2 In the contested decision, the opposition division found that document D14 shows in Figures 1 and 2 a perforated plate connecting part 17 to partial chambers 15. Thus, the subject-matter of claims 1 and 8 lacked

novelty over the disclosure of D14 (see decision under appeal, point II.9.2).

- 4.3 The patent proprietor has contested that D14 discloses a perforated plate between the static pressure chamber 17 and the partial chambers 15 as the feature must be understood using the definition of "a perforated plate" that the person skilled in the art of glass tempering furnaces would use. In the art of glass tempering furnaces the definition of "a perforated plate" refers to a plate comprising an orifice pattern with a number of free openings extending through the plate without any obstruction such as the regulating valves of D14. An example of a perforated plate, as understood by the person skilled in the art of glass tempering furnaces, is shown schematically for example in Figure 3 of document D1. It is therefore evident that the chamber specific single passage 16 provided with the regulating valve 18 between the static pressure chamber 17 and each partial chamber 15 does not fulfil the definition of a perforated plate (see statement of grounds of appeal, page 9).

Furthermore, it is clear to the skilled person that the plate between part 17 and chamber 15 does not let air flow through but the air flows along the passage which is provided with a valve. Thus, D14 does not disclose a perforated plate through which air flows to a blow part of the blowing channel (see reply to the opponent's statement of grounds of appeal, page 7).

- 4.4 The Board is not convinced by the patent proprietor's argumentation that the finding in the decision under appeal, point II.9.2, is incorrect. It is clearly and unambiguously depicted in Figures 1 and 2 of D14 that a plate connects part 17 to chambers 15. This plate

comprises a passage 16 above each chamber, which means that the plate above each chamber comprises a hole, *i.e.* is perforated.

The patent proprietor has brought forward the argument that the person skilled in the art of glass tempering furnaces has a specific understanding of a perforated plate. However, contrary to the patent proprietor's view, the skilled person understands the term "perforated plate" broadly, as there is no mention of any specific understanding in the disputed patent.

Contrary to the patent proprietor's opinion, D14 discloses that air flows through the perforated plate to a blow part of the blowing channel, irrespective of the provision of the regulating valve, which is a flow control device 18, since the passage 16 which is provided with the flow control device is the hole in the plate forming the perforated plate. As a matter of fact, the flow control device 18 provided in the passage 16 controls the flow from part 17 through the passage 16 into chamber 15, *i.e.* air flows along the passage which could be provided with a regulating valve, as also conceded by the patent proprietor (see reply to the opponent's statement of grounds of appeal, page 7, last paragraph, first sentence). This is directly and explicitly disclosed on page 7, lines 2 to 3, of D14a, as put forward by the opponent during the oral proceedings before the Board.

4.5 Hence, the subject-matter of claims 1 and 8 of auxiliary request 2 is not novel over the disclosure of document D14 (Article 54 EPC).

5. *Auxiliary request 3 - Inventive step - Article 56 EPC*

5.1 Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that the feature "whereby there are several successive elongated resistors in the heating resistor row (9)" has been added. Claim 8 of auxiliary request 3 comprises the corresponding additional feature.

5.2 In the decision under appeal, the opposition division found that the subject-matter of claims 1 and 8 did not involve an inventive step starting from the teaching of document D14 in combination with common general knowledge, as exemplified in documents D1 to D4 (see decision under appeal, point II.12.3).

5.3 The patent proprietor has argued that document D14 fails to disclose a heating resistor row having at least three separate controllable parts whereby there are several successive elongated resistors in the heating resistor row.

The technical effect of this difference between the claimed subject-matter and D14 is an improved temperature profile controllability in the lateral direction of the glass tempering furnace. The objective technical problem is thus to modify the tempering furnace of D14 in order to achieve the technical effect.

In D14 the main issue in the control of the lateral direction temperature profile of the gas flow is the cooperation of the regulating valves for the gas flow control and the resistance band heaters for the temperature control.

The person skilled in the art, knowing also documents D1 to D4, would not consider replacing the resistance band heaters with the elongated resistors, since when considering D14 in view of any one of D1 to D4, any specific indication of how to combine the teachings of D14 with those of any of D1 to D4 is not disclosed in the documents. The replacement of the resistance band heaters with the elongated resistors is not an immediately probable solution in view of D1 to D4 or D14 taking into account also evident changes that would be needed in mechanical and electrical arrangements in the structures of the partial chambers. Furthermore, the person skilled in the art would also have to disregard the other teachings of D1 to D4 in order to arrive at the invention. Thus, the person skilled in the art would have to pick only certain features and omit other features from the prior art. Therefore, the person skilled in the art would not arrive at the invention without using hindsight knowledge of the invention.

The more probable and straightforward solution to improve the operation of the glass tempering furnace of D14, so the patent proprietor, would be to improve the cooperation of the regulating valves and the resistance band heaters by replacing the resistance band heaters presently used with more powerful resistance band heaters. By doing this, no structural modification of the glass tempering furnace is necessary. Thus, the person skilled in the art would not arrive at the claimed solution on the basis of the cited prior art (see statement of grounds of appeal, pages 12 to 13).

- 5.4 The Board does not share the patent proprietor's view that D14 fails to disclose a heating resistor row having at least three separate controllable parts, in

addition to several successive elongated resistors in the heating resistor row. As set out with respect to the main request under point 2.2 above, D14 discloses a heating resistor row having at least three separate controllable parts.

Thus, the subject-matter of claims 1 and 8 differs from the disclosure of D14 merely in that there are elongated resistors in the heating resistor row.

As a consequence, the patent proprietor starts from an improperly formulated technical effect and an improperly formulated associated technical problem.

The Board follows the appealed decision, under point II.12.3, that a technical effect provided by successive elongated resistors cannot be identified. The objective technical problem to be solved can be seen in providing an alternative method of heating glass sheets with adequate control of the temperature profile of the glass sheets.

In view of the objective technical problem of providing an alternative method for heating glass sheets with adequate control of the temperature profile of the glass sheets, the Board further follows the appealed decision, under point II.12.3:

"Elongated resistors are well known to the skilled person since they are widely used as heaters in glass tempering furnaces. This common general knowledge is illustrated e.g. in D1-D4. The skilled person looking for an alternative solution would immediately think of replacing less common band heaters by elongated resistors and would align them in the direction

transverse to the direction of travel of the glass sheets."

- 5.5 The patent proprietor has further argued that the appealed decision was incorrect in stating that "*[t]he skilled person looking for an alternative solution would immediately think of replacing less common band heaters by elongated resistors and would align them in the direction transverse to the direction of travel of the glass sheets."*

The separate partial chambers 15 in D14 are almost square shaped. When studying Figures 1 and 2 the separate partial chambers 15 seem to be rectangular such that they are even longer in the direction of travel of the glass sheets. Thus, it would be usual to provide the almost square shaped chamber with a resistance band heater which is circular shaped. Furthermore, if the skilled person provides the almost square shaped chamber of D14 with an elongated resistor, they could align it either in the direction of travel of the glass sheets or in the direction transverse to the direction of travel of the glass sheets. And if the chamber is rectangular such that it is even longer in the direction of travel of the glass sheets, they would align the elongated resistor in the direction of travel of the glass sheets (see reply to the opponent's statement of grounds of appeal, page 8).

- 5.6 The Board disagrees, since D14 discloses a heating resistor row arranged in the direction transverse to the direction of travel of the glass sheets. Thus, when replacing the resistance band heaters in D14 by elongated resistors, the elongated resistors would inevitably be aligned in the direction transverse to the direction of travel of the glass sheets.

The Board further agrees with the opponent that Figures 1 and 2 of D14 are schematic drawings. The patent proprietor's argumentation is based on the assumption that the partial chambers are almost square shaped. There is no indication in D14 that would lead the skilled person to provide an almost square shaped chamber with a resistance band heater which is circular shaped. The patent proprietor's line of arguments is rather based on a mere allegation.

- 5.7 Thus, the patent proprietor did not convincingly demonstrate that the decision under appeal was incorrect in that the combination of the teaching of D14 with the common general knowledge of the skilled person, as illustrated for example in D1 to D4, leads the skilled person to the subject-matter of claims 1 and 8 of auxiliary request 3 in an obvious manner.

6. *Conclusions*

The patent proprietor had therefore not convincingly shown that the decision under appeal was incorrect in finding

- that the subject-matter of the independent claims according to the patent as granted (main request) as well as according to the first and second auxiliary requests was not novel, and
- that the subject-matter of the independent claims according to the third auxiliary request did not involve an inventive step.

7. *Partial reimbursement of the appeal fee*

The opponent withdrew its appeal before the decision was announced at oral proceedings. Therefore, pursuant

to Rule 103(4) (a) EPC, the appeal fee is to be reimbursed at 25%.

Order

For these reasons it is decided that:

1. The appeal of the patent proprietor is dismissed.
2. The appeal fee paid by the opponent is to be reimbursed at 25%.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated