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Datasheet for the decision of 21 March 2023

Case Number: T 0741/20 - 3.4.02

Application Number: 14169351.5

Publication Number: 2778638

IPC: G01K1/08

Language of the proceedings: EN

Title of invention:
Temperature sensor assembly

Patent Proprietor:
WATLOW ELECTRIC MANUFACTURING COMPANY

Opponent:
Valeo Systèmes de Contrôle Moteur

Relevant legal provisions:
EPC Art. 54(1), 56, 87, 100(a), 100(b), 100(c)
RPBA 2020 Art. 12(3), 12(5), 13(2)

Keyword:
Submissions with respect to sufficiency of disclosure and novelty not substantiated or incomplete (admission: no)
Unallowable intermediate generalisation (no)
Admission of late-filed objection (no)
Novelty and inventive step (yes)

Decisions cited:
T 0423/18, T 1876/18, T 0145/19

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Case Number: T 0741/20 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 21 March 2023

Appellant: (Opponent)	Valeo Systèmes de Contrôle Moteur Propriété Intellectuelle 14 avenue des Béguines BP 68532 Cedex 95892 Cergy Pontoise (FR)
Representative:	Garcia, Christine Valeo Systèmes de Contrôle Moteur Immeuble Le Delta 14, avenue des Béguines BP 68532 Cedex 95892 Cergy Pontoise (FR)
Respondent: (Patent Proprietor)	WATLOW ELECTRIC MANUFACTURING COMPANY 12001 Lackland Road St. Louis, Missouri 63146 (US)
Representative:	Germain Maureau 12, rue Boileau 69006 Lyon (FR)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 13 January 2020 rejecting the opposition filed against European patent No. 2778638 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	R. Bekkering
Members:	F. J. Narganes-Quijano
	T. Karamanli

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the decision of the opposition division rejecting the opposition against European patent No. 2778638, which claims priority from US application No. 767362 of 22 June 2007.

The opposition filed by the appellant against the patent as a whole was based on the grounds for opposition of added subject-matter (Article 100(c) EPC), insufficiency of disclosure (Article 100(b) EPC), and lack of novelty and of inventive step (Article 100(a) together with Articles 52(1), 54 and 56 EPC).

II. The following documents considered during the first-instance proceedings have been referred to by the parties during the appeal proceedings:

D1: "Exhaust Gas temperature Sensor", R. Laurinat et al.; MTZ worldwide, Vol. 64 (2003); pages 13 to 16, and the corresponding German version in the "Sonderdruck" (pages 1 to 6)
D2: GB 2 292 832 B
D5: EP 1 510 801 B1
D7: WO 97/25603 A1
D8: US 5 088 835.

III. In the decision under appeal the opposition division held that none of the grounds for opposition raised by the appellant prejudiced the maintenance of the patent as granted.

IV. In a communication under Article 15(1) RPBA 2020 annexed to the summons to oral proceedings the board presented a preliminary assessment of the appellant's case in appeal.

V. With its letter dated 14 March 2023 the appellant submitted the following documents:

D13: application entitled "Temperature Sensor Assembly and Method of Manufacturing thereof", Attorney Docket No. 7377S-000210/US/PS1 PATENT
D14: US 2008/0025372 A1.

VI. Oral proceedings before the board were held on 21 March 2023.

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

The respondent (patent proprietor) requested that the appeal be dismissed (main request) or, alternatively, that the decision under appeal be set aside and that the patent be maintained as amended on the basis of the claims of one of the first to fourth auxiliary requests, all filed by letter dated 29 September 2020.

At the end of the oral proceedings the chairman announced the decision of the board.

VII. Claim 1 of the patent as granted (main request) - with the feature labelling "C1" to "C8" in square brackets used during the proceedings being inserted therein by the board - reads as follows:

"A temperature sensor assembly (10) comprising:

[C1] at least one temperature probe (12) having a probe body (16) and a temperature sensor and at least one conductor (90) configured to provide a temperature signal indicative of a temperature over the at least one conductor (90);

[C2] a wire set having at least one wire (26) corresponding to each of the at least one conductor (90), the at least one wire (26) having a first end and a second end, the first end of the at least one wire (26) being coupled to the at least one conductor (90) at a coupled portion;

[C3] a transition component (22) surrounding the coupled portion of the at least one conductor (90) and the at least one wire (26) of the wire set, the transition component (22) including a grommet (23) and a transition body (27), the grommet(23) including at least one internal cavity (89) dimensioned for receiving an end of one of the at least one conductor (90) and for receiving the first end of the al least one wire (26) of the wire set, and the transition body (27) having a cavity substantially enclosing the grommet (23);

[C4] a housing (28) having an input (36) configured to receive the second end of the at least one wire (26) of the wire set;

[C5] a circuit (62) enclosed within the housing (28), the circuit (62) being configured to receive the temperature signal from the temperature probe (12) and generate the temperature characteristic in response to the received temperature signal, wherein the temperature probe (12) is external to the housing (28),

[C6] a mounting connector (18) configured to be secured around the probe body (16) and adapted to secure the temperature probe (12) to a mounting assembly in an operating environment;

[C7] the housing (28) having an output (30) for coupling to a temperature measurement system that is external to the housing (28) and providing a temperature characteristic,

[C8] and the transition component being external to the housing."

The set of claims of the patent as granted further includes dependent claims 2 to 16 all referring back to the temperature sensor assembly defined in claim 1.

Reasons for the Decision

1. The appeal is admissible.

2. *Main request (patent as granted) - Ground for opposition under Article 100(b) EPC*

2.1 In its statement of grounds of appeal, the appellant stated that the ground for opposition under Article 100(b) EPC - contrary to the opposition division's conclusion in the decision under appeal - justified the revocation of the patent.

2.2 The board notes that, as submitted by the respondent, no argument was submitted by the appellant in this respect in the statement of grounds of appeal. Therefore, the statement of grounds of appeal was not substantiated in respect of this ground for opposition. Equivalently, the statement of grounds of appeal did not set out the reasons why the opposition division's decision in respect of this ground for opposition should be reversed and, therefore, this part of the

appellant's appeal case does not meet the requirements of Article 12(3), second sentence, RPBA 2020.

For these reasons, the board decided, in the exercise of its discretion under Article 12(5) RPBA 2020, not to admit the appellant's submissions relating to the ground for opposition under Article 100(b) EPC into the appeal proceedings.

2.3 Therefore, the ground for opposition under Article 100(b) EPC does not prejudice the maintenance of the patent as granted for the reasons given by the opposition division in the decision under appeal.

3. *Main request (patent as granted) - ground for opposition under Article 100(c) EPC*

3.1 The opposition division held in its decision with respect to the ground for opposition under Article 100(c) EPC that the fact that claim 1 as granted required feature C8 (i.e. "the transition component being external to the housing") without also requiring the provision of the tip cap 14 and the collar 20 disclosed in the application as originally filed by reference to Fig. 1 did not constitute an unallowable intermediate generalisation and that, therefore, the subject-matter of claim 1 as granted did not go beyond the content of the application as filed, on which the contested patent is based. In particular, feature C8 was not disclosed as being inextricably linked with the tip cap and the collar of Fig. 1, and the overall disclosure of the application as filed, and in particular Fig. 2A and 2B and dependent claims 10 and 15, justified the incorporation of feature C8 without the tip cap and the collar.

The appellant contested the opposition division's view in this respect and submitted that the claimed combination of features was not directly and unambiguously derivable from the application as filed. In particular, the description of the application as filed did not mention feature C8, and feature C8 as claimed was only disclosed in Fig. 1 of the application as filed; however, Fig. 1 also disclosed the tip cap 14 and the collar 20, and these two components were omitted in claim 1 as granted. In addition, the remaining figures did not disclose the claimed combination of features; in particular, the embodiment of Figs. 2A and 2B only related to a variant involving two temperature probes, while claim 1 only required "at least one temperature probe".

3.2 In the board's opinion, however, the mere fact that feature C8 is disclosed in Fig. 1 of the application as filed in the context of an embodiment involving, among other features, the use of a tip cap (14) and a collar (20) does not imply *per se* that feature C8 is inextricably linked to the presence of the tip cap and the collar to the extent that the skilled person would not consider feature C8 without the provision of the tip cap and the collar.

In addition, the tip cap and the collar are disclosed in connection with several embodiments of the application as originally filed, and in particular in connection with the embodiment of Fig. 1, but neither the tip cap nor the collar are disclosed as essential features. More particularly,

- claim 1 as granted is based on claim 1 as originally filed and both the collar and the tip cap are not required by the subject-matter of this claim - nor by the corresponding statement of the invention in

the introductory part of the description of the application as filed, see paragraph [0006] -, but - as submitted by the respondent - only defined in the dependent claims (see, respectively, dependent claims 10 and 15 as originally filed); and

- the description of the application as filed refers to the presence of the collar and of the tip cape only as examples of the different means that can be incorporated in the temperature probe, see for instance paragraphs [0032] ("*The mounting connector 18 is adapted for securing the temperature probe 12 to a mounting assembly [...]. Such an arrangement can be as simple as a hanger or can include [...]. For example, in some embodiments, the mounting connector 18 includes a sealing ring or collar 20 [...].*") and [0070] ("*In some embodiments, each sensor probe [...] can include a collar [...].*"), and also paragraph [0066] ("*In other embodiments, a tip cap [...] or a disc [...] can be positioned [...].*") [*emphasis added by the board*].

Furthermore, while the tip cap and the collar of the embodiment of Fig. 1 are components of the temperature probe itself, the transition component relates to the coupling portion between a conductor coupled to the temperature probe and a wire coupled to a housing. Therefore, the transition component is located at a different position than the tip cap and the collar (see Fig. 1) and, in addition, fulfils a technical purpose not related to the function of the tip cap and the collar. It follows that there is no structural or functional relationship, let alone an inextricably link, between the provision of the transition component and the provision - or the absence - of a tip cap and a collar in the mounting connector of the temperature probe.

The board also notes that feature C8 of granted claim 1 is not exclusively based on the embodiment of Fig. 1 as filed because the considerations made above in respect of this embodiment also apply - as also held by the opposition division in its decision - to the embodiments disclosed in the application as originally filed with reference to the remaining figures, these embodiments being disclosed in the application as originally filed as embodiments of the assembly of claim 1 as originally filed and this assembly including a housing receiving the second end of a wire connected by its first end to the transition component. In particular, Figs. 2A and 2B, and Figs. 3A and 3B also show the housing and the transition component external to the housing, and, although the remaining figures do not show a housing, they show elongated wires to be connected by the respective end to the transition component shown in the figures and to the housing. Therefore, the skilled person would understand in the technical context of the disclosed invention that also in these embodiments the transition component is external to the housing.

As regards the appellant's submissions relating to the embodiment of Figs. 2A and 2B as filed, the board notes that this embodiment comprises two temperature probes (52 and 53) each being connected via a respective conductor to a respective transition component (86) external to a housing (56) and that, therefore, as submitted by the appellant, the embodiment does not represent the whole claimed temperature sensor assembly, but only a particular embodiment thereof. However, the mere fact that this embodiment only constitutes a particular embodiment of claim 1 as filed does - contrary to the appellant's submissions - not render this embodiment irrelevant for the issues under

consideration, but, on the contrary, confirms the considerations made above in respect of the embodiment of Fig. 1 as filed.

3.3 In view of the above considerations, the board is of the opinion that the skilled person would directly and unambiguously derive from the embodiment disclosed in the application as filed with reference to Fig. 1 together with the whole disclosure that the transition component is external to the housing as defined in feature C8 of claim 1 as granted, without the temperature probe necessarily comprising the collar and the tip cap represented in the figure. Therefore, the subject-matter of claim 1 as granted does not constitute an unallowable intermediate generalisation of the content of the application as originally filed.

3.4 For these reasons, the board concludes that the ground for opposition under Article 100(c) EPC does not prejudice the maintenance of the patent as granted.

4. *Main request (patent as granted) - Ground for opposition of lack of novelty (Article 100(a) together with Article 54(1) EPC) - Documents D1, D2, D5, D7 and D14*

4.1 Document D1

4.1.1 In its decision, the opposition division held that the temperature sensor assembly of claim 1 as granted differed from the temperature sensor assembly disclosed in document D1 (Fig. 3 on page 3 of the "Sonderdruck") by features C3 and C8.

The appellant contested the opposition division's view in this respect and submitted that the tubular

component intercalated between the wire and the conductor of the temperature sensor assembly represented in Fig. 3 on page 3 of the "Sonderdruck" of document D1 constituted a transition component which anticipated features C3 and C8 because the mentioned component necessarily included means allowing the wire and the conductor to pass therethrough. In particular, the appellant referred to the claimed grommet by the French expression "passe-fil" and submitted that a grommet allowed for a conductor and a wire to pass therethrough, and that every means that allowed for a conductor and a wire to pass therethrough constituted a grommet (a "passe-fil") having, as claimed, an internal cavity dimensioned for receiving an end of the conductor and of the wire.

The respondent submitted that it was not unambiguously disclosed in document D1 that the tubular component of Fig. 3 of document D1 determined the coupled portion between a conductor of the temperature probe and a wire connected to the housing and that, therefore, there was no direct and unambiguous disclosure in document D1 that the tubular component constituted a transition component as defined in features C3 and C8 of claim 1. In any case, document D1 was silent as to the internal structure of the tubular component and, more particularly, as to the provision of a grommet in the tubular component (feature C3).

4.1.2 The board notes that Fig. 3 only shows the external part of the tubular component, and there is no disclosure in document D1 relating to the internal structure of the component. Therefore, even assuming that the tubular component of document D1 constitutes a transition component external to the housing as claimed, there is no disclosure in document D1 from

which it could be derived in a direct and unambiguous way that the internal cavity of the tubular component would comprise any additional structural component enclosed by the cavity, let alone a grommet as claimed, i.e. a grommet including an internal cavity for receiving the corresponding ends of the conductor of the temperature probe and of the wire connected to the housing.

4.1.3 In view of these considerations, the board is of the opinion that the temperature sensor assembly of claim 1 as granted differs from the assembly of document D1 at least in the provision of a grommet as claimed.

Therefore, the subject-matter of claim 1 as granted is new over document D1.

4.2 Document D2

4.2.1 In its decision, the opposition division held that the temperature sensor assembly of granted claim 1 differed from the temperature sensor assembly disclosed in document D2 by reference to Fig. 5 in the claimed features C3 and C8.

The appellant contested the opposition division's view in this respect by referring to the same arguments submitted in respect of document D1.

4.2.2 Document D2 discloses by reference to Fig. 5 and to the disclosure of Fig. 1 a direct welded connection 24 connecting the conductors (wires 31 and 32) of a temperature probe (probe 10) to the wires (extension wires 25) of a measurement transducer (transducer 26), see page 9, line 8, to page 10, line 7, together with page 7, lines 25 to 36.

The direct welded connection 24 of document D2 constitutes a transition component external to the housing as claimed. However, document D2 is silent as to the structure of the direct welded connection. More particularly, document D2 is silent as to the provision of a transition component comprising the structural and functional features of the claimed transition component, and in particular a transition component having a cavity enclosing a grommet as claimed, for reasons analogous to those given in point 4.1.2 above in respect of document D1.

4.2.3 It follows that the temperature sensor assembly of claim 1 as granted differs from the assembly of document D2 at least in the provision of a grommet as claimed.

Therefore, the subject-matter of claim 1 as granted is new over document D2.

4.3 Document D7

4.3.1 In its decision, the opposition division held that the temperature sensor assembly of claim 1 differed from the temperature sensor assembly disclosed in document D7 (Figs. 1 and 5, together with the corresponding description, in particular claim 1, page 5, lines 12 to 19, and page 14, line 16 et seq.) by features C2 to C5, C7, and C8.

The appellant contested the opposition division's view in this respect by referring to Figs. 1 and 4, together with claims 1, 2, 6 and 8 of document D7.

4.3.2 The board notes the following:

- As regards feature C2, the appellant has only referred to Fig. 1 and claim 1 of document D7, without however submitting arguments contesting the opposition division's view that neither Fig. 1 nor claim 1 of document D7 disclosed the wires defined in feature C2. The board notes that the opposition division's comment that "[a]t best a wire set as in C2 can be regarded as implicit" (reasons for the decision, point 12.14, last paragraph) cannot be followed by the board to the extent that the leads 16 of Fig. 1 would constitute either the conductors or the wires as claimed, it being noted that in the first of the two mentioned alternatives the conductors could be directly connected to the circuitry of Fig. 5 without the provision of wires as claimed, and that in the second alternative document D7 would not disclose conductors as claimed.

- As regards feature C3 the appellant has only referred to claim 1 of document D7, without however submitting arguments contesting the opposition division's view that claim 1 of document D7 did not disclose feature C3. In addition, the board is unable to see in claim 1 any disclosure of a transition component as claimed.

- As regards features C4 and C7, the appellant has only referred to claims 6 and 8 of document D7. These two claims, however, only refer to the components of a transmitter circuit and are silent as to the provision of a housing as defined in features C4 and C7.

- As regards features C5 and C8, the appellant has only referred to claims 1 and 2 and to Fig. 4 of document D7. The mentioned parts of document D7 disclose an electronic circuit that can be brought into correspondence with the circuit mentioned in features C5 and C8 of claim 1. However, document D7 does not disclose that the circuit is enclosed within a housing

such that the temperature probe and the transition component are external to the housing.

4.3.3 Therefore, in the board's opinion, the temperature sensor assembly of claim 1 as granted is new over the assembly of document D7.

4.4 Admittance of the appellant's submissions relating to the issue of novelty over document D5

4.4.1 In its decision, the opposition division noted that the appellant had stated that the same arguments of lack of novelty submitted in respect of document D7 would also apply to document D5, without however providing further details. The opposition division found that the temperature sensor assembly of granted claim 1 was new in view of document D5 in several respects.

In the statement of grounds of appeal, the appellant submitted that the subject-matter of claim 1 was not new over document D5 in view of the same arguments submitted in respect of document D7.

4.4.2 The statement of grounds of appeal contains no argument as to why the opposition division's view that the claimed subject-matter was new over document D7 would not be correct, but only a reference to the disclosure of predetermined parts of document D7 (see point 4.3.1 above, second paragraph) which have no connection with document D5. In view of the absence of any specific submission directly or indirectly connected with the disclosure of document D5 and relating to the issue of novelty of the claimed subject-matter over document D5, the board considers that the statement of grounds of appeal does not meet the requirements of Article 12(3), second sentence, RPBA 2020 in respect of the

appellant's submissions relating to the issue of novelty over document D5.

For this reason, the board decided, in the exercise of its discretion under Article 12(5) RPBA 2020, not to admit the appellant's submissions relating to the issue of novelty over document D5 into the appeal proceedings. In these circumstances, the board sees no reason to depart from the opposition division's view that the subject-matter of claim 1 is new over document D5.

4.5 Admittance of the appellant's objection of lack of novelty over document D14

4.5.1 With the letter filed on 14 March 2023, the appellant filed documents D13 and D14 and raised for the first time during the appeal proceedings an objection of lack of novelty of the claimed subject-matter over document D14, which is the publication of the US application from which priority is claimed for the patent in suit. The respondent submitted in particular the following:

- the patent proprietor had filed on 22 June 2006 US provisional application No. 60/815,620 and document D13 constituted a copy of this application;

- document D13 already disclosed the claimed invention of granted claim 1 and the priority of the US provisional application had been claimed for the US application from which priority was claimed for the present patent, with the consequence that the priority claim of the present patent was not valid because the US application from which priority was claimed for the patent in suit did not constitute the first application for the claimed invention within the meaning of Article 87(1) and (4) EPC);

- document D14 was published on 31 January 2008, i.e. before the filing date (6 June 2008) of PCT application WO2009/002682, on which the present patent was based, and, therefore, document D14 formed part of the state of the art within the meaning of Article 54(2) EPC; and

- the claimed invention was not new in view of document D14.

The appellant also submitted that documents D13 and D14 constituted priority documents and that, therefore, they had been part of the opposition proceedings from the outset and did not constitute new documents filed during the appeal proceedings. In any case, documents D13 and D14 should be admitted into the appeal proceedings in view of their *prima facie* relevance. In addition, the non-validity of the claimed priority for the patent in suit and the *prima facie* relevance of document D14 justified the admission of the objection of lack of novelty over document D14.

The respondent submitted that the appellant's objection of lack of novelty over document D14 was an amendment of the appellant's appeal case within the meaning of Article 13(2) RPBA 2020. However, the appellant had not identified any exceptional circumstance as required by Article 13(2) RPBA 2020 that would justify the submission of this new objection one week before the oral proceedings before the board. In addition, the admission of this new objection would require remittal to the opposition division to address all the issues raised by the appellant.

4.5.2 The board first notes that, in the case in hand, the summons to oral proceedings was notified after the date on which RPBA 2020 entered into force, i.e. 1 January

2020 (Article 24(1) RPBA 2020). Thus, in accordance with Article 25(1) and (3) RPBA 2020, Article 13(2) RPBA 2020 applies to the question of whether to admit the new objection of lack of novelty over document D14, which was submitted by the appellant after notification of the summons to oral proceedings and is therefore an amendment of the appellant's case within the meaning of Article 13(2) RPBA 2020. In addition, according to this provision the amendment will, in principle, not be taken into account by the board, unless there are exceptional circumstances, which have been justified with cogent reasons by the appellant.

In the present case the board is unable to see in the appellant's submissions any exceptional circumstance that would justify taking into account the new objection of lack of novelty. In particular, no circumstance in the appeal proceedings justifies the late-filing of the objection of lack of novelty over document D14. In addition, neither the fact that the priority document is part of the procedure nor the possible relevance of the validity of the claimed priority explain, let alone justify, why the appellant did not address the issue of the validity of the claimed priority at a previous stage of the proceedings, and in particular during the first-instance proceedings, and why the appellant submitted the new objection of lack of novelty at such a late stage of the appeal proceedings. Furthermore, the alleged *prima facie* relevance of document D14 does not constitute exceptional circumstances within the meaning of Article 13(2) RPBA 2020 and the criterion of *prima facie* relevance does not prevail over the criteria explicitly mentioned in Article 13(2) RPBA (see, for instance, decisions T 423/18, point 4.3 of the reasons,

T 1876/18, point 3.6 of the reasons, and T 145/19, point 2.2.3 of the reasons).

4.5.3 In view of the above considerations, the board exercised its discretion under Article 13(2) RPBA 2020 and decided not to take into account the appellant's objection of lack of novelty over document D14. Consequently, the issue of the validity of the priority claimed for the present patent is not relevant for the present decision.

4.6 Taking into account the above considerations and conclusions, the board concludes that the subject-matter of claim 1 as granted, and therefore also that of dependent claims 2 to 16 as granted, is new and that, consequently, the ground for opposition of lack of novelty under Article 100(a) and Article 54(1) EPC does not prejudice the maintenance of the patent as granted.

5. *Main request - Ground for opposition of lack of inventive step (Article 100(a) together with Article 56 EPC) - Document D1 or D2 in combination with document D8*

5.1 In its decision, the opposition division held that the closest state of the art regarding the subject-matter of granted claim 1 was represented by document D1 or by document D2 which disclosed a temperature sensor assembly similar to the claimed sensor, that the objective technical problem solved by the distinguishing features of claim 1 - and in particular by the grommet included within the claimed transition component - over document D1 resided in the adaptation of the temperature sensor assembly so as to facilitate coupling an end of the conductor to an end of the lead

wire and also to provide mechanical protection, and that none of the remaining documents, in particular document D8, rendered obvious the claimed subject-matter.

The appellant contested the opposition division's conclusion that the combination of any of documents D1 and D2 with document D8 did not render obvious the claimed temperature sensor assembly. In particular, the appellant disputed the opposition division's view that the high heat conductivity epoxy 37 enclosed within the metal sheath 35 of the connector disclosed in document D8 (Fig. 1, together with column 3, lines 32 to 44) could not be regarded as a grommet as claimed. More particularly, the appellant submitted that a component allowing for a wire to pass therethrough constituted a grommet as claimed (i.e. a "passe-fil" in French).

5.2 The board is of the opinion that the high heat conductivity epoxy component 37 of the connector of Fig. 1 of document D8 is enclosed within the cavity of the metal sheath 35 as required by feature C3 of claim 1, but that the component does not constitute a grommet as claimed because, as found by the opposition division and submitted by the respondent, the component 37 does not constitute "a grommet" having "an internal cavity dimensioned for receiving" the corresponding ends of the conductor and of the wire as required by the claimed subject-matter. The board notes in this respect that granted claim 1 does - contrary to the appellant's submissions - not merely require a component through which a wire passes (i.e. a "passe-fil" within the broadest technical meaning of this functional expression), but more specifically a structural entity constituted by a grommet having, in addition, the claimed functional and structural

features. In addition, as noted by the opposition division in the decision under appeal, the epoxy material of component 37 seals or fills, after curing, the space of the cavity of the metal sheath 35 not occupied by the components inserted within the metal sheath (see Fig. 1), resulting in a component 37 that does not constitute a grommet as claimed, and the board concurs with the opposition division's view in this respect because the component 37 of document D8 does not constitute a structural entity constituted by a grommet with a cavity as required by the claimed subject-matter.

Therefore, the appellant's arguments that the combination of any of documents D1 and D2 (*cf*. points 4.1 and 4.2 above) with document D8 would, contrary to the opposition division's view, result in a transition component including a grommet as claimed are in the board's opinion not convincing. For this reason already, the subject-matter of claim 1 as granted, and therefore also that of dependent claims 2 to 16 as granted, involves an inventive step over any of documents D1 and D2 in combination with document D8 (Article 56 EPC).

5.3 The board concludes that the ground for opposition of lack of inventive step under Article 100(a) together with Article 56 EPC does not prejudice the maintenance of the patent as granted.

6. As none of the grounds for opposition put forward by the appellant prejudices the maintenance of the patent as granted, the appellant's request that the patent be revoked cannot be granted under Article 101(2) EPC. Therefore, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Voyé R. Bekkering

Decision electronically authenticated