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**Datasheet for the decision
of 22 November 2022**

Case Number: T 1158/20 - 3.2.01

Application Number: 11710578.3

Publication Number: 2533655

IPC: A24C5/35

Language of the proceedings: EN

Title of invention:

METHOD OF MASS FLOW CONTROL AND DEVICE FOR MASS FLOW CONTROL

Patent Proprietor:

International Tobacco Machinery Poland Sp. z o.o.

Opponent:

G.D S.p.A

Headword:

Relevant legal provisions:

EPC Art. 123(2), 54

RPBA 2020 Art. 15a(1)

Keyword:

Oral proceedings - before board of appeal - format by
videoconference
Basis of decision - text submitted or agreed by patent
proprietor (yes)
Amendments - allowable (no) - broadening of claim (yes)
Novelty - auxiliary request (yes)

Decisions cited:

G 0001/21

Catchword:

1. Pursuant to Article 15a(1) RPBA 2021 the boards have a discretionary power to hold oral proceedings by videoconference without the consent of all parties. When exercising this discretion, the board must primarily assess whether the case is suitable to be dealt with by videoconference and/or whether there are reasons that require holding oral proceedings in person. Such reasons may be seen in the complexity of the case or a need to inspect models.
2. Holding oral proceedings by videoconference can meanwhile be often considered an equivalent alternative to oral proceedings in person because the boards and the parties have gained such extensive experience with videoconferencing and using the tools involved since G1/21. Holding oral proceedings by videoconference is hence no longer that disadvantageous as it was when the decision G1/21 was issued.



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Case Number: T 1158/20 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 22 November 2022

Appellant:

(Opponent)

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Representative:

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Respondent:

(Patent Proprietor)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 20 March 2020
rejecting the opposition filed against European
patent No. 2533655 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman

G. Pricolo

Members:

M. Geisenhofer

O. Loizou

Summary of Facts and Submissions

I. The appeal was filed by the opponent (appellant) against the decision of the opposition division to reject the opposition filed against European patent No. 2 533 655.

II. The opposition division held that the claimed subject-matter was novel and involved an inventive step over the following documents (Article 100(a) EPC in combination with Articles 54 and 56 EPC):

D1	US 4 691 848 A
D2	US 3 646 971 A
D3	US 3 498 022 A
D4	US 2006/0237336 A1
D5	US 2004/0231961 A1

It further held that the subject-matter of the claims as granted did not extend beyond the disclosure of the application as originally filed (Article 100(c) EPC).

III. Oral proceedings were held before the board.

(a) The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

(b) The respondent (patent proprietor) requested that the appeal be dismissed and that the patent be maintained as granted (main request) or, in the alternative, that the patent be maintained in amended form on the basis of the claims of auxiliary request M-Alpha replacement II filed during the oral proceedings, the amended

description also filed during the oral proceedings and the drawings of the patent specification.

- IV. The oral proceedings were held by videoconference with the consent of the respondent.

The appellant did not consent to holding the oral proceedings by videoconference and requested in-person oral proceedings.

- V. The **main request** (patent as granted) comprises an independent method claim 1 which reads as follows:

"A method of controlling mass flow in the form of multi layer stream of rod-shaped articles filling a channel positioned angularly relative to horizontal plane in which the flow of rod-shaped articles takes place by gravity or is forced and the path of mass flow is altered by means of swing or fragments slide shiftable movable elements being fragments of opposite side walls of the angularly positioned channel, characterized in that, the movable elements after shifting stop the mass flow in the angularly positioned channel, with the possibility of restoring the previous flow by shifting the movable elements to the previous position."

Further independent product claim 2 reads as follows:

"A device for controlling mass flow in the form of multi layer stream of rod-shaped articles filling a channel positioned angularly relative to horizontal plane, wherein the flow of rod-shaped articles takes place by gravity or is forced, with the said channel having side walls, first and second, each of which is provided with a movable element, characterised by

the second side wall having a narrowed part, and by a first movable element (5) constituting a fragment of the first side wall (2) is situated beneath an axis (6) parallel to the plane of side walls (2, 3) and positioned slightly under upper fixed part of the first side wall (2), and on the axis (6) is rotary mounted a plate (7) perpendicular to the side walls (2, 3) of the channel (1), whereas on the plate (7) is mounted a second movable element (10), constituting a fragment of the opposite second side wall (3), by means of an actuator (9) fixed to the plate (7) giving the second element (10) rotational or slide shiftable movement, whereas the second movable element (10) has the form of a cylindrical sector with an interior cut-out (11) corresponding to the width of the narrowed part (12) of the second side wall (3) of the channel (1), the narrowed part (12) entering the interior cut-out (11) while shifting the second movable element (10), whereas shifting the movable elements (5, 10) stops the mass flow in the channel (1)."

VI. Independent method claim 1 of the **auxiliary request M-Alpha replacement II** reads identically to claim 1 of the main request.

Independent product claim 2 differs from claim 2 of the main request in that the first feature of the characterising portion is amended to read:

"the second side wall having a narrowed part, and by a first movable element (5) constituting a fragment of the first side wall (2) is swivel-mounted on a pivot and situated beneath an axis (6) of the pivot parallel to the planes of side walls (2, 3) and positioned slightly under and just below upper fixed part of the first side wall (2)"

and in that the product of claim 2 further requires the following features:

"wherein the end of the first side wall (2) below the first movable element (5) forms a shutoff element (8) situated outside the first side wall (2) and the plate (7) is swivel-mounted on the pivot (6) permanently and together with the first movable element (5)."

VII. The appellant's arguments can be summarised as follows.

(a) Holding the oral proceedings in appeal proceedings by videoconference was not allowable.

(i) In line with G 1/21, parties could only be denied the option of in-person hearings (these representing the gold standard) for good reasons. G 1/21 allowed holding oral proceedings by videoconference in the absence of the parties' consent only during a general emergency, a situation that no longer prevailed due to the absence of travel restrictions, a negligible number of infections and very low incidences.

(ii) The opponent was represented by a representative located in Munich such that no long-distance travel was required. The representative of the patent proprietor could find a representative in Munich to act on his behalf.

(iii) The same board dealing with this case did not grant in another case (T 996/20) a

request for oral proceedings by videoconference in the absence of the consent of all parties.

- (iv) A videoconference was not suitable for the case since it was reasonable to assume that the respondent would file a plurality of further auxiliary requests, and this could not be done in an efficient manner by videoconference.
- (b) The opposition division based its decision on the wrong request. According to the overview filed during oral proceedings and taking into consideration that the ground for opposition under Article 100(c) EPC was admitted, the main request that should have been examined by the opposition division was the set of claims filed on 20 December 2019 with the title "Main-A". Nevertheless, the opposition division decided on the claims of the patent as granted.
- (c) The **main request** (granted patent) was amended such that it extended beyond the disclosure of the application as originally filed as follows.
- (i) Originally filed claim 1 defined a movable element in each of the four walls of the channel, whereas claim 1 as granted only referred to two movable elements in opposite side walls.
 - (ii) Granted claim 2 referred to the first movable element being situated "*beneath an axis*", this not identical in content to being "*swivel-mounted on a pivot*" as

required by originally filed claim 9 forming the basis for the amendments.

- (iii) The unique plane of the side walls (in plural) required in claim 2 as granted lacked disclosure in the originally filed application.
- (iv) The same applied to the "*upper fixed part of the side wall*". A suitable basis could therefore only be provided by the embodiment of Figures 1 - 4. However, these figures disclosed a shut-off element not defined in claim 2 as granted, this claim hence being based on an unallowable intermediate generalisation.

(d) **Auxiliary request** M-Alpha Replacement II (filed during oral proceedings) was amended such that it extended beyond the disclosure of the application as originally filed since the term "*fixed to the pivot*" used in granted claim 1 was no longer present in claim 1.

(e) The method of claim 1 was not novel over any of documents D1 - D5, these documents all showing a mass flow that was stopped and hence "*altered*" as meant in the patent in suit.

VIII. The respondent's arguments can be summarised as follows.

(a) The opposition division's decision was based on the correct request as confirmed by the patent proprietor at the beginning and clarified at the

end of the oral proceedings in opposition proceedings.

- (b) The amendments according to the **main request** did not extend beyond the disclosure of the application as originally filed.
 - (i) It was obvious from the description and figures as originally filed that the movable element of claim 1 must only be provided in the side walls of the channel.
 - (ii) A pivot provided an axis of rotation such that the terms referred to the same granted claim 2, hence no additional technical information was provided.
 - (iii) Whether it was a single plane representing the direction of the side walls (in plural) or two parallel planes was irrelevant since both opposite side walls were parallel as shown in the figures. It was thus sufficient to define that the axis/pivot was parallel to one single plane representing the direction of both side walls.
 - (iv) When a movable part of a wall beneath an axis/pivot was defined, this implicitly required a fixed part of the wall above the axis/pivot. Furthermore, originally filed claim 8 referred to the upper part of the first side wall when defining the first movable element with it being implicit that the non-movable upper part was a fixed part of the wall.

- (v) Whether the embodiment comprised further features not mentioned in claim 2 was not decisive since claim 2 was not based on the embodiment disclosed in the originally filed description but on a combination of originally filed claims 8 - 10. In any case, the shut-off element was not an essential feature of the inventive device for controlling mass flow of cigarettes.

- (c) The expression "swivel mounted on the pivot" was used in originally filed claim 9 such that claim 2 of **auxiliary request M-Alpha replacement II** was not unallowably amended.

- (d) None of documents D1 - D5 disclosed a method for altering the path of mass flow, the method of claim 1 hence being novel and inventive.

Reasons for the Decision

Format of the oral proceedings

1. The board decided of its own motion to hold the oral proceedings by videoconference pursuant to Article 15a(1) RPBA 2020.

1.1 Article 15a(1) RPBA 2020 reads as follows:

"The board may decide to hold oral proceedings by videoconference if the board considers it appropriate to do so, either upon request by a party or of its own motion."

1.2 From the expression "*if the board considers it appropriate*", it is evident that the board has discretion to decide whether to hold oral proceedings by videoconference.

The provision does not explicitly set criteria to be applied when exercising this discretionary power. Nor does this provision require the consent of the parties.

1.3 The board considered it appropriate to hold the oral proceedings by videoconference.

1.3.1 To arrive at this conclusion when exercising its discretion, the board considered the following circumstances.

1.3.2 Before deciding the form of the oral proceedings, the board informed the parties that it intended to hold the oral proceedings by videoconference in view of the increasing number of COVID-19 infections and because the case appeared suitable for being dealt with in a videoconference (see communication dated 20 October 2022). At the same time, the board asked the parties whether they had any reasons why the oral proceedings should not be held by videoconference and/or why a hearing in person was required.

The respondent explicitly gave its consent (see letter dated 24 October 2022).

The appellant disagreed. The reasons put forward by the appellant against holding oral proceedings by videoconference were, however, not convincing for the following reasons.

- (i) Contrary to the appellant's allegation, the COVID-19 pandemic was ongoing at the date of the oral proceedings before the board. On the day of the oral proceedings, there were still access restrictions in place for the premises of the boards in Haar (obligation to test prior to entering the premises, wearing face masks within the premises) that could hinder a party or a member of the board from attending oral proceedings in person.

Holding oral proceedings by videoconference avoided the risk that a participant of the oral proceedings might, on quite short notice before the oral proceedings (or even on the very same day), be barred from attending them.

The board agrees with the appellant's argument that general travel restrictions being applied within the host country or the countries of the parties would be a clear indication that oral proceedings should be held by videoconference. However, the absence of such travel restrictions is not a clear indication that oral proceedings must therefore be held in person. The board still has the discretion to decide on the form of the oral proceedings.

A further aspect to be taken into account was the risk for the parties and the members of the board of being infected, irrespective from whether the probability

of an infection was low or near to certainty.

The appellant argued that the absolute number of infections in the region of Munich but also the incidence of infections was low at the date of the oral proceedings.

The board takes the view that it is not possible to objectively define a threshold for the number of infections (or for any other parameter) below which it would be acceptable to expose the parties or the members of the board to the virus. The board is not empowered to force a participant to participate in oral proceedings in person against their will and contrary to their belief that they would be at risk of being infected during oral proceedings or while travelling to and from the board's premises.

- (ii) The appellant further argued based on the place of employment of the representatives.

The board notes that while the appellant's representative is located in Munich, the respondent's representative is located in London and hence needs to travel to Munich. Contrary to the appellant's suggestion, the board finds that it cannot be expected of the respondent's representative to find a colleague of the same firm located in Munich as a replacement just for the purpose of attending oral proceedings in

person while the representative located in London was available to participate in oral proceedings by videoconference.

- (iii) As regards the argument that the same board decided in another case (T 996/20) to hold the oral proceedings in person on 2 November 2022, this decision is a discretionary one based on the circumstances of each case. It should also be noted that the composition of the board was different.
- (iv) As regards the appellant's argument that due to the increased number of auxiliary requests filed in opposition and appeal proceedings it was likely that the respondent would file further auxiliary requests during oral proceedings and that this was not possible during a videoconference, the following is noted.

The numerous auxiliary requests already filed is not an indication that during oral proceedings a plurality of further auxiliary requests will be filed. But even if the patent proprietor were to submit further auxiliary requests, this can be accommodated by the practice of the boards by email filing, using a dedicated email address, during the videoconference.

In fact, the respondent filed further auxiliary requests during oral proceedings which were forwarded to the appellant. None

of the parties experienced problems using this procedure.

1.3.3 The current case required an examination of the objections raised regarding the disclosure of the application as originally filed, novelty and inventive step. Proceedings before the EPO are mainly in writing and are complemented where necessary by oral proceedings as an opportunity for a party to present and argue its case (see Reasons 40 of G 1/21). Since all pieces of relevant prior art were printed documents available on the databases of the EPO and no particular difficulties were apparent, such as particular complexities or, for example, models to be inspected during the oral proceedings, the board saw no reason why a videoconference was not suitable for dealing with this case.

1.4 The appellant also referred to decision G 1/21, in accordance with which in-person hearings should be the default option and parties can only be denied this option for good reasons.

1.4.1 As explained above, such good reasons derive from the circumstances of the case.

1.4.2 In decision G 1/21, points 47 to 50 of the Reasons, the Enlarged Board of Appeal stated:

"47. As for the reasons that could justify denying a party its wish to have the oral proceedings held in person, the Enlarged Board makes the following observations.

48. Firstly, there must be a suitable, even if not equivalent, alternative. As explained above, the

Enlarged Board holds the view that a videoconference normally provides the basic conditions for an opportunity to be heard and to present a case. If in a particular case a videoconference is not suitable, the oral proceedings will need to be held in person. In the case underlying the referral, the Board expressed the view that the reasons brought forward why a videoconference would not be suitable for this particular case were not convincing. There was thus, in the Board's assessment, a suitable alternative which could be used to bring the appeal case to a conclusion.

49. Secondly, there must also be circumstances specific to the case that justify the decision not to hold the oral proceedings in person. These circumstances should relate to limitations and impairments affecting the parties' ability to attend oral proceedings in person at the premises of the EPO. In the case of a pandemic, such circumstances could be general travel restrictions or disruptions of travel possibilities, quarantine obligations, access restrictions at the EPO premises, and other health-related measures aimed at preventing the spread of the disease. This decision should not be influenced by administrative issues such as the availability of conference rooms and interpretation facilities or intended efficiency gains. It is the EPO's responsibility to make available the necessary resources for facilitating the conduct of proceedings provided for in the EPC.

50. Thirdly, the decision whether good reasons justify a deviation from the preference of a party to hold the oral proceedings in person must be a discretionary decision of the board of appeal summoning them to the oral proceedings."

1.4.3 The first and third criteria are met, as explained above. In this case, a videoconference was suitable, and the decision is a discretionary one. As regards the circumstances of the case that justify the decision not to hold the oral proceedings in person, it suffices to say that access restrictions at the EPO premises in Haar were still in force, as explained above.

Hence, the board sees no conflict with G 1/21.

1.4.4 Irrespective of this, the board also considered whether in the current case holding oral proceedings by videoconference could be considered an equivalent alternative to holding oral proceedings in person, even having regard to G 1/21, in which in-person oral proceedings are stated to be the gold standard (see point 45 of the Reasons).

(a) Firstly, decision G 1/21 was taken after the Enlarged Board of Appeal limited the scope of the referral and reformulated the referred question
"Is the conduct of oral proceedings in the form of a videoconference compatible with the right to oral proceedings as enshrined in Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference?"

to:

"During a general emergency impairing the parties' possibilities to attend in-person oral proceedings at the EPO premises, is the conduct of oral proceedings before the boards of appeal in the form of a videoconference compatible with the EPC if not all of the parties have given their consent to the conduct of oral proceedings in the form of a videoconference?"

- (b) Furthermore, this decision was issued when the boards had had little experience with the software tools used for videoconferencing. As set out in G 1/21, point 46, *"at this point in time videoconferences do not provide the same level of communication possibilities as in-person oral proceedings"*.

Since then, the situation has changed, and the boards but also the parties have had extensive experience with videoconferences and the tools involved. The technical requirements were met on the board's side but also on the side of the representatives to allow for stable videoconferences with high-quality picture and sound such that holding oral proceedings by videoconference is no longer as far from the gold standard as it was when decision G 1/21 was taken.

On the contrary, in the board's view, nowadays an oral proceedings held by videoconference is often equivalent to a hearing in person. This applies in this case in which, given there were no particular complexities, no limitations on the interaction between the parties and the board and on the opportunity for the parties to argue their cases by videoconference were apparent when using the available technology.

Therefore, the board concludes that even in view of decision G 1/21, oral proceedings by videoconference was in this case not only suitable but also represented an equivalent alternative to in-person oral proceedings.

- 1.4.5 Finally, the board notes that at the outcome of the oral proceedings, the appellant's representative confirmed that he had no objections based on the right to be heard and that the videoconferencing technology functioned properly.

Basis for the opposition division's decision

2. The appellant alleged that the decision of the opposition division was based on the wrong request.
- 2.1 The opposition division considered the main request of the respondent to be the rejection of the opposition (see Reasons for the decision, section 7 and 11), i.e. the relevant set of claims were the claims as granted.
- 2.2 As confirmed by the minutes (see section 8), there was need for clarification regarding the requests due to a contradiction between the requests made orally by the respondent during oral proceedings and the overview of requests filed by the patent proprietor at the beginning of the oral proceedings ("Formal Statement of Requests").
- 2.3 However, the patent proprietor explicitly confirmed during the oral proceedings (see point 8.2 of the minutes) that its main request was the rejection of the opposition, and the Chairman of the opposition division further stated (see section 9 of the minutes) that it was clear for the opposition division that this was indeed the patent proprietor's main request.
- 2.4 The opposition division hence decided on the correct request.

Main request

Amendments (Article 123(2) EPC)

3. The opposition division held that the amendments to claim 1 of the main request complied with the requirements of Article 123(2) EPC.
- 3.1 Claim 1 of the main request is based on a combination of originally filed claims 8, 9 and 10.
- 3.2 Originally filed claim 9 refers back to claim 8 and recites a first movable element being swivel-mounted on a pivot (embodiment I shown in Figures 1 - 5 and described on pages 7 and 8). Originally filed claim 13 also refers back to claim 8 but recites a first movable element being slidably mounted (embodiment II shown in Figures 6 - 10 and described on page 8).

The set of originally filed claims also refers to three further embodiments. Originally filed claim 15 again refers to claim 8 and recites a first movable element comprising two plates being swivel-mounted with their ends on pivots (embodiment III shown in Figures 11 and 12 and described on pages 8 and 9). Originally filed claims 16 and 20 - similarly to claim 9 - recite a first movable element being swivel-mounted on a pivot (embodiments IV and V shown in Figures 13 - 17 and described on pages 9 and 10).

The application as originally filed hence only discloses two mutually excluding alternatives of how the first movable element is supported: either swivel-mounted on a pivot or slidably mounted.

3.3 Independent claim 2 as granted claims the first movable element without specifying how it is supported such that the claim also covers alternatives where the first element is neither swivel-mounted nor slidably mounted.

These alternatives, however, lack a basis in the application as originally filed, the amendment hence being unallowable.

3.4 The opposition division's decision must therefore be set aside. The main request does not comply with Article 123(2) EPC.

Auxiliary request M-Alpha replacement II

Admittance (Article 12 RPBA 2020)

4. This auxiliary request is based on auxiliary request M-Alpha filed with the respondent's reply to the statement of grounds of appeal.

4.1 With auxiliary request M-Alpha, the respondent intended to remedy an objection under Article 123(2) EPC against the main request (see respondent's reply dated 27 October 2020, page 54, section 7). The ground for opposition under Article 100(c) EPC was first raised and admitted during oral proceedings before the opposition division, the opponent arguing, however, in opposition proceedings, that a pivot is not the same as an axis (see Reasons 12.2.2 and 12.3.2).

The appellant's objection raised in appeal (missing information that the first movable element is swivel-mounted on a pivot) was first raised with the statement of grounds of appeal.

4.2 The filing of auxiliary request M-Alpha was therefore a timely reaction to the appellant's objection and hence was admitted by the board pursuant to Article 12(4) RPBA 2020.

4.3 Auxiliary request M-Alpha replacement II is an amended version of auxiliary request M-Alpha in which the obviously erroneous expression "*on a pivot situated beneath an axis of the pivot*" is replaced by "*on a pivot and situated beneath an axis of the pivot*".

Furthermore, the contradiction between the first movable element being swivel-mounted (claim 2) and slidably mounted (dependent claim 5 referring to claim 2) is remedied by omitting dependent claim 5.

4.4 The correction of an erroneous expression and the deletion of a dependent claim do not substantially change the respondent's case in appeal. Under these special circumstances, the board decided to take auxiliary request M-Alpha replacement II into account (Article 13(2) RPBA 2020).

Amendments (Article 123(2) EPC)

5. The appellant alleged that the expression "*the plate (7) is fixed on the pivot (6)*" used in claim 2 of the main request was replaced by "*the plate (7) is swivel-mounted on the pivot (6)*" in auxiliary request M-Alpha replacement II and that this replacement was an unallowable amendment, contrary to Article 123(2) EPC.

The expression "swivel-mounted" used in claim 2 of the current auxiliary request is, however, identically used in originally filed claim 9 and in the originally filed

description of the embodiment on page 7, fourth line after the heading "Embodiment I". The board hence does not see how the amendment adds subject-matter.

6. The appellant further alleged with regard to the main request that originally filed claim 1 defined a movable element in each of the four walls of the channel, whereas claim 1 only referred to two movable elements in opposite side walls, with this objection also applying to auxiliary request M-Alpha replacement II because it contained an identical claim 1.

- 6.1 The originally filed application does not describe in any passage that the channel comprises four walls, each of the walls being provided with a movable element. On the contrary, it is clear from originally filed claim 8 but also from the description of the "*Embodiment I*" starting on page 7 that the channel has a first side wall provided with a first movable element and a second side wall with a second movable element. Neither a rear nor front wall is mentioned.

The figures also only disclose two side walls defining the channel. The plate (7) is not the back wall of the channel (since the channel extends also above and below the plate) but connects the first and second movable elements (5, 10) to the pivot (6).

- 6.2 The originally filed application therefore does not disclose that the device has to be provided with a channel having four walls with four movable elements but only a channel having two side walls with two movable elements, one movable element being located in each of the side walls.

The appellant's objection is therefore not convincing.

7. The further objections under Article 123(2) EPC made by the appellant against the main request do not apply to auxiliary request M-Alpha Replacement II.

Claim 2 now refers to planes (in plural) of the side walls. The appellant's objection with regard to the expression "plane of the side walls" is hence moot.

Novelty and inventive step (Article 54 and 56 EPC) - claim 1

8. The appellant alleged that stopping the flow of cigarettes in the channel as carried out in any of documents D1 - D5 must be considered "altering the path of mass flow".

8.1 In the board's understanding, stopping the flow of cigarettes is equivalent to a mass flow being altered.

8.2 However, claim 1 requires the path of mass flow to be altered, i.e. the mass flow to be deviated such that the path changes. The board hence shares the opposition division's interpretation of feature [P5] as set out in the decision (see Reasons 14.1.3) and therefore also agrees with the opposition division's decision that the path of mass flow is not altered in any of documents D1 - D5.

8.3 The subject-matter of claim 1 is therefore novel over D1 - D5.

9. The appellant did not object to claim 1 with regard to inventive step.

Novelty and inventive step (Article 54 and 56 EPC) - claim 2

10. The appellant did not object to claim 2 of auxiliary request M-Alpha replacement II based on novelty or inventive step.
11. Further lines of argument were not raised by the appellant against the claims of auxiliary request M-Alpha replacement II.
12. An adapted description was filed during oral proceedings by the respondent. The amendments to the description were not objected to by the appellant.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:

Description:

Columns 1 to 5 filed during oral proceedings

Claims:

No. 1 to 3 of auxiliary request M-Alpha replacement II filed during oral proceedings.

Drawings:

1 to 10 of the patent specification

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated