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**Datasheet for the decision  
of 11 April 2024**

**Case Number:** T 2047/21 - 3.4.03

**Application Number:** 05808511.9

**Publication Number:** 1803110

**IPC:** G09F3/02

**Language of the proceedings:** EN

**Title of invention:**

TISSUE CONTAINER, AND METHOD FOR ARRANGING DATA ON SUCH A  
TISSUE CONTAINER

**Patent Proprietor:**

Synovation B.V.

**Opponents:**

dc-systeme Informatik GmbH / Sanowa  
Laborprodukte GmbH  
inveox GmbH

**Relevant legal provisions:**

EPC Art. 123(2)  
RPBA 2020 Art. 11, 12(4)

**Keyword:**

Remittal to the department of first instance - (no)  
Amendments - auxiliary requests 1b and 2b - undisclosed  
disclaimer (yes) - allowable (no)  
Auxiliary requests 3b, 4b, 5b, 6b - admitted (no)

**Decisions cited:**

G 0001/03, G 0002/10, G 0001/16



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 2047/21 - 3.4.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.03**  
**of 11 April 2024**

**Appellant:** Synovation B.V.  
(Patent Proprietor) 't Holland 31  
6921 GX Duiven (NL)

**Representative:** Brouwer, Hendrik Rogier  
Arnold & Siedsma  
Bezuidenhoutseweg 57  
2594 AC The Hague (NL)

**Respondent:** dc-systeme Informatik GmbH / Sanowa  
(Opponent 1) Laborprodukte GmbH  
Rügenstraße 11 / Gustav-Throm-Straße 6  
42579 Heiligenhaus / 69181 Leimen (DE)

**Representative:** Ullrich & Naumann PartG mbB  
Schneidmühlstrasse 21  
69115 Heidelberg (DE)

**Respondent:** inveox GmbH  
(Opponent 2) Lichtenbergstr. 8  
85748 Garching bei München (DE)

**Representative:** Stellbrink & Partner Patentanwälte mbB  
Widenmayerstrasse 10  
80538 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 1 October 2021  
revoking European patent No. 1803110 pursuant to  
Articles 101(2) and 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman**            T. Häusser  
**Members:**            M. Ley  
                              D. Prietzel-Funk

## Summary of Facts and Submissions

- I. The patent proprietor's appeal is against the opposition division's decision revoking the opposed European patent No. 1 803 110 pursuant to Articles 101(2) and 101(3) (b) EPC.
- II. The oppositions were based on the grounds for opposition under Article 100(b) EPC, Article 100(c) EPC and Article 100(a) EPC in combination with Articles 52(1), 54(1) and (2) and 56 EPC.
- III. The opposition division held that claim 1 as granted extended beyond the application as filed so that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent.

Moreover, the opposition division held *inter alia* that claim 1 according to auxiliary requests V and VI was not clear (Article 84 EPC).

- IV. The appellant requests that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of one of auxiliary requests 1b to 6b submitted with the statement setting out the grounds of appeal, or, in case the board finds one of these requests to fulfil the requirements of Articles 84 and 123(2) EPC, that the case be remitted to the opposition division for further prosecution.

Auxiliary request 1b is thus their main request.

- V. Respondents 1 requested that the appeal be dismissed or, in case the board holds that one of the requests fulfils the requirements of Articles 84 and 123(2) EPC,

that the case be remitted to the opposition division for further prosecution.

Respondent 2 requested that the appeal be dismissed or that the requests for remittal be refused. They also requested that auxiliary requests 3b to 6b not be admitted into the proceedings.

VI. Claim 1 according to auxiliary request 1b has the following wording:

Container (1, 10) for containing tissue, comprising

- at least one receiving space (4, 13) for tissue, the receiving space (4, 13) comprising a plurality of fluid-access recesses (6, 12) in the form of a grating, through which fluids from outside the container (1, 10) can come into contact with the tissue within the receiving space (4, 13) and leave the receiving space (4, 13), and
- at least one information surface (7, 14) for arranging data (8, 15), characterized by that at least the information surface (7, 14) is manufactured from a material configured to be coloured by electromagnetic radiation, wherein the material configured to be coloured by electromagnetic radiation is formed substantially from a plastic material, wherein the plastic material is mixed with a radiation-absorbing pigment, and wherein the information surface (7, 14) is provided with data (8, 15) arranged by selective colouring of the plastic material by electromagnetic radiation, wherein the material which can be coloured by radiation is not formed by a laminate comprising at least two layers having mutually contrasting colours, wherein an upper layer is selectively removed by electromagnetic radiation and

thus reveals the underlying layer in the colour contrasting with the upper layer.

Claim 1 according to auxiliary request 2b corresponds to claim 1 according to auxiliary request 1b, wherein the last feature "wherein an upper layer is selectively removed by electromagnetic radiation and thus reveals the underlying layer in the colour contrasting with the upper layer" is deleted.

Claim 1 according to auxiliary request 3b corresponds to claim 1 according to auxiliary request 1b with the last features amended as follows (additions underlined, deletions struck through):

"wherein the material which can be coloured by radiation is not formed by a laminate comprising ~~at least two~~ layers having mutually contrasting colours, wherein the an upper layer of the two layers having mutually contrasting colours is selectively removed by electromagnetic radiation and thus reveals the underlying layer in the colour contrasting with the upper layer."

Claim 1 according to auxiliary request 4b corresponds to claim 1 according to auxiliary request 1b with the last features amended as follows (additions underlined, deletions struck through):

"wherein the material ~~which can~~configured to be coloured by radiation is not formed by a laminate comprising at least two layers having mutually contrasting colours, wherein an upper layer is selectively removed by electromagnetic radiation and thus reveals the underlying layer in the colour contrasting with the upper layer."

Claim 1 according to auxiliary request 5b corresponds to claim 1 according to auxiliary request 2b with the last feature amended as follows (additions underlined, deletions struck through):

"wherein the material ~~which can~~configured to be coloured by electromagnetic radiation is not formed by a laminate comprising at least two layers having mutually contrasting colours."

Claim 1 according to auxiliary request 6b corresponds to claim 1 according to auxiliary request 1b with the last features amended as follows (additions underlined, deletions struck through):

"wherein the material ~~which can~~configured to be coloured by electromagnetic radiation is not formed by a laminate comprising ~~at least two~~ layers having mutually contrasting colours, wherein ~~the~~an upper layer of the two layers having mutually contrasting colours is selectively removed by electromagnetic radiation and thus reveals the underlying layer in the colour contrasting with the upper layer."

VII. The parties' arguments can be summarized as follows:

- The appellant argued that claim 1 of auxiliary request 1b included a "disclosed disclaimer". The subject-matter remaining in the claim after the introduction of the disclaimer is disclosed in Figure 1b and the corresponding parts of the description as originally filed.
- The respondents argued that claim 1 of auxiliary request 1b included an unallowable "undisclosed



disclaimer". The requirements of Article 123(2) EPC were not fulfilled. Auxiliary requests 3b, 4b, 5b and 6b were filed for the first time with the statement setting out the grounds of appeal. They did not correspond to requests on which the decision under appeal was based. They thus constituted amendments within the meaning of Article 12(4) RPBA and should not be admitted into the appeal proceedings.

### **Reasons for the Decision**

#### 1. The invention

The invention relates to a container for tissue comprising at least one receiving space for the tissue and at least one information surface for arranging data.

Tissue containers are frequently used to store, order and treat tissue material. Tissue is here understood to mean organic material isolated from, for instance, humans, animals or plants. The tissue can be intended for histological or pathological research. Because large quantities of tissue samples are generally examined and analysed in laboratories, it is necessary to be able to trace tissues back to the different sources from which they originate. For this purpose the containers in which the tissue is situated are provided with data from which the origin of the tissue can be traced. This can for example be a number linked to labels in a log book, a database, or a registration number of a patient. These numbers can be arranged manually by means of a pen. For the sake of legibility it is however recommended to arrange the data using a

printer, preferably coupled to an automated database in which the data are stored.

A drawback of arranging data on containers both manually and using a printer is that the arranging is relatively time-consuming. Moreover, printers or pens might provide a reduced performance. Another drawback of the known methods is that data written or printed with a printer can be erased due to wear. As a result, the origin of the tissue in the container can no longer be traced. This danger is even greater when the data arranged on the container are exposed to aggressive agents. This may be the case when the tissue is pre-treated for microscopic examination when the tissue and the container are exposed to chemicals.

The present invention has the object to provide a solution for the undesired erasing of data on containers for tissue and to make it possible to arrange data more rapidly on the containers.

2. Auxiliary request 1b - Article 123(2) EPC

Auxiliary request 1b corresponds to auxiliary request V on which the decision under appeal was based.

2.1 The appellant argued that claim 1 of auxiliary request 1b was based on original claims 1 and 2 and page 3, lines 9 to 33 and page 4, lines 1 to 21 of the description.

Regarding the mixture of plastic and radiation-absorbing pigments, a basis could be found on page 4, lines 6 and 7 in combination with page 3, lines 9 to 33 and claim 2. The teaching of pages 3 and 4 was not inconsistent. The introduction of the mixing did not

constitute an unallowable intermediate generalisation of the example shown in Figure 1b. The application made it clear that two components were present, i.e. the plastic material that was coloured and the pigments that were not coloured and allowed an accelerated colouring and thus the use of less radiation.

Page 4, lines 1 to 13 concerned a preferred embodiment with a radiation-absorbing pigment mixed with the material which can be coloured by electromagnetic radiation, i.e. a plastic material as disclosed on page 3, lines 9 to 33. Page 4, lines 15 to 21 concerned a preferred embodiment wherein the material which can be coloured by radiation was formed by a laminate comprising at least two layers having mutually contrasting colours. The upper layer was selectively removed by electromagnetic radiation and thus revealed the underlying layer in the colour contrasting with the upper layer.

The skilled person would understand that these preferred embodiments were not mutually exclusive or mere alternatives and that it is not excluded to combine them. Using its common general knowledge the skilled person would find suitable materials for such a combined embodiment.

Moreover, claim 8 as originally filed was directed to a laminate according to page 4, lines 15 to 21 and was dependent on claims 2 to 6 as originally filed, which were directed to a container with a mixture of plastic material and radiation absorbing pigments according to page 4, lines 1 to 13. Hence, the skilled person would understand from the structure of the claims as originally filed that said preferred two embodiments could be combined.

Finally, Figure 1b and page 7, line 25 to page 8, line 3 described a container made of plastic which could be coloured by electromagnetic radiation and which was mixed with a radiation-absorbing pigment. Figure 1c and page 8, lines 5 to 21 described a "similar" container with a laminate of a dark-coloured thin layer 26 and an underlying light-coloured plastic 27. By selectively removing dark-coloured layer 26 (e.g with a laser beam), the underlying light-coloured layer 27 became visible. From page 8, lines 17 to 19, the skilled person would understand that one of the two layers (e.g. layer 27) could be made of the plastic used in the example of Figure 1b.

Hence, for the appellant, the application as originally filed disclosed the subject-matter disclaimed so that the disclaimer in claim 1 of auxiliary request 1b was a "disclosed disclaimer".

The subject-matter remaining in the claim after the introduction of the disclaimer was disclosed in Figure 1b and page 7, line 25 to page 8, line 3. There was no indication that in this example a laminate according to feature (c) was present (see feature labelling under point 2.3.3 below). The board understands that the appellant argued that the requirements of decision G 2/10 for "disclosed disclaimers" were met.

In summary, according the appellant, the introduction of the disclaimer did not infringe Article 123(2) EPC.

2.2 Respondents 1 argued that the combination of features of the container disclaimed in claim 1 was not directly and unambiguously disclosed in the application as filed so that there was an undisclosed disclaimer.

Respondent 2 added that a container with a plastic material mixed with a radiation-absorbing pigment was not disclosed in the application as filed. Said feature could not be derived from page 4, lines 2 to 7 in combination with page 3, lines 9 to 33, because, according to the passage on page 4, the radiation-absorbing pigments were mixed with the material which can be coloured by electromagnetic radiation, while it was not specified that said material was made of or included plastic. Figure 1b and the corresponding description on page 7, line 25 to page 8, line 3 could not be considered as a basis, because other features from this embodiment were not included into claim 1. The respondent mentioned the reference bar 16 and the fact that the container was entirely made from plastic which can be coloured by electromagnetic radiation. The omission of these features constituted an unallowable intermediate generalisation.

As to the nature of the disclaimer, respondent 2 agreed with appellant that according to claim 1 the plastic was coloured, while claims 2, 6 and 11 disclosed that the pigments were coloured. However, the combination of the features of the disclaimed container could be not found in the application as originally filed. A skilled person would not combine the examples shown in Figures 1b and 1c, which were described on page 7, lines 25 to page 8, line 3 and page 8, lines 5 to 21, respectively. While Figure 1c showed an container "similar to the tissue containers of figures 1a) and 1b)" (see page 8, lines 5 and 6), the passage on page 8, lines 9 to 14 ("In contrast ...") made it clear that a alternative example was disclosed. No plastic material or pigments were mentioned in the context of Figure 1c.

As to the dependency of original claim 8 with original claims 2 to 5, respondent 2 argued that this would introduce combinations of features that were technically not reasonable.

2.3 The board is not convinced by the appellant's arguments.

2.3.1 Claim 1 defines the container by means of a disclaimer as it requires that the material which can be coloured by radiation is **not** formed by a laminate comprising at least two layers having mutually contrasting colours, wherein an upper layer is selectively removed by electromagnetic radiation and thus reveals the underlying layer in the colour contrasting with the upper layer.

It is disputed among the parties whether said disclaimer was a so-called "disclosed disclaimer" or a so-called "undisclosed disclaimer".

2.3.2 G 1/16, Reasons 14 to 16, provides definitions for the terms "undisclosed disclaimer" and "disclosed disclaimer". The term "undisclosed disclaimer" relates to the situation in which neither the disclaimer itself nor the subject-matter excluded by it have been disclosed in the application as filed. The term "disclosed disclaimer" relates to the situation in which the disclaimer itself might not have been disclosed in the application as filed but the subject-matter excluded by it has a basis in the application as filed, e.g. in an embodiment. Thus, undisclosed disclaimers and disclosed disclaimers can be distinguished according to whether the subject-matter on which the respective disclaimer is based is explicitly or implicitly, directly and unambiguously,

disclosed to the skilled person using common general knowledge, in the application as filed.

2.3.3 In the present case, the disclaimed subject-matter, i.e. the subject-matter excluded from the scope of claim 1 due to the disclaimer, is a container for containing tissue, comprising (feature labelling by the board):

**(a)** - at least one receiving space for tissue,

**(a1)** the receiving space comprising a plurality of fluid-access recesses in the form of a grating, through which fluids from outside the container can come into contact with the tissue within the receiving space and leave the receiving space, and

**(b)** - at least one information surface for arranging data,

characterised by that

**(b1)** at least the information surface is manufactured from a material configured to be coloured by electromagnetic radiation,

**(b2)** wherein the material configured to be coloured by electromagnetic radiation is formed substantially from a plastic material,

**(b3)** wherein the plastic material is mixed with a radiation-absorbing pigment, and

**(b4)** wherein the information surface is provided with data arranged by selective colouring of the plastic material by electromagnetic radiation,

**(c)** wherein the material which can be coloured by radiation is formed by a laminate comprising at least two layers having mutually contrasting colours,

**(c1)** wherein an upper layer is selectively removed by electromagnetic radiation and thus reveals the underlying layer in the colour contrasting with the upper layer.

If this subject-matter, i.e. the combination of features (a) to (c1), is explicitly or implicitly, directly and unambiguously, disclosed to the skilled person using common general knowledge, in the application as filed, then the disclaimer is a "disclosed disclaimer. If not, the disclaimer is an "undisclosed disclaimer".

- 2.3.4 First, the board notes that in the context of the present invention, a skilled person understands that "the material which can be coloured by electromagnetic radiation" (feature (c)) is "the material configured to be coloured by electromagnetic radiation" (features (b1) and (b2)).

It was not contested by the parties that the radiation-absorbing pigments are made of a material that is suitable to absorb the electromagnetic radiation mentioned in feature (b1).

- 2.3.5 The opposition division held that it was not clear whether the last feature of independent claim 1 of the then auxiliary request V ("wherein an upper layer is selectively removed ... the upper layer") was part of the disclaimer and thus unambiguously excluded by the disclaimer. The person skilled in the art would not understand the feature "upper layer" as the uppermost layer because it was not clear to which layer the feature "upper layer" belonged. It was not clear if the upper layer of the last feature of claim 1 was the upper layer of the laminate or of the at least two layers having mutually contrasting colours. Furthermore, it was also not clear whether the at least two layers having mutually contrasting colours were part of the disclaimed laminate or not. Hence, the



upper layer did not necessarily have to have a contrasting colour.

For the board, the skilled person would understand that the terms "upper layer" and "underlying layer" refer to the "at least two layers" of the laminate. They are thus a part of the laminate and of the disclaimed subject-matter, as also argued by the appellant. Moreover, the board takes the view that the disclaimer only requires that the underlying layer is positioned in the stack between the receiving space and the upper layer. The wording of the disclaimer does not exclude any additional layers between the underlying layer and the receiving space or between the upper layer and the underlying layer or on top of the upper layer. Insofar, the upper layer is not necessarily the uppermost layer of the laminate.

- 2.3.6 With respect to feature (b3), the board accepts that this feature as such is disclosed in the passages indicated by the appellant.

According to page 2, lines 18 to 22 of the application, the colouring results from chemical transformation under the influence of the electromagnetic radiation, wherein the electromagnetic radiation can for instance be infrared radiation (radiant heat), light, ultraviolet radiation or any other usable electromagnetic radiation. Suitable materials are commercially available.

From page 3, lines 9 to 33 of the description as filed the skilled person understands that such suitable materials are plastic materials, i.e. it is the plastic material that is subject to a colouring by chemical transformation induced e.g. by laser irradiation, see

also page 7, lines 13 to 16, "laser-colourable plastic", and Figure 1a.

According to page 4, lines 1 to 13, the material "which can be coloured by electromagnetic radiation", i.e. which is "configured to be coloured by electromagnetic radiation", can comprise a radiation-absorbing pigment, which can be applied to the surface of the information surface or mixed with the material which can be coloured by the electromagnetic radiation, see page 4, lines 5 to 7. Again, a skilled person would understand that two separate components are present, while a plastic material is not explicitly mentioned on page 4. However, in view of the disclosure of page 3, the skilled person would understand that a mixture of plastic and pigments is disclosed.

This is in agreement with the disclosure of Figure 1b. Page 7, line 25 to page 8, line 3 discloses a container manufactured entirely from a plastic which can be coloured by electromagnetic radiation, wherein said plastic is mixed with a radiation-absorbing pigment, whereby less radiation is necessary to cause sufficient colouring of the plastic. The board is not convinced that features of (a) to (b3) are inextricably linked to reference bar 16 shown in Figure 1c or to the fact that the container is entirely made of plastic, as argued by respondent 2, or e.g. to other features of the example of Figure 1b such as the releasable cover 11 with information surface 14. These features are structurally and functionally unrelated to the claimed features.

2.3.7 With respect to the combination of features (a) to (c1), however, the board concurs with the respondents.

First, none of the claims as originally filed mentions the selective removal of a layer, which reveals an underlying layer according to feature (c1), or mixing a plastic material with radiation-absorbing pigments according to feature (b3). This was not contested by the appellant. In particular, the container according to claim 8 as originally filed does not correspond to a container with features (a) to (c1).

Furthermore, the application as originally filed was directed to a container with an information surface manufactured from a material which can be coloured by electromagnetic radiation (i.e. which is configured to be coloured by electromagnetic radiation). The application disclosed two main embodiments, which differ in the way said colouring is performed.

A first embodiment (according to features (b1) to (b4)) concerns a material substantially formed by a plastic material, which is mixed with a radiation-absorbing material, see page 3, line 9, to page 4, line 13; page 6, line 29 to page 8, line 3; Figures 1a and 1b. As explained on page 2, lines 18 to 22 of the application, the colouring results from a chemical transformation of an irradiated layer, see feature (b4).

In an alternative second embodiment (according to features (c) and (c1)), a laminate is present wherein one layer of the laminate is selectively removed so as to reveal an underlying layer, wherein said two layers have mutually contrasting colours, see page 4, lines 15 to 21; page 8, lines 5 to 21; Figure 1c. In particular, page 8, lines 5 to 21 is silent about the composition of the dark-coloured layer 26 and the light-coloured material 27 and about the way these elements are coloured. In the context of this embodiment, the term

"coloured by electromagnetic radiation" does not refer to any chemical transformation of a (plastic) material, but rather to the selective removal of a dark-coloured layer 26 with a laser beam to render visible a light-coloured material 27. This is a clear difference with respect to the embodiments of Figures 1a and 1b.

The skilled person would understand that both alternatives provide a solution to the technical problem indicated in the application, namely to avoid the undesired erasing of data on containers for tissue when exposed e.g. to chemicals, and also make it possible to arrange data more rapidly on the containers (in comparison to manually writing or printing said data).

There is no reason for the skilled person to consider for one of the layers 26 or 27 used in the example of Figure 1c the claimed composition according to Figure 1b, which is used in the claimed container with feature (b3).

Moreover, claim 1 as originally filed being dependent on claims 1, 2 and 6 as originally filed does disclose the combination of of feature (a) to (c1). The board is not convinced that original claim 8 alone teaches the skilled person that the two main embodiments of the application can be combined, in particular since the embodiments use different techniques to provide the data on the information surface.

The application as originally filed does not disclose a container configured to be coloured by chemical transformation of a plastic material after exposure to electromagnetic radiation (e.g. irradiated from a laser) and configured to be coloured by selectively

removing an upper layer and exposing an underlying layer of a laminate. The skilled person using its general technical knowledge would not directly and unambiguously derive this type of container from the original application as a whole.

Hence, there is no indication in the application as originally filed for a container having features (a) to (b4) in combination with feature (c) alone or combination with features (c) and (c1).

- 2.3.8 It follows that the disclaimer does not disclaim subject-matter that is an embodiment of the invention according to the application as originally filed.

In view of these considerations, the board opines that the disclaimer of claim 1 according to auxiliary request 1b is a so-called "undisclosed disclaimer".

- 2.3.9 For the purpose of considering whether a claim amended by the introduction of an undisclosed disclaimer is allowable under Article 123(2) EPC, the disclaimer must fulfil one of the criteria set out in point 2.1 of the order of decision G 1/03, see the Headnote of G 1/16.

A disclaimer may be allowable in order to:

- restore novelty by delimiting a claim against state of the art under Article 54(3) and (4) EPC [1973];
- restore novelty by delimiting a claim against an accidental anticipation under Article 54(2) EPC; an anticipation is accidental if it is so unrelated to and remote from the claimed invention that the person skilled in the art would never have taken it into consideration when making the invention; and

- disclaim subject-matter which, under Articles 52 to 57 EPC, is excluded from patentability for non-technical reasons.

- 2.3.10 The board notes that said disclaimer was introduced for the first time in auxiliary request III filed with letter dated 10 December 2020 as a reply to the opposition division's preliminary opinion. Neither in said letter nor in the short letter dated 5 February 2021, the appellant gave any further explanations with respect to said disclaimer.

The allowability of the disclaimer under Article 123(2) EPC was briefly brought up by respondent 2 in its letter dated 28 January 2021 and by respondents 1 in their letter dated 1 February 2021.

During the opposition proceedings, the appellant apparently justified the disclaimer by the objections raised against granted claim 1 in view of document D2, see the minutes to oral proceedings before the opposition division, page 9, fourth paragraph. However, D2 is neither state of the art under Article 54(3) EPC nor an accidental anticipation under Article 54(2) EPC.

Furthermore, neither during the oral proceedings before the opposition division nor in its statement setting out the grounds of appeal and in its short reply to the board's communication pursuant to Article 15(1) RPBA nor during the oral proceedings before the board, the appellant provided any argument why the undisclosed disclaimed was allowable, i.e. why it fulfilled one of the criteria set out in point 2.1 of the order of decision G 1/03.

2.3.11 Hence, the board is not aware of any reasons why the undisclosed disclaimed in claim 1 according to auxiliary request 1b would fulfil any of the criteria set out in point 2.1 of the order of decision G 1/03.

Therefore, claim 1 of auxiliary request 1b does not meet the requirements of Article 123(2) EPC.

3. Auxiliary request 2b - Article 123(2) EPC

Auxiliary request 2b corresponds to auxiliary request VI on which the decision under appeal was based.

The parties did not present any additional arguments why the omission of feature (c1) would overcome the objection under Article 123(2) EPC raised against claim 1 of auxiliary request 1b. Hence, claim 1 according to auxiliary request 2b does not comply with Article 123(2) EPC, either.

4. Auxiliary requests 3b, 4b, 5b and 6b - admittance

As pointed out by respondent 2, auxiliary requests 3b, 4b, 5b and 6b do not correspond to any of the multiple requests on which the impugned decision was based. They constitute amendments within the meaning of Article 12(4) RPBA.

Any such amendment may be admitted only at the discretion of the board. The board shall exercise its discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy.

The board takes the view that the amendments made do not change in substance the disclaimed subject-matter. In particular, the board notes that there is no difference between a laminate comprising at least two layers (see auxiliary request 1b) and a laminate comprising two layers (see auxiliary requests 3b and 6b).

Hence, it is immediately apparent to the board that claim 1 of each of auxiliary requests 3b, 4b, 5b and 6b does not comply with Article 123(2) EPC for the reasons given for auxiliary request 1b. Their admission into the appeal proceedings would thus imply a mere repetition of the exchange of arguments presented by the parties in the discussion of auxiliary request 1b with the same conclusion that the requirements of Article 123(2) EPC are not met. This would be detrimental to the need for procedural economy.

The appellant did not provide any arguments supporting the admittance of the auxiliary requests.

Hence, the board did not admit auxiliary requests 3b, 4b, 5b and 6b into the appeal proceedings (Article 12(4) RPBA).

5. Request for remittal and conclusion

In view of the above, as no admissible and allowable set of claims is on file, the board is not aware of any special reason to remit the case to the opposition division (see Article 11 RPBA). Hence, the appeal must fail.



**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated