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Datasheet for the decision of 25 March 2025

Case Number: T 2178/22 - 3.3.04

Application Number: 11729247.4

Publication Number: 2575433

A23L7/25, A01H5/10, C12C1/18, IPC:

> C12C12/00, A23L2/38, A23L7/20, C12N9/02, C12N15/82, C12N9/10

Language of the proceedings: EN

Title of invention:

Energy Saving Brewing Method

Patent Proprietors:

Carlsberg Breweries A/S Heineken Supply Chain B.V.

Opponents:

Privatbrauerei Hirt Vertrieb GmbH / Braucommune Freistadt/ Privatbrauerei Zwettler karl Schwarz GmbH et al Arbeitsgemeinsschaft bäuerliche Landwirtschaft (AbL)/Arbeitsgem. der Umweltbe. der Gliedkirchen der Evangelischen Kirche in DE (AGU) et al

Headword:

Mutant Barley Plants/CARLSBERG

Relevant legal provisions:

EPC Art. 113(1), 111(1) EPC R. 103(1)(a), 111(2) RPBA 2020 Art. 11

Keyword:

Right to be heard - violation (yes)

Appeal decision - remittal to the department of first instance (yes)

Decisions cited:

T 0278/00, T 1411/07



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

Case Number: T 2178/22 - 3.3.04

DECISION of Technical Board of Appeal 3.3.04 of 25 March 2025

Appellant I: Privatbrauerei Hirt Vertrieb GmbH /

Braucommune Freistadt/ (Opponent 1)

Privatbrauerei Zwettler karl Schwarz GmbH et al

Hirt 1

9322 Micheldorf (AT)

Wagner, Leopold Representative:

Dr. Leopold Wagner

Rechtsanwaltsgesellschaft mbH.

Karfreitstraße 1

9020 Klagenfurt am Wörthersee (AT)

Appellant II: Arbeitsgemeinsschaft bäuerliche Landwirtschaft

(AbL)/Arbeitsgem. der Umweltbe. der Gliedkirchen (Opponent 2)

der Evangelischen Kirche in DE (AGU) et al

Heiligengeistr. 28 21335 Lüneburg (DE)

Representative: Then Christoph

> Frohschammerstr. 14 80807 München (DE)

Respondent: Carlsberg Breweries A/S

J.C. Jacobsens Gade 1 (Patent Proprietor 1)

1799 Copenhagen V (DK)

Respondent: Heineken Supply Chain B.V.

2de Weteringplantsoen 21 (Patent Proprietor 2)

1017 ZD Amsterdam (NL)

Representative: Høiberg P/S

Adelgade 12

1304 Copenhagen K (DK)

Decision under appeal:

Decision of the Opposition Division of the European Patent Office posted on 27 July 2022 rejecting the opposition filed against European patent No. 2575433 pursuant to Article 101(2) EPC.

Composition of the Board:

A. Bacchin
D. Luis Alves
L. Bühler

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Summary of Facts and Submissions

- I. European patent EP 2 575 433 was opposed by two parties (joint opponents 1 and 2). The opposition division decided to reject the oppositions. In its decision the opposition division considered and dismissed objections under Article 53(b) EPC, Article 54 EPC and Article 56 EPC. It also held that the ground for opposition under Article 100(b) EPC did not prejudice the maintenance of the patent as granted.
- II. Both joint opponents 1 and 2 (referred to in this decision as appellants I and II) filed appeals against this decision and submitted respective statements of grounds of appeal. The patent proprietors are respondents to these appeals.
- III. With the reply to the appeals, the respondents filed sets of claims of auxiliary requests 1 to 3.
- IV. With submissions of 22 January 2025, appellant II proposed questions to be referred to the Enlarged Board if the Board did not agree with its reasoning and its request for revocation of the patent (see point XVI. below).
- V. The Board issued a summons to oral proceedings and subsequently a communication pursuant to Article 15(1) RPBA. In that communication it informed the parties inter alia that in relation to claims 13 to 16 of the patent as granted, directed to beverages, it understood from appellant I's submissions on inventive step (statement of grounds of appeal, section 3) that it considered the technical effect of improved taste in beverages was not necessarily linked to the barley used

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as starting material, implying that the claimed barley based beverage was obtainable by other means, e.g. by using ordinary commercial barley (see point 25. of the Board's communication).

- VI. The Board further stated that it was in preliminary agreement with appellant I that the beverage as defined in the claims did not necessarily differ from commonly known barley based beverages in a manner that would impart a non-obvious technical effect and therefore appeared not to meet the requirements of Article 56 EPC (see point 26. of the Board's communication).
- VII. The respondents replied to the Board's communication by letter dated 24 February 2025. With this reply the respondents filed claim sets of auxiliary requests 4 to 7.
- VIII. Appellant II also submitted a reply to the Board's communication dated 12 March 2025.
- IX. Appellant I informed the board by letter dated 24 March 2025 that it would not attend the oral proceedings, although it did not request postponement of said proceedings.

Claims as granted

- X. The patent was granted with sixteen claims. Claims 1 to 6 are directed to a method for preparing a barley based beverage, claims 7 to 11 are directed to a barley plant, claim 12 is directed to a malt composition and claims 13 to 16 are directed to a barley based beverage.
- XI. Claim 1, 7 and 12 to 16 read as follows:

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"1. A method for preparing a barley based beverage with low levels of one or more off-flavours and/or precursors thereof,

wherein the method involves reduced energy input, the method comprising the steps of:

- (i) providing a barley plant or part thereof, wherein said barley plant comprises:
- (a) a first mutation that results in a total loss of functional lipoxygenase (LOX)-1; and
- (b) a second mutation resulting in a total loss of functional LOX-2; and
- (c) a third mutation resulting in a total loss of functional S-adenosylmethionine:methionine Smethyltransferase (MMT);
- (ii) optionally malting at least part of said barley, thereby obtaining malted barley;
- (iii) mashing said barley and/or malted barley and optionally additional adjuncts, thereby obtaining a wort;
- (iv) heating said wort optionally in the presence of additional ingredient(s), wherein at the most 4% of the wort volume is evaporated, thereby obtaining heated wort;
- (v) processing said heated wort into a beverage; thereby preparing the barley based beverage with low levels of one or more off-flavours and/or precursors thereof.
- 7. A barley plant, or a part thereof, wherein said barley plant comprises:
- a) a first mutation that results in a total loss of functional LOX-1, and
- b) a second mutation resulting in a total loss of functional LOX-2 and

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- c) a third mutation resulting in a total loss of functional MMT.
- 12. A malt composition comprising a processed barley plant, or a part thereof, wherein said barley plant is the barley plant according to any of claims 7 to 11.
- 13. A barley based beverage preparable from a barley plant, or a part thereof, according to any one of claims 7 to 11, wherein said beverage contains a level of dimethyl sulfide (DMS) below 10 ppb.
- 14. The beverage according to claim 13, wherein said beverage is prepared by the method according to anyone of claims 1 to 6.
- 15. The beverage according to any one of claims 13 to 14, wherein the beverage is beer.
- 16. The beverage according to any one of claims 13 to 15, wherein the beverage is a non-alcoholic malt beverage."
- XII. Oral proceedings were held as scheduled. At the end of the oral proceedings, the Chair announced the Board's decision.
- XIII. The submissions of appellant I made in writing, relevant to the decision are summarised as follows.

The patent as granted

Novelty (Article 54 EPC)

The claimed subject-matter was not new. The claims related to plants which had arisen as a result of a

random mutation of the genetic material and which were already common and widespread in barley cultivation.

Inventive step (Article 56 EPC)

The subject-matter of the claims of the granted patent was not inventive. The patent used a process that had been known and used for decades. The alleged inventive step lay in the provision and use of randomly mutated barley plants. However, the claimed process represented a normal malting and brewing process for pale malt. Conventional malting processes already included steps for the avoidance of off flavours. In older malting processes, lipoxygenase was only partially inactivated, leading to fast ageing of the beer due to the presence of ageing carbonyls. In modern brewing processes however, the lipoxygenase was almost completely suppressed by lower pH values (lactic acid). The claimed process and its outcome and the commonly known ones were therefore identical or the claimed process was at least obvious compared to these.

XIV. Appellant II's submissions on appeal are focused on the lack of patentability of the subject-matter of claim 7 under Articles 53(b) and 56 EPC. The submissions under Article 53(b) EPC are not reproduced here because they are not relevant to this decision.

Inventive step (Article 56 EPC)

The subject-matter of claims 7 to 16 lacked an inventive step. It solved the problem of improving the taste of a beverage by a non-technical approach (or rather, by an essentially biological approach). It had been common practice for centuries, in plant breeding to search for plants with desired characteristics from

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amongst the existing genetic diversity of the plant population. It was clear to the skilled person that changes or variants and mutations in the genetic material and their combinations were responsible for the stable inheritance of traits. Since about a hundred years, it had also been possible to increase genetic diversity in plant breeding through targeted measures, known as random mutagenesis, the results of which corresponded to genetic events that can also occur naturally.

Although technical aids are used in these mutagenesis processes, they only accelerated but did not change the result in terms of the desired characteristics. Rather, crossbreeding and selection were necessary to identify desired characteristics and stabilise them in the form of varieties. Once this had been achieved, the characteristics could be further disseminated and combined through further crossbreeding and selection within the species.

The claimed solution was achieved by the selection of desired phenotypes resolved, which then allowed the corresponding genotypes determined.

Using the above analysis it was apparent that the claimed subject-matter lacked an inventive step.

Extent of opposition/substantiation of the opposition/ substantiation of the appeal

Both oppositions were directed against the patent in its entirety and it was clear from the structure of the claims that the objections of lack of inventive step raised both in opposition and in opposition appeal proceedings affected all claims.

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XV. The submissions of the respondents made in writing and at the oral proceedings, relevant to the decision are summarised as follows.

The patent as granted - claims 13 to 16

Extent of opposition/substantiation of the opposition/ substantiation of the appeal

In the Board's communication pursuant to Article 15 (1) RPBA, the board referred to objections to inventive step of claims 13 to 16 raised by appellant I. However, this issue had not been addressed in appellant I's statement of grounds of appeal or indeed in its notice of opposition. Said opposition did not in fact extend to claims 13 to 16 and the decision under appeal did not concern claims 13 to 16. The same applied to the opposition and appeal of appellant II.

Admittedly, both opponents had requested revocation of the patent in its entirety, but neither had given any indication as to the grounds for revocation or arguments in support of this request in so far as it related to claims 13 to 16 and their subject-matter. A substantiation was provided only with respect to granted claims 1 and 7. In fact, in both the opposition proceedings and the appeal proceedings, no substantiation for any such objections had been provided by the opponents. The opposition division had not dealt with the issue of lack of substantiation of the opponents' attacks against the remaining claims either in the oral proceedings or in the decision under appeal.

If the objection of lack of inventive step against claims 13 to 16 were considered to come from

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appellant I, then it constituted an amendment to its case and should not be admitted. If the Board of it's own motion had made the objection of lack of inventive step against claims 13 to 16 in its communication under Article 15(1) RPBA, this was a new interpretation of appellant I's arguments, which justified remittal to the opposition division.

In summary, first and foremost, the oppositions filed by the two opponents were not substantiated with respect to objections against claims 13 to 16. The extent of opposition was thus limited to claims 1 to 12. Furthermore, the decision under appeal did not deal with claims 13 to 16.

Secondly, under Article 12(2) RPBA, the primary object of an appeal was to review the decision under appeal in a judicial manner. A party's case therefore had to be directed to the requests, facts, objections, arguments, and evidence on which the decision under appeal was based. Since there had been no objections, arguments, facts and evidence against the patentability of claims 13 to 16 in the opposition proceedings, such objections were not part of the appeal cases.

Remittal (Article 111(1) EPC/Article 11 RPBA)

In view of the fact that the Board in its communication under Article 15(1) RPBA raised an objection of lack of inventive step for the first time against the subject-matter of claims 13 to 16, and even though the Board in its communication had stated that it derived this objection from the statement of grounds of appellant I, the respondents were not in a position to reply to objections which had not been discussed at the oral proceedings before the opposition division and had not

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been dealt with in the decision under appeal. Nor would it be fair from a procedural perspective, because the issues to be dealt with amounted to a fresh case. To safeguard its position it might be necessary to develop new lines of argumentation and possibly to file further auxiliary requests. If the Board were to consider it necessary deal with objections not dealt with in the decision under appeal, then remittal of the case to the opposition division was requested in line with the provisions of Article 111 EPC and Article 11 RPBA.

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Requests of the parties

XVI. The appellants (opponents 1 and 2) both requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

Appellant II further requested that, if the Board did not agree with its reasoning and its request for revocation of the patent, then the following questions, as submitted in German, be referred to the Enlarged Board of Appeal:

- "(1) Kommt es bei der Auslegung der Verbote nach Art. 53b) auf die Regel 27 an und wie sind, vor dem historischen Hintergrund der Entstehung der Regel 27, die Anforderung an eine technische Erfindung zu verstehen?
- (2) Kommt es bei der Auslegung der Verbote nach Art. 53b) auf die Regel 27b) an und wie sind, vor dem historischen Hintergrund der Entstehung der Regel 27, die Anforderungen an die Ausführung der Erfindung im Hinblick auf die Übertragbarkeit von patentierten Merkmalen zu verstehen?

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(3) Kommt es bei der Auslegung der Verbote nach Art. 53b) auf die maβgeblichen Unterschiede zwischen herkömmlichen Züchtungsverfahren und gentechnischen Verfahren an und wie sind diese Unterschiede zu verstehen?"

XVII. The respondents (patent proprietors) requested that

- the appeal be dismissed and that the patent be maintained as granted;
- alternatively, that the patent be maintained in amended form based on the claims of one of auxiliary requests 1 to 3, submitted with the reply to the statements of grounds of appeal;
- alternatively, if these requests could not be allowed, that the appeal be restricted to the extent of the opposition and to a judicial review of the decision under appeal and that any fresh case identified in points 25 and 26 of the communication under Article 15(1) RPBA, concerning the question of inventive step of claims 13 to 16 was not admitted;
- should the Board decide to allow the discussion of inventive step of claims 13 to 16, that the case be remitted to the opposition division for a discussion of the inventive step of claims 13 to 16;
- if the Board found that claims 13 to 16 of the main request lacked an inventive step, the respondents requested maintenance of the patent based on the claims of one of auxiliary requests 4 to 7, filed with the letter dated 24 February 2025.

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Reasons for the Decision

1. Appellant I informed the Board that it would not attend the oral proceedings and that it would not request postponement. Appellant II and the respondents attended oral proceedings before the board. The oral proceedings were conducted in the absence of appellant I, which is treated as relying on its written case (Rule 115(3) EPC and Article 15(3) RPBA).

The right to be heard (Article 113(1) EPC)

2. The Board has of its own motion, examined the facts of the case in relation to whether or not Article 113 EPC has been complied with in the proceedings before the opposition division (Article 114(1) EPC).

Requirement for a reasoned decision (Rule 111(2) EPC)

- According to the established case law of the Boards of Appeal, the requirement for a reasoned decision pursuant to Rule 111(2) EPC implies that a decision open to appeal must, in a logical way, state the considerations which justify the finding made.

 Furthermore, the conclusions drawn from the facts and evidence must be clearly stated. Therefore, the decision must give a detailed assessment of all relevant facts and evidence, as well as of all relevant considerations relating to the legal and factual circumstances of the case (see T 278/00, OJ 2003, 546, reasons 2 to 5).
- 4. The requirement to state the reasons for the decision is intended to ensure fairness between the organs issuing the decision and the parties to the proceedings such that it gives the parties, and in the case of

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appeal proceedings also the Board of Appeal, the opportunity to examine whether the decision taken is justified or not in view of the relevant considerations, facts and evidence (see T 1411/07, reasons 2 to 4).

5. In the present case, where a decision is taken to dismiss the oppositions, it is necessary for the opposition division to provide reasoning on all grounds for opposition raised by the opponents and in relation to all claims and claimed subject-matter objected to. In case of a dispute as to the substantiation of (some of) the objections raised by the opponents and where the opposition division considers that these objections were not substantiated, contrary to its provisional opinion provided in preparation of the oral proceedings (see point 10 below), it is necessary that the parties be heard on this issue and that the relevant considerations are set out in the decision.

The submissions of the appellants in their notices of opposition

- 6. In its notice of opposition, opponent 1-appellant I requested the revocation of the patent in its entirety, referring to claims 1 to 7 and 12 to 16, in particular (see section I., page 3). It raised objections of lack of novelty against the subject-matter of claims 1 to 7 and 8 to 12 under Article 54 EPC (section II, 1)). In section II, 2), it raised objections of lack of inventive step against all granted claims, in German "den angemeldeten Patentansprüchen".
- 7. In its notice of opposition, opponent 2-appellant II requested the revocation of the patent in its entirety. It objected to the "patent" as not meeting the

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requirements of either Article 53(b) EPC or Article 56 EPC (see page 3, points 1 and 2).

- 8. Opponent 2-appellant II set out its arguments as to why the requirements of Article 53(b) EPC were not met, referring to claim 7 in particular. It considered that the reasons given for claim 7 extended to "claims 7-16, as well as claim 16 [sic]" (see page 4, last two lines).
- 9. In its submissions on inventive step opponent 2-appellant II did not refer to any particular claims but referred to the patent as a whole (see page 5).

The opposition division's preliminary opinions

10. During the opposition proceedings, the opposition division issued two communications expressing its provisional opinion on the opposition case, in preparation of the oral proceedings. In paragraph 5.2 of the first communication (dated 3 August 2018), identical to paragraph 10.1 of the second communication (dated 8 July 2021), the opposition division referred to opponent 2-appellant II's arguments of lack of inventive step of the subject matter of claims 1 to 16. In the second communication, the opposition division took note of the patent proprietors-respondents' objection of lack of substantiation of the ground for opposition raised under Article 56 EPC for claims 1 to 16 (paragraph 10.2) and gave the preliminary opinion that the ground for opposition under this provision was sufficiently substantiated, such as to allow the proprietors-respondents to understand and address the relevant objection (paragraph 10.3.1).

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11. Furthermore, in paragraph 3.2 of the first communication, identical to paragraph 8.2 of the second communication, the opposition division noted opponent 2-appellant II's objection under Article 53(b) EPC against the subject-matter of the claims 7 to 16.

The decision under appeal

- 12. In the decision under appeal, the opposition division dealt with and dismissed objections under Article 53(b), first sentence, second half EPC, in relation to the subject-matter of the claims 7 to 16 of the granted patent (see point 13.4).
- 12.1 It further dismissed objections under Article 53(b), first sentence, first half EPC, in relation to the subject-matter of the claims 7 to 11 of the granted patent (see point 14).
- 12.2 In relation to Article 54(3) EPC, the opposition division held that the subject-matter of claims 1 to 12 was new (see point 19.2.1). In relation to Article 56 EPC it held that the subject-matter of claim 7 was not obvious in light of the cited prior art art (see point 20, penultimate paragraph). It observed that claim 1 relies on a method wherein plants with the same technical features as claim 7 are employed (Id., last two lines).
- 13. Finally, in relation to the ground for opposition under 100(b) EPC, which was introduced by the opposition division itself, it held that "the opposed patent (\$0308-0326) provides sufficient information for the person skilled in the art in order to work the claimed subject matter over the full breadth of the claims without any undue burden because the examples provide

means for screening barely plants allowing identification of plants with the correct genotype" (see point 22).

- 14. Opponent 1-appellant I had objected to the patent as a whole and in particular to claims 1 to 7 and 12 to 16, inter alia under Article 56 EPC as lacking an inventive step. Opponent 2-appellant II had objected to the patent as a whole, i.e. all claims, under Article 56 EPC as lacking an inventive step. The decision under appeal however, only gives explicit reasons about why the subject-matter of claim 7 was considered to involve an inventive step (see page 10, second full paragraph), although the opposition division's communications sent with the summons to oral proceedings and setting out its preliminary opinions, did refer to all claims (see paragraph 10.1 of the opposition division's communication) and even provisionally dismissed the proprietors-respondents' arguments, stating that these objections were not substantiated (see point 10. above). Neither the minutes of the oral proceedings nor the decision under appeal however further address this matter. Under these circumstances, rejecting the oppositions without taking a decision on still pending objections contravenes the requirements of Article 111(2) EPC (see point 5. above).
- The finding of lack of inventive step for the subjectmatter of claim 7 can reasonably be considered to
 extend to that of dependent claims 8 to 11, but not to
 that of remaining independent claims 1, 12 and 13 or to
 the claims dependent thereon, because they are directed
 to different subject-matter. In the decision under
 appeal there is no complete construction of claim 1 and
 dependent claims or of claim 13 and dependent claims.
 If this had been done, the opposition division would

have realised that the barley plant of claim 7 does not necessarily impart a technical effect on the process of claim 1 or on the beverage of claim 13. It is therefore apparent that at least the objection of lack of inventive step made by opponent 1-appellant I (repeated in its statement of grounds of appeal, see section XIII.) cannot be dealt with by relying solely on an assessment of inventive step for the barley plant of claim 7.

In more detail, in relation to claim 1, directed to a 16. method for preparing a barley based beverage with low levels of one or more off-flavours and/or precursors thereof, in the section of the decision under appeal dealing with Article 56 EPC, the opposition division observed "that claim 1 relies on a method wherein plants with the same technical features as claim 7 are employed" (see point 20, last two lines). The opposition division however did not provide its construction of claim 1 and it is therefore not known whether it considered that the feature "involves reduced energy input" recited in the claim, as representing an inevitable result of carrying out steps (i) to (v). Although the decision refers to tables 2, 3, 5 to 8 and Fig. 7 of the patent as showing "that the triple-null mutant has less off-flavours and allows to use a more energy-saving brewing method without an increased risk of off-flavours [and that]. Also the beer foam (a quality parameter in beer brewing) formation is improved" (see point 20), it is not apparent whether it construed claim 1 to the effect that the recited steps (i) to (v) invariably result in a barley based beverage with low levels of one or more (undefined) off-flavours and/or (undefined) precursors. Indeed, in relation to the subject-matter of claim 7 it formulated the problem to be solved as "providing a

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barley plant with improved use in brewing". It is noted that brewing is not a compulsory feature of claim 1 because step (ii) malting is optional and there is no mandatory step of fermentation. Moreover, since the method fails to limit the ingredients of the beverage to barley grains or specify their quantity or proportion, the board has doubts about the opposition division's implied conclusion that the properties of barley grains used necessarily impart a technical effect on the method of claim 1.

- 17. In the absence of a finding that the opponents-appellants' objections against the subject-matter of claims 1 to 6 and 12 to 16 were either unsubstantiated, as alleged by the respondents already in opposition, or not convincing, the decision is not sufficiently reasoned under Rule 111(2) EPC with respect to the objection of lack of inventive step against the subject-matter of all claims except claims 7 to 11 (see point 5. above).
- 18. For this reason there has been a violation of both opponents-appellants' right to be heard under Article 113(1) EPC.
- 19. In any case, the decision under appeal reaches no explicit conclusion on the inventive step of the subject-matter of claim 1, which is a further reason for considering the decision under appeal insufficiently reasoned. For this additional reason there has been a violation of both opponents-appellants' right to be heard under Article 113(1) EPC.

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Referral of questions to the Enlarged Board of Appeal (Article 112(1)(a) EPC)

- 20. Opponent 2-appellant II conditionally requested that if the Board did not agree with its reasoning and its request for revocation of the patent, certain questions on points of law of fundamental importance be referred to the Enlarged Board of Appeal (see section XVI. above).
- 21. In view of the fact that the Board has decided to remit the case to the opposition division for further prosecution, the condition for referral of questions has not been met and there was no need to decide on this request.

Remittal (Article 111(1) EPC/Article 11 RPBA)

Pursuant to Article 111(1) EPC, a board of appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution. Special reasons for remittal are present in case of fundamental deficiencies, which are apparent in the proceedings before the department which issued the appealed decision (Article 11 RPBA). The violations of the appellants' right to be heard because the decision under appeal was not sufficiently reasoned, in the present case constitute fundamental deficiencies under Article 11 RPBA that justify the remittal of the case to the opposition division, to rectify said deficiencies.

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Reimbursement of the appeal fee (Rule 103(1)(a) EPC)

23. Under Rule 103(1)(a) EPC, the appeal fee is to be reimbursed in full where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation. In the present case the decision under appeal is to be set aside because the procedural violations identified are "substantial" in the sense that there is a causal link between the substantial procedural violation and the necessity of filing an appeal against the opposition division's decision. Despite the opposition division's dismissal of the objections with regard to claim 7 and dependent claims, the oppositions could not have been rejected without a decision on the still pending objections concerning claims 13 to 16, either as to their substantiation or as to substance. In view of the foregoing, the appeal fees are reimbursed.

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 for further prosecution.

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The Registrar:

The Chairwoman:



I. Aperribay

M. Pregetter

Decision electronically authenticated