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**Datasheet for the decision
of 9 September 2024**

Case Number: T 0104/23 - 3.2.04

Application Number: 16154477.0

Publication Number: 3033945

IPC: A22C21/00

Language of the proceedings: EN

Title of invention:
SLAUGHTERING INSTALLATION

Patent Proprietor:
Marel Poultry B.V.

Opponent:
BAADER Food Systems Denmark A/S

Headword:

Relevant legal provisions:
EPC Art. 54(2), 56
EPC R. 103(1)(a), 103(4)(c)

Keyword:

Substantial procedural violation - reimbursement of appeal fee
(no)

Prior use - public (yes)

Novelty - main request - (no)

Inventive step - auxiliary request 1 and 2 - (no)

Reimbursement of appeal fee - request for oral proceedings
withdrawn (yes)

Decisions cited:

T 0517/17, T 0073/17, T 0191/17

Catchword:



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Case Number: T 0104/23 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 9 September 2024

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 November 2022 concerning maintenance of the
European Patent No. 3033945 in amended form.**

Composition of the Board:

Chairman A. Pieracci
Members: G. Martin Gonzalez
C. Heath
J. Wright
T. Bokor

Summary of Facts and Submissions

- I. The appeals were filed by the proprietor and the opponent against the interlocutory decision of the opposition division to maintain the patent in amended form.

- II. The division considered prior use LINCO Benelux (sale of 27 May 2009) to be sufficiently proven, inter alia on the basis of the testimony of M. Kjeldsen (E1), who had been heard by a different opposition division during the proceedings on the grandparent patent EP 2 555 628 B1. The division then found that auxiliary request 3 before it (main request in appeal) was not novel with respect to the proved prior use, and that claim 1 of auxiliary request 4 (upheld claims; auxiliary request 1 in appeal) involved an inventive step.

- III. In preparation for oral proceedings the Board issued a communication setting out its provisional opinion on the relevant issues.

In a letter of 26 July 2024, the appellant proprietor informed the Board that they would not attend the oral proceedings.

The Board subsequently cancelled the scheduled oral proceedings.

- IV. The appellant proprietor requests that the decision under appeal be set aside and that the patent be maintained according to the main request, or according to auxiliary request 1 or 2, all requests filed or refiled with the statement of grounds, where the main

request corresponds to auxiliary request 3 of the appealed decision and auxiliary request 1 corresponds to the claims upheld by the opposition division (auxiliary request 4 in the impugned decision) and thus to the dismissal of the opponent's appeal. Auxiliary request 3 corresponds to auxiliary request 5 of the opposition proceedings.

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

V. The independent claim 1 of the requests relevant to this appeal read as follows:

(a) Main request

"Slaughtering installation (30) for processing poultry, which installation is adapted to be used in combination with a conveying assembly (40) for conveying poultry which is suspended from their legs in a transport direction (T), the slaughtering installation comprising a killing device (50) with poultry positioning means for positioning the neck region of the poultry suspended from the conveying assembly, the killing device further comprising cutting means for cutting into the neck and thereby opening at least one blood vessel in the neck region of the poultry, characterized in that the poultry positioning means comprise a wing guide plate (51) with which the wing (45b) comes into contact when entering the killing device (50), which tilted wing guide plate extends essentially parallel to the transport direction (T) and is tilted about 10-70° from the vertical plane, in the direction of the back of the suspended poultry."

(b) Auxiliary request 1

Claim 1 as in the main request with the following added features (emphasis by the Board to indicate added text):

"... plane, in the direction of the back of the suspended poultry,
wherein the poultry positioning means further comprise neck guides (53, 54), wherein the neck guide is a back neck guide (54) along which the back side of the neck of the poultry is guided, and a breast neck guide (53) along which the breast side of the neck of the poultry is guided,
wherein the back neck guide and the breast neck guide are embodied as two neck guide plates, extending in line with each other at either side of the plane between the neck guides, wherein:
- separate wing guide plates (51) and neck guide plates (54) are provided,
or
- the wing guide plate (51) and neck guide plate (54) are physically the same, and wherein their function is dependent on the position seen in transport direction
T."

(c) Auxiliary request 2

Claim 1 as in auxiliary request 1 in which the alternative that:

"separate wing guide plates (51) and neck guides plates (54) are provided"

has been deleted.

VI. In the present decision, reference is made to the following documents:

(E1) Minutes of the taking of evidence from the hearing of M. Kjeldsen on 16 November 2017 during oral proceedings in the opposition proceedings of grandparent patent EP 2 555 628 B1

(D4) Brochure "LINCO Killing Machine II D"

(D4a) Document D4 with annotations

(D6) Construction drawing of LINCO killing machine

(D26) Construction drawing of the guide rails of the LINCO "Killing Machine 2D Electric"

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

The admission and reliance on the witness testimony of Mr. Poul Kjeldsen (E1) constituted a substantial procedural violation, justifying the reimbursement of the appeal fee under Rule 103(1)(a) EPC. Moreover, the testimony is not credible, and thus the alleged public prior use LINCO Benelux, sale of 27 May 2009, including evidence D4, was not sufficiently proven. As a result, this evidence did not constitute prior art in the sense of Article 54(2) EPC, and the division's conclusion that claim 1 of the main request lacked novelty over the prior use was incorrect. Claim 1 of all requests involved an inventive step over the cited prior art.

VIII. The appellant opponent's arguments can be summarised as follows:

The opposition division did not commit any procedural violations in admitting and relying on witness testimony E1. Its conclusion that the public prior use,

the sale of a killing machine to LINCO Benelux on 27 May 2009, including evidence D4, constitutes prior art under Article 54(2) EPC, based in part on witness testimony E1, was correct. Claim 1 of the main request lacked novelty over the cited prior use, while claim 1 of auxiliary requests 1 and 2 lacked inventive step, starting from the same prior use.

Reasons for the Decision

1. The appeals are admissible.

2. Background

The patent relates to a slaughtering installation for processing poultry adapted to be used in combination with a conveying assembly, see para 0001 of the patent specification. In order to open the blood vessels in the neck area of the stunned poultry, the neck is adequately positioned by appropriate guiding means. Neck guides are used for this purpose. The wings are also guided by means of wing guides, at least in the inlet area of such slaughtering systems, see paras 0018, 0025-0026 and 0033.

3. Substantial procedural violation, request for reimbursement

3.1 In their grounds, the appellant proprietor argues that the admission and reliance on the witness testimony of Mr. Poul Kjeldsen from the grandparent application (E1) constitutes a substantial procedural violation justifying reimbursement of the appeal fee, Rule 103(1) (a) EPC.

3.2 In its communication in preparation for the oral proceedings, see section 5 of the communication, the Board gave its preliminary opinion on this issue as follows:

"5.2 In principle, a procedural violation must be procedural in nature, see the Case Law of the Boards of Appeal (CLB), 10th edition, 2022, V.A.11.6.1.

In this regard, the proprietor submits that the opponent spoke with the witness just before the witness was heard. They further point out that the witness's replies were contradictory, the witness had no recollection of the alleged prior use sales, and the witness provided unsolicited information ("original copy of the invoice" and presence of IBAN numbers on an invoice), which the proprietor believes indicates undue influence by the opponent. The witness statement, so the argument goes, should not have been taken into account for being vitiated. By ignoring the instructions of the opposition division to refrain from contact with the witness prior to the witness hearing, the opponent broke procedural safeguards designed to ensure fair proceedings for all parties. Relying on it would constitute a substantial procedural violation.

5.3 Firstly, it is not apparent that either the opponent or the witness disregarded any instruction from the Opposition Division. According to the minutes of this hearing (9 February 2018), the Chairman only instructed the witness to leave the room, there is no mention of a prohibition to speak to the witness, see point 2.3 of the minutes. It is also not clear why the Chairman would have given such an instruction to the parties or to the witness. The Guidelines do not seem to contain such an instruction either, the only rule is

that witnesses should be heard separately, but only as a general rule allowing for exceptions (see Guidelines for Examination (version of November 2017), Chapters E.IV.1.6 (Hearing of parties, witnesses and experts) and E.IV.1.6.4 (Separate hearings)).

5.4 Additionally, in the Board's view, a procedural violation must first and foremost manifest itself in a defective act of the deciding body. As the disregarding of any instructions issued by the opposition division cannot be attributed to the division itself, the defective act can only lie in, either, for the division hearing the witness at all, or using the witness statement as a basis of the decision. The Board is not aware of any procedural rule that would require a division or a Board to reject evidence out of hand because instructions were not properly complied with. Neither does there seem to exist a basis for a bar to using a witness statement under these circumstances. The correct approach in these circumstances appears to be to consider the witness's disregard of the division's instructions in the evaluation of evidence, namely the witness's credibility. After all, the principle of free evaluation of evidence is one of the foremost prerogatives of the deciding body. A division that, mindful of a witness's credibility, instructs the latter not to talk to a certain party during proceedings, is no less within its discretionary powers than it is when evaluating the witness's testimony in the light of all relevant circumstances, including the witness's conduct.

Contact between the opponent and witness during an interruption of oral proceedings may potentially raise doubts about the witness's impartiality and therefore diminish the probative value of their testimony.

However, these are merely factors to consider when assessing the witness's credibility, especially considering the - undisputed - link between the witness and the opponent. As there are no indications of a manifestly wrong evaluation of evidence, the Board is unable to see a substantial violation in this regard.

5.5 It would also appear as manifestly unrealistic to expect from parties to wholly refrain from contacting witnesses before their hearing, in particular to refrain from consulting them before a hearing. It is in the overall interest of the procedure that the witness statement is directed at those facts that are relevant to the case, and it is only natural that the attorney will have to talk to a witness before offering him or her as witness in the proceedings. Otherwise it would be plainly impossible for the attorney to select the appropriate persons, possibly out of a larger circle of people, very often all the employees of the party.

5.6 Otherwise, the Board does not find evidence that the division did not observe the proprietor's right to be heard or any other procedural right when considering their request to disregard E1. The right to be heard under Article 113(1) EPC requires that all involved parties have the opportunity to present comments on relevant facts and considerations pertinent to the decision, and to have those comments taken into account. The division indeed followed these procedural rules correctly, as demonstrated in sections II.4.1-II.4.4 and II.4.6-II.4.10 of the contested decision, where all issues raised by the proprietor were considered and addressed.

5.7 The Board therefore sees here no procedural violation. Reimbursement of the appeal fees is therefore not justified."

3.3 The appellant proprietor refrained from further comment on this issue. In the absence of any additional submissions from the appellant proprietor, after having reconsidered all the aspects of the case, the Board sees no reason to change its assessment of the same. It thus concludes that the opposition division's admission and reliance on the witness testimony of Mr. Poul Kjeldsen (E1) does not constitute a substantial procedural violation, and therefore, reimbursement of the appeal fee under Rule 103(1) (a) EPC is not justified.

4. Prior use - Issues of proof

4.1 The opposition division held, based on the witness testimony E1 together with evidence D4, D6 and D26, that the sale and delivery of the "LINCO Killing Machine Model IID" on 27 May 2009 (indicated as public prior use LINCO Benelux, Linco Benelux B.V., Linco Benelux or LINCO) constitutes state of the art (section 8 of the appealed decision). The appellant patent proprietor, in their grounds of appeal, challenges this finding of the division.

4.2 As noted by the Board in its communication (see section 6 of the Board's communication):

"6.1 The Board sees no reason to overturn the opposition division's conclusions regarding the admission and reliance on E1, as well as its findings based on E1 that the public prior use "Linco Benelux"

of 27 May 2009 (with D4, D6 and D26) constitutes state of the art (section 8 of the appealed decision).

6.2 The Board sees no reason to further consider the proprietor's arguments against this findings in sections 2.1-2.3 of the statement of grounds, Article 12(5) RPBA. The appellant proprietor reiterates the same objections to admissibility of E1 and to the witness credibility as in first instance, namely the arguments that the opponent spoke with the witness just before the witness hearing, also pointing at the contradictions, lack of recollection and the unsolicited answers in the testimony. The Board set out above why the division was not prevented from taking into account E1 as a piece of evidence. Concerning the other issues, which touch on the evidentiary weight of E1 in view of its content, they were dealt with in the contested decision, specifically in sections 4.7-4.10 and 8.1-8.6.11. The appellant did not provide any reasons as to why the decision was incorrect in these findings and the Board sees no error in these reasons of the division either. The Board also observes that E1 does not appear to be the sole decisive piece of evidence on which the public availability of the LINCO prior use depends.

6.3 In section 2.4 of their grounds, the appellant proprietor asserts that the division, in sections 8.6.12 and 8.6.13, failed to apply the "up-to-the-hilt" or "absolute conviction" standard in proving the lack of confidentiality. However, in section 6 of the impugned decision, the division explicitly explains that they arrived at their conclusions applying the standard of "absolute conviction". The use of expressions like "it would be against all likelihood" or "there is neither any indication nor any

likelihood..." in the reasoning (sections 8.6.12 and 8.6.13) does not contradict the assumption of being absolutely convinced. These phrases demonstrate thorough analysis, while absolute conviction reflects confidence in the conclusion drawn from that analysis."

- 4.3 The appellant proprietor did not make any further submissions on this issue and, in the absence of any additional submissions from the appellant proprietor, the Board, after having reconsidered all the aspects of the case, sees no reason to change its assessment of the case. It therefore concludes that the prior public use LINCO Benelux on 27 May 2009 constitutes state of the art within the meaning of Article 54(2) EPC.

5. D4 - public availability

The appellant also challenges the opposition division's finding that D4 was publicly available.

As outlined in section 7 of the Board's preliminary opinion (to which the appellant proprietor has offered no further comments), "The Board finds no convincing grounds to challenge the division's conclusion that D4 was publicly available (section 7 of the impugned decision). The proprietor's objection (outlined in grounds section 4) solely revolves around the division's reliance on E1 for this determination, citing procedural violations. However, as explained earlier, the Board currently sees no procedural violation or any other justification to disregard E1."

The appellant proprietor did not make any further submissions on this issue and, in the absence of any additional submissions from the appellant proprietor, the Board, after having reconsidered all the aspects of

the case, remains unconvinced by the appellant's arguments and sees no reason to change its assessment of the case.

6. Main request - Novelty

6.1 As noted by the Board in its preliminary opinion, section 9 of the communication (LINCO refers to prior use LINCO Benelux, sale of 27 May 2009):

"9.1 Claim 1 of this request (also corresponding to granted claim 1) appears not novel over prior use LINCO, as concluded by the opposition division.

Regarding prior use LINCO, as the opposition division noted, and contrary to the proprietor's arguments, the lower plate's upward orientation (shown in the upper and middle figures of D4, plate M1.5 of D4a) inevitably contacts the poultry wings, thus acting as a wing guide as in claim 1."

6.2 As the appellant proprietor has made no further submissions on this matter, the Board, after having reconsidered all the aspects of the case sees, no reasons to change its assessment of this issue.

The further argument of the patent proprietor that even if the lower plate of D4 would be considered to touch the wing, it would bring the wing closer to the knives, increasing the risk of damaging the wing, so that the lower plate cannot be considered as a wing guide plate in the sense of claim 1 is not convincing. As argued by the opponent, the advantage mentioned in paragraph 0042 of the description of the patent in suit, referred to by the patent proprietor to support its argument,

cannot be read as indicating a specific orientation of the claimed wing guide plates.

Consequently, the Board concludes that claim 1 of the main request lacks novelty over the prior use LINCO Benelux, sale of 27 May 2009, Article 54(2) EPC.

7. Auxiliary request 1 (claims as upheld) - Inventive step

7.1 The appellant opponent contests the conclusion of the opposition division in section 23 of the appealed decision, holding that claim 1 as upheld involves an inventive step.

7.2 As noted in the Board's written communication in preparation for the oral proceedings, see section 10 (LINCO refers to prior use LINCO Benelux, sale of 27 May 2009):

"10.1 Contrary to the division's conclusion, claim 1 appears to lack an inventive step.

10.2 Both parties agree that D4 (LINCO prior use) is a suitable starting point. From the novelty analysis of the main request, it is evident that claim 1 of the upheld claim differs from this prior art only in that the back and breast neck guides are embodied as neck guide plates rather than neck guide bars as in D4.

10.3 The proprietor contends that guide plates improve poultry guidance and refers to paragraph 0029 of the patent specification. However, as argued by the opponent, this effect does not seem to be achieved by using plates instead of bars. Figures 4b, 5b, 6b, 7b and 8b of the patent show that the poultry neck is

guided only by the edge of the plate, which acts in the same way as a guide bar.

In the absence of a discernible technical effect, the only technical problem that can be identified is how to find an alternative to the bar construction for the neck guiding means.

10.4 It may be discussed whether the construction in the form of a plate appears to be an obvious alternative known to skilled person, a mechanical engineer, when starting from the prior use in combination with common general knowledge."

- 7.3 The appellant proprietor has not responded to the Board's preliminary opinion as set out above.
- 7.4 In the appealed decision, the division held that the skilled person would not be motivated to alter the neck guide bars of D4 (prior use LINCO Benelux on 27 May 2009) into neck guide plates without any incentive to do so and that the skilled person would not arrive at the combination of claim 1 in view of D4 and common general knowledge, see section 23.3.4 of the appealed decision.
- 7.5 The appellant opponent disputes this reasoning, see page 27, last paragraph of the statement of grounds and the argument on page 17, paragraph 7 of their reply of 16 August 2023 that applies to both auxiliary requests 1 and 2. They submit that the prior use LINCO Benelux (sale of 27 May 2009) itself teaches wing guide plates (see D4a, wing guides M1.5), which the skilled person would only have to adopt for the neck guide in his search for an alternative guide.

7.6 The Board finds this argument convincing. The Board holds that a skilled person, a mechanical engineer involved in the design and development of slaughtering installations with expertise in conveying systems and having the related common general knowledge in mechanical design, would readily recognise that bars and plates serve the same fundamental purpose: providing a controlled path for moving parts. Given this common knowledge they would thus regard both bar and plate guides as obvious alternatives in the present context.

7.7 Thus, contrary to the opposition division's conclusion in section 23.3.4, the Board holds that, based on their common general knowledge, the skilled person would consider the replacement of the bars of D4 with neck guide plates as as an obvious measure.

7.8 The Board therefore concludes that the subject-matter of claim 1 of auxiliary request 1 (claims as upheld) does not involve an inventive step (Article 56 EPC).

The appealed decision must thus be set aside.

8. Auxiliary request 2 - Inventive step

8.1 As noted by the Board in section 11 of its written communication (LINCO refers to prior use LINCO Benelux, sale of 27 May 2009):

"11.2 The subject-matter of claim 1 appears to lack inventive step for similar reasons as auxiliary request 1, starting from D4 as the state of the art. In D4, the neck guide bar and wing guide plate are constructed as a unitary part (see D4, top picture). The alleged effect of improving poultry positioning is thus already

achieved by D4 (prior use LINCO). The only difference is again the use of a neck guide plate instead of a neck guide bar. The objective technical problem remains finding an alternative to the bar construction of the neck guide means of D4. As explained above for auxiliary request 1, a guide plate seems to be an obvious solution to this problem."

- 8.2 In the absence of further submissions from the appellant proprietor, the Board, after having reconsidered all the aspects of the case, sees no reason to depart from its preliminary view. It therefore concludes that claim 1 of auxiliary request 2 lacks an inventive step (Article 56 EPC).
9. In view of the above conclusions, the appellant opponent's request to remit the case to the opposition division for re-hearing of the witnesses does not need to be addressed.
10. The appeal of the appellant proprietor cannot succeed, as the main request is unallowable due to lack of novelty. Additionally, the Board shares the view of the appellant opponent that the appealed decision was incorrect in its conclusion on inventive step for the maintained claims, and it must therefore be set aside. Moreover, considering the amendments made by the appellant proprietor, the patent and the invention to which it relates do not meet the requirements of the Convention, and the patent must be revoked pursuant to Article 101(3)(b) EPC.

11. Reimbursement of appeal fees

11.1 The appellant proprietor auxiliarily requested oral proceedings with its statement of the grounds for appeal. Subsequently, by letter of 26 July 2024, after having received the Board's communication pursuant to Article 15(1) RPBA in preparation for the oral proceedings, posted on 28 June 2024, they informed the Board that they would not attend the oral proceedings scheduled for 9 September 2024. In accordance with established practice, the Board considers such statement as an equivalent to a withdrawal of the request for oral proceedings, see Case Law of the Boards of Appeal, 10th edition 2022, III.C.4.3.2.

11.2 The question arises whether in these circumstances the appellant is entitled to a partial refund of the appeal fee pursuant to Rule 103(4)(c) EPC. In the present case it has to be decided whether the Board's treatment of the non-attendance at the oral proceedings declared by the patent proprietor as equivalent to a withdrawal of the request for oral proceedings, in that the Board indeed decided that the oral proceedings could be cancelled, is also to be treated as a withdrawal within the meaning of Rule 103(4)(c) EPC.

11.3 The Board considers that the conditions for a 25% partial refund of the appeal fee under Rule 103(4)(c) EPC are met, for the following reasons:

According to this provision,

(4) The appeal fee shall be reimbursed at 25%

(c) if any request for oral proceedings is withdrawn within one month of notification of the communication issued by the Board of Appeal in

preparation for the oral proceedings, and no oral proceedings take place.

- 11.4 Both according to the wording and the intention of the provision, the current case falls within the scope of this provision:
- 11.5 The intention not to attend oral proceedings was communicated within one month of the communication, and the Board subsequently cancelled the oral proceedings. The provision does not require any formal requirements as to how the withdrawal of a request for oral proceedings should be formulated. There is also no need for the party to formally request the reimbursement, though such a request may make the party's intention even clearer. However, it remains that it is sufficient that the Board can interpret the party's request as such.
- 11.6 In the case at issue, at no point was there a dispute about how the appellant's communication should be interpreted, or that it should mean anything else than what was effectively a withdrawal. The cancellation of the oral proceedings had been notified to the parties more than two months before the issuance of the present decision, and no new date for oral proceedings has been set. None of the parties protested against the cancellation of the oral proceedings or merely enquired whether a new date will be appointed, although the Board's communication made it clear that the revocation of the patent could be expected. Under these circumstances the Board sees no indication that the stated non-attendance would be anything else than an implicit withdrawal of the request for oral proceedings.

- 11.7 Also the legislative intention was met: It was the statement of the party that moved the Board to cancel oral proceedings, in spite of the existing request for oral proceedings from the other party. The Board could not have cancelled the oral proceedings but for the appellant's statement. Thus, oral proceedings were ultimately not held and the legislative purpose of facilitating and streamlining proceedings was achieved.
- 11.8 In summary, the Board holds that all conditions of Rule 103(4) (c) EPC had been fulfilled.
- 11.9 The Board is aware that the case law does not appear to be uniform on this issue. There are decisions that seem to make a difference between an explicit withdrawal, and a withdrawal by way of announcing non-attendance. This was so held in an *obiter dictum* in **case T 0073/17** of 15 June 2020 based on the intention of the legislator, and **T 0191/17** of 28 January 2021, both by the same board. The latter decision emphasises that a "withdrawal" according to Rule 103 must mean an explicit withdrawal.
- 11.10 The Board disagrees with the above interpretation, namely that, on the one hand, the Board is free to interpret a party's announcement not to attend oral proceedings as equivalent to a withdrawal of the request to hold oral proceedings (i.e. for the question as to whether oral proceedings have to take be held under Article 116 EPC), and, on the other hand, at the same time the Board cannot consider the announcement of the non-attendance as equivalent to such a withdrawal (i.e. for the purpose of a partial reimbursement of the appeal fee under Rule 103 EPC). For this Board, such distinction would appear arbitrary and not justified by the underlying reason for partial reimbursement, namely

to provide a financial incentive to a party whose procedural act(s) result in oral proceedings no longer having to take place.

11.11 The Board agrees with decision **T 517/17** of 27 October 2020. According to point 6.3 of the reasons of this decision,

"It does not appear to be justified to qualify the express announcement as equivalent to a withdrawal for the purpose of the question of whether appointed oral proceedings shall take place, but as not equivalent for the question of whether fees shall be refunded. Such a conclusion is neither supported by the wording of Rule 103(4) (c) EPC nor by the preparatory document CA/80/19, which does not comment on the wording of the withdrawal, but only on its timing. Rather, it proposes that "the appeal fee is reimbursed at a rate of 25% if ... the decision is eventually issued without the oral proceedings taking place" (see CA/80/19 of 4 October 2019, point 85)."

11.12 The Board concurs with these reasons, and adds that CA/80/19 indeed seems to focus on the proper timing of the party statement rather than on its specific form when noting that parties often announce their intended non-attendance only shortly before the oral proceedings, cf. point 83, last sentence.

11.13 For these reasons, the Board finds the requirements for a partial reimbursement of the appeal fee to be met.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**
2. **The patent is revoked.**
3. **The appeal fee paid by the appellant patent proprietor is reimbursed at 25%.**

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated