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Datasheet for the decision of 5 June 2025

Case Number: T 0504/23 - 3.3.08

Application Number: 11794142.7

Publication Number: 2649175

IPC: C12N1/04, C12N1/38, A23L33/10

Language of the proceedings: EN

Title of invention:
Starter culture composition

Patent Proprietor:
DSM IP Assets B.V.

Opponents:
Chr. Hansen A/S (opposition withdrawn)
CSK Food Enrichment B.V. (opposition withdrawn)
DuPont Nutrition BioSciences ApS

Headword:
Starter culture composition/DSM

Relevant legal provisions:
EPC Art. 54, 84
RPBA 2020 Art. 12(6)

Keyword:
Novelty - (no)
Claims - product-by-process claims
Late-filed request - should have been submitted in first-instance proceedings (yes) - circumstances of appeal case justify admittance (no)

Decisions cited:
T 0967/10, T 2019/20

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Beschwerdekammern

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Case Number: T 0504/23 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 5 June 2025

Appellant: (Patent Proprietor)	DSM IP Assets B.V. Wilhelminasingel 39 6221 BE Maastricht (NL)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 4 January 2023 revoking European patent No. 2649175 pursuant to Article 101(3)(b) EPC**

Composition of the Board:

Chairwoman T. Sommerfeld
Members: A. Schmitt
R. Winkelhofer

Summary of Facts and Submissions

I. The appeal of the patent proprietor (appellant) is against the opposition division's decision to revoke European patent No. 2 649 175 (the patent). The patent was granted on the basis of European patent application No. 11 794 142.7 (the application), which had been filed as an international application published as WO 2012/076665.

II. Three oppositions were filed against the patent. The opposition proceedings were based on the grounds for opposition under Article 100(a) EPC in relation to novelty (Article 54 EPC) and inventive step (Article 56 EPC) and on those under Article 100(b) and (c) EPC. Two opponents withdrew their oppositions during the opposition proceedings and thus ceased to be parties. The remaining opponent is the respondent in the appeal.

III. The opposition division held, *inter alia*, that the patent as granted was not allowable under Article 54 EPC, auxiliary requests 1 and 2 were not allowable under Article 84 EPC, auxiliary request 3 was not allowable under Article 84 EPC and Article 123(2) EPC, and auxiliary request 4 was not allowable under Article 123(2) EPC for the same reasons as auxiliary request 3. Auxiliary requests 5 to 10 were not admitted into the proceedings.

IV. With the statement of grounds of appeal, the appellant submitted sets of claims of a main request and auxiliary requests 1 to 9. The sets of claims of the main request, auxiliary request 1, auxiliary request 2, and auxiliary request 3 are identical to the sets of

claims of auxiliary request 1 and auxiliary requests 5, 2 and 4, respectively, as submitted in the opposition proceedings. Auxiliary requests 4 to 9 are new to the proceedings.

V. The board summoned the parties to oral proceedings in accordance with their requests and it set out its preliminary opinion in a communication under Article 15(1) RPBA.

VI. Claim 10 of the main request reads as follows:

"10. A frozen starter culture composition comprising:
a) frozen pellets or frozen granules comprising a microorganism and a cryoprotectant; and
b) at least one stimulating additive which is a pellet, a granule, a tablet or a powder,
wherein the stimulating additive is formic acid or a salt or ester thereof,
said composition being obtainable by a process according to any of claims 1-9."

Claim 8 of auxiliary request 1 reads as follows:

"8) A frozen starter culture composition comprising:
a) frozen pellets or frozen granules comprising a microorganism and a cryoprotectant; and
b) at least one stimulating additive which is a pellet, a granule, a tablet or a powder,
wherein the microorganism is a lactic acid bacterium; and
wherein the stimulating additive is formic acid or a salt or ester thereof."

Claims 1, 10 and 11 of auxiliary request 2 read as follows:

"1. A process for making a starter culture composition comprising a microorganism, a cryoprotectant and at least one stimulating additive, the process comprising the steps of:
a) culturing a microorganism in a culture medium; and
b) collecting the microorganism from the culture medium; and
c) adding a cryoprotectant to the microorganism obtained in step b); and
d) freezing the microorganisms obtained in step c); and
e) adding at least one stimulating additive which is a pellet, a granule, a tablet or a powder to microorganisms obtained in step d),
wherein the cryoprotectant is maltodextrin; and
wherein the stimulating additive is formic acid or a salt or ester thereof."

"10. A frozen starter culture composition comprising:
a) frozen pellets or frozen granules comprising a microorganism and a cryoprotectant; and
b) at least one stimulating additive which is a pellet, a granule, a tablet or a powder,
wherein the cryoprotectant is maltodextrin; and
wherein the stimulating additive is formic acid or a salt or ester thereof,
said composition being obtainable by a process according to any of claims 1-9."

"11. A freeze-dried starter culture composition comprising:
a) freeze dried material comprising a microorganism and a cryoprotectant; and
b) at least one stimulating additive which is a pellet, a granule or a tablet,
wherein the cryoprotectant is maltodextrin; and

wherein the stimulating additive is formic acid or a salt or ester thereof,
said composition being obtainable by a process according to any of claims 1-9."

Claim 1 of auxiliary request 3 reads as follows:

"1) A process for making a starter culture composition comprising a microorganism, a cryoprotectant and at least one stimulating additive, the process comprising the steps of:
a) culturing a microorganism in a culture medium; and
b) collecting the microorganism from the culture medium; and
c) adding a cryoprotectant to the microorganism obtained in step b); and
d) freezing the microorganisms obtained in step c); and
e) adding at least one stimulating additive which is a pellet, a granule, a tablet or a powder to microorganisms obtained in step d),
wherein the microorganism is a lactic acid bacterium; and
wherein the stimulating additive is formic acid or a salt or ester thereof; and
wherein the starter culture composition comprises from 3% to 65% wt/wt of the stimulating additive measured as wt/wt of the starter culture composition."

Claims 1 and 8 of auxiliary request 4 read as follows:

"1) A process for making a frozen starter culture composition comprising a microorganism, a cryoprotectant and at least one stimulating additive, the process comprising the steps of:
a) culturing a microorganism in a culture medium; and

b) collecting the microorganism from the culture medium; and
c) adding a cryoprotectant to the microorganism obtained in step b); and
d) freezing the microorganisms obtained in step c); and
e) adding at least one stimulating additive, which is a frozen pellet, to microorganisms obtained in step d),
wherein the microorganism is a lactic acid bacterium; and
wherein the stimulating additive is formic acid or a salt or ester thereof; and
wherein the frozen starter culture composition comprises from 3% to 65% wt/wt of the stimulating additive, measured as wt/wt of the frozen starter culture composition."

"8) A frozen starter culture composition comprising:
a) frozen pellets or frozen granules comprising a microorganism and a cryoprotectant; and
b) at least one stimulating additive which is a frozen pellet,
wherein the microorganism is a lactic acid bacterium; and
wherein the stimulating additive is formic acid or a salt or ester thereof; and
wherein the frozen starter culture composition comprises from 3% to 65% wt/wt of the stimulating additive, measured as wt/wt of the frozen starter culture composition."

The sets of claims of auxiliary requests 5 to 9 are identical to the sets of claims of the main request and auxiliary requests 1 to 4, respectively, with the exception of the deletion of the claims directed to the frozen or freeze-dried starter culture compositions

(product claims) and all claims directed to processes or uses referring to these product claims.

VII. The following document is referred to in the present decision:

D1 WO2009/056979 A1

VIII. The arguments of the parties relevant to the board's decision are referred to, where necessary, in the Reasons for the decision.

IX. The parties' requests relevant to the decision are as follows.

The appellant requests that the decision under appeal be set aside and the patent be maintained in amended form on the basis of a main request or auxiliary requests 1 to 9, all submitted with the statement of grounds of appeal.

The respondent requests that the appeal be dismissed.

Reasons for the Decision

Main request
Novelty (Article 54 EPC) - claim 10
Claim construction

1. Claim 10 of the main request relates to a frozen starter culture composition comprising components a) and b). Component a) is defined as being "*frozen pellets or frozen granules comprising a microorganism and a cryoprotectant*" and component b) is defined as being "*at least one stimulating additive which is a*

pellet, a granule, a tablet or a powder, wherein the stimulating additive is formic acid or a salt or ester thereof".

2. According to the respondent's claim construction, endorsed in the decision under appeal, components a) and b) could be identical frozen pellets or granules, each comprising a microorganism, a cryoprotectant and the stimulating additive formic acid or a salt or ester thereof.

3. However, the wording of component b) of the claim defines only one type of compound - "at least one stimulating additive" - which, as such, "is" a pellet, a granule, a tablet or a powder. This definition of a single type of compound that is in a specific form has the consequence that the pellet, granule, tablet or powder as defined in component b) of the claim does not contain any other ingredients than the "at least one stimulating additive", which is formic acid or a salt or ester thereof.

4. This definition is different from that used for component a) of the claim, where frozen pellets or frozen granules are defined as "comprising" a microorganism and a cryoprotectant. These frozen pellets or granules may therefore contain other ingredients than those listed in the claim, including a stimulating additive.

5. This conclusion on the definition of component b) of the claim is not altered by the fact that the claimed composition may, as pointed out by the respondent, "comprise" further components, i.e. components other than those expressly mentioned under items a) and b) of the claim. The reason for this is that this open

language only refers to the different components of the composition and does not influence the definition of the component in item b).

6. Nor is this conclusion changed by the fact that pellets, granules, tablets and powders "*are rarely (if ever) formed from pure materials*", as asserted by the respondent (first full paragraph on page 6 of the reply to the appeal). Even if this were the case, this would not have an impact on claim construction. At most, it could have had the consequence that a compound as defined in item b) of the claim could not have been provided. If this had been an objection raised, it would have had to be discussed under Article 83 EPC.

7. In view of these considerations, the appellant's claim construction is correct in that the claimed composition comprises a first type of frozen pellets or frozen granules comprising a microorganism and a cryoprotectant, and a second, separate type of pellet, granule, tablet or powder that only contains at least one stimulating additive which is formic acid or a salt or ester thereof.

Paragraph [069] of document D1

8. Document D1 is concerned with lactic acid bacterial cultures and starter compositions for starting these cultures (see, e.g., paragraph [01]). Paragraph [069] of document D1 is part of a section about these starter compositions and contains the teaching that "[i]*n some embodiments, the starter culture is made by inoculating hydrolyzed 1-5% milk supplemented with carbohydrates (e.g., glucose, lactose, and/or sucrose), yeast extract, peptones and/or minerals. During the fermentation, the pH is controlled, such that it is*

maintained at about pH 6 (i.e., using NH_4OH). In some embodiments, when the base consumption stops, the fermentate is cooled and the cells concentrated in a centrifuge. In some embodiments, the concentrate is then canned or placed in suitable containers for freezing in liquid nitrogen or dripped as drops into liquid nitrogen."

9. It was uncontested that the process of dripping liquid cell culture concentrate drops into liquid nitrogen described in paragraph [069] of document D1 and recited above results in frozen pellets comprising the cultured microorganisms, i.e. lactic acid bacteria. The appellant, however, asserted that the frozen pellets obtained through this process did not comprise a cryoprotectant.

10. However, this line of argument cannot be followed. The starter culture described in paragraph [069] of document D1 contains, *inter alia*, sugars such as, e.g., glucose, lactose, and/or sucrose, yeast extract, peptones and/or minerals (see point 8. above). As is evident from paragraph [0031] of the patent, each of these compounds (sugars, peptides, minerals and yeast extracts) is a cryoprotectant as defined in the patent.

11. In view of this, the inoculated starter culture described in paragraph [069] of document D1 inevitably contains lactic bacterial cells and at least one cryoprotectant. Moreover, the same components are also necessarily contained within the frozen pellets prepared from this starter culture because these pellets are prepared by concentrating the cells in a centrifuge and freezing them "as drops" (see point 8. above). Concentrating cells in this manner

means that, while the culture medium is reduced, it is not entirely removed.

12. Residual amounts of the culture medium components, including sugars, peptides, minerals and/or yeast extracts, are therefore present in the concentrated "drops" and consequently also in the frozen pellets. As claim 10 of the main request does not require any specific concentration of the cryoprotectant to be present in the pellet, this part of paragraph [069] discloses the preparation of a starter culture composition comprising frozen pellets as defined in item a) of the claim.

13. Paragraph [069] of document D1 then goes on to teach the skilled person that "[i]*n some other embodiments, the pellets containing the sources of formate and purine are also made by dripping solutions containing those compounds (either separately or mixed) into liquid nitrogen. In some embodiments, the culture pellets and formate/purine pellets are then mixed to provide starter compositions that contain those components suitable concentrations* [sic]."

14. This part of paragraph [069] hence describes the preparation of a second type of frozen pellets that contain formate and purine "*either separately or mixed*". i.e. discloses two options for preparing this second type of frozen pellets. In the first option, frozen pellets are prepared that contain only the stimulating additive formate - as required in item b) of the claim - and, separately, frozen pellets are prepared that contain only purine. In the second option, frozen pellets are prepared that contain both components.

15. A starter culture composition is then prepared by mixing frozen culture pellets comprising a microorganism and a cryoprotectant - i.e. pellets according to item a) of the claim - and the (separate or mixed) frozen formate/purine pellets. Thus, in view of the fact that paragraph [069] describes the preparation and use of separate frozen formate pellets in the starter culture composition, it discloses the preparation of a frozen starter culture composition comprising items a) and b) as defined in claim 10 of the main request.

16. The respondent asserted that the different sentences of paragraph [069] of document D1 concerned several separate embodiments since the paragraph referred to "other" embodiments. It is not relevant, however, that paragraph [069] describes the preparation of the different frozen pellets as separate embodiments, because, subsequently, the preparation of starter compositions by mixing these different pellets is explicitly disclosed as a single embodiment (see the last sentence of the citation in point 13. above). Therefore, this line of argument is not persuasive.

17. The respondent also pointed out that claim 10 comprised the additional feature "*said composition being obtainable by a process according to any of claims 1-9*". As assessed below in the context of claims 10 and 11 of auxiliary request 2 (see points 20. to 25.), however, the technical features, if any, which are imparted by this product-by-process feature are unclear. The only feature identified by the respondent that was allegedly imparted by this expression was that the two components a) and b) as defined in claim 10 could not be identical (see also point 23. below). However, as assessed in points 14. and 15. above, this

feature is disclosed in paragraph [069] of document D1 and is hence not suited to distinguishing the claimed frozen starter culture composition from that disclosed in document D1.

18. The subject-matter of claim 10 of the main request is not novel over the disclosure in paragraph [069] of document D1.

Auxiliary request 1
Novelty (Article 54 EPC) - claim 8

19. Claim 8 of auxiliary request 1 differs from claim 10 of the main request in the deletion of the feature "*said composition being obtainable by a process according to any of claims 1*-9" and in that the microorganism is specified as a lactic acid bacterium. As outlined above in the context of claim 10 of the main request (see points 8. to 18.), paragraph [069] of document D1 discloses a frozen starter culture composition comprising components a) and b) as defined in this claim, with or without the recited product-by-process feature, and wherein the microorganism is a lactic acid bacterium. The subject-matter of claim 8 of auxiliary request 1 hence lacks novelty over the disclosure in paragraph [069] of document D1 for the same reasons as claim 10 of the main request.

Auxiliary request 2
Clarity (Article 84 EPC) - claims 10 and 11

20. The compositions of claims 10 and 11 of auxiliary request 3 are defined, *inter alia*, by the expression "*said composition being obtainable by a process according to any of claims 1-9*" (see section VI. above for the full wording of the claims). Therefore, these

claims are so-called product-by-process claims, in which a process for the production of the claimed products is used to define a feature or features of these products.

21. Compliance with the requirements of Article 84 EPC necessitates to make clear which identifiable and unambiguous technical feature(s) are imparted to the product by the process so that there can be no doubts as to what the subject-matter for which protection is sought actually is (T 967/10; Reasons 4 and 5).

22. In the present case, however, it is not clear, which technical features of the claimed composition are conveyed by the recited product-by-process feature, contrary to the requirements of Article 84 EPC.

23. The only feature indicated by the appellant that was allegedly conveyed to the product - when defined as being obtainable by the process of claim 1 (see section VI. above for a full wording of this claim) - was that components a) and b) of the composition were separate and different from each other. However, firstly, in the claim construction outlined above for component b) of claim 10 of the main request (see points 2. to 7.) that is equally applicable to component b) of claims 10 and 11 of auxiliary request 2, this feature is already conveyed by the definition of component b) of the claims. The product-by-process feature does not therefore contribute any technical features beyond those expressed through the remaining definition in the claims.

24. Secondly, as correctly pointed out by the respondent, it is not unambiguously clear whether the product-by-process feature could convey the meaning that

components a) and b) were indeed different. The reason for this is that the sequential steps (a) to (d) of claim 1 could result in a frozen pellet comprising a microorganism, a cryoprotectant and a stimulating additive, and the addition of a second pellet prepared in the same manner would fulfil the requirements of step (e) unless the definition of the pellet in this step already conveyed that components a) and b) were separate and different pellets. Hence, in either claim construction, the product-by-process feature would, at best, be superfluous.

25. Since it is unclear which technical features of the claimed composition are conveyed by the recited product-by-process feature, claims 10 and 11 of auxiliary request 2 lack clarity (Article 84 EPC).

Auxiliary request 3
Amendments (Article 123(2) EPC) - claim 1

26. Claim 1 of auxiliary request 3 is amended compared to claim 1 of the application as filed, *inter alia*, through the insertion of the feature "wherein the starter culture composition comprises from 3% to 65% wt/wt of the stimulating additive, measured as wt/wt of the starter culture composition" (see section VI. for the full wording of the claim).

27. As a basis for this feature, the appellant referred to the sentence that bridges pages 8 and 9 of the application as filed, in particular line 33 on page 8, and to the sentence from lines 6 to 10, in particular line 8, on page 9. These sentences read as follows:

"*The frozen starter culture composition comprises preferably from 0.1% to 90%, preferably from 0.5%*

to 85%, more preferably from 1% to 80%, even more preferably from 2% to 70%, most preferably from 3% to 65%, and in particular from 5% to 60% of the stimulating additive measured as wt/wt of the frozen culture composition." (sentence that bridges pages 8 and 9 of the application)

"*The lyophilized starter culture composition comprises preferably from 0.1% to 90%, preferably from 0.5% to 85%, more preferably from 1% to 80%, even more preferably from 2% to 70%, most preferably from 3% to 65%, and in particular from 5% to 60% of a stimulating additive measured as wt/wt of the freeze-dried culture composition.*" (lines 6 to 10 on page 9 of the application)

28. These sentences in the application therefore concern the percentage (wt/wt) amount of the stimulating additive in the *frozen or freeze-dried* starter culture composition. In contrast thereto, claim 1 of auxiliary request 3 relates to a process for making a starter culture composition, in which neither the starting culture composition nor the at least one stimulating additive added in step e) of the process is specified as being frozen or freeze-dried and, furthermore, the amount of the stimulating additive is not specified as a percentage (wt/wt) of the frozen or freeze-dried starter culture composition. For this reason alone, claim 1 of auxiliary request 3 does not have a basis in the above-cited passages of the application.

29. The appellant asserted that, since the microorganism was frozen in step d) of the claimed method and since the at least one stimulating additive was added to this frozen composition, the resulting starting culture composition was necessarily also frozen. However,

neither the preamble nor step e) of the claim requires the starter culture composition produced to be frozen, and adding further components to a frozen pellet does not necessarily result in the resulting composition being frozen, as the temperature of the resulting composition depends on, *inter alia*, the temperature and the amount of the added component(s).

30. Claim 1 of auxiliary request 1 contains subject-matter that extends beyond the disclosure of the application as filed, contrary to the requirements of Article 123(2) EPC.

Auxiliary request 4
Admittance (Article 12(6) RPBA)

31. Auxiliary request 4 was newly filed on appeal and therefore constitutes an amendment of the appellant's case under Article 12(4) RPBA, with reference to Article 12(2) RPBA. Under Article 12(6) RPBA, second paragraph, a board is not to admit, *inter alia*, requests which should have been submitted in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

32. The appellant asserted that auxiliary request 4 was filed in response to the opposition division's finding that auxiliary request 3 (auxiliary request 4 before the opposition division) did not meet the requirements of Article 123(2) EPC. Since this objection had not been raised prior to the oral proceedings in opposition, the current auxiliary request 4 was filed in a timely manner.

33. This line of argument is not persuasive. The previous auxiliary request 4 was filed during the oral proceedings before the opposition division after the latter had established that claims 1, 8 and 9 of the previous auxiliary request 3 did not meet the requirements of Article 84 EPC and Article 123(2) EPC with respect to the feature "*wherein the starter culture comprises from 3% to 65% wt/wt of the stimulating additive*" (point 11 of the minutes of the oral proceedings before the opposition division; points 10.1 to 10.5 of the decision under appeal). This feature was incorporated, for the first time in the proceedings, from the description in this claim request filed as auxiliary request 6 under Rule 116 EPC (points 9.5 to 9.7 of the decision under appeal). This explains why the objections raised under Article 84 EPC and Article 123(2) against this claim request had not been raised earlier in the opposition proceedings.

34. The subsequently filed (previous) auxiliary request 4 was also admitted into the proceedings (points 11.1 to 11.5 and 12 of the minutes of the oral proceedings before the opposition division). The amendments in this request addressed the objection raised under Article 84 EPC but not those raised under Article 123(2) EPC. In view of this, the opposition division found that claim 1 of this request did not meet the requirements of Article 123(2) EPC for the same reasons as claim 1 of the (previous) auxiliary request 3 (points 12.2 and 13 of the minutes of the oral proceedings before the opposition division; points 13.3 to 13.6 of the decision under appeal).

35. It follows from this course of events that the objection raised under Article 123(2) EPC against the present auxiliary request 3 (see points 26. to 30.

above) was discussed in the context of two claim requests during the oral proceedings before the opposition division. The appellant hence had an opportunity to react to the opposition division's finding on added matter in the (previous) auxiliary request 3 with appropriate amendments. Instead of doing so, however, they submitted a new claim request during the oral proceedings before the opposition division that suffered from the same deficiencies under Article 123(2) EPC, and, when this new claim request was rejected by the opposition division for this reason, the appellant once again did not submit a further claim request addressing this issue.

36. In view of this, the present auxiliary request 4, which addresses - for the first time - these issues under Article 123(2) EPC, could and should have been submitted in the opposition proceedings. No circumstances of the appeal case present themselves that would justify admitting auxiliary request 4 on appeal.

Auxiliary request 5 to 9
Admittance (Article 12(6) RPBA)

37. Auxiliary requests 5 to 9 were likewise newly filed on appeal and therefore also constitute amendments of the appellant's case under Article 12(4) RPBA. Admittance of these requests into the appeal proceedings is therefore subject to the conditions set out in Article 12(6) RPBA as well (see point 31. above).

38. Each of the claim sets of auxiliary requests 5 to 9 is amended having regard to the claims sets of the main request and auxiliary request 1 to 4, respectively, through the deletion of the claims relating to products

and uses of these products. In the appellant's view, the deletion of these claims, which limited the set of claims to the process claims, was in the interest of procedural economy as it simplified the proceedings, did not raise any new issues, and thus did not constitute an amendment to the appellant's case, in line with decision T 2019/20 (Reasons 23).

39. This is not persuasive. Notwithstanding the question of whether the principles set out in T 2019/20 are to be considered applicable in any way, these principles cannot be transferred to the case in hand. Contrary to the case underlying decision T 2019/20, in which the opposition was rejected and the opposition division had addressed all objections raised against the patent, in the case in hand the opposition division revoked the patent and did not address all objections raised by the opponents. In particular, the objections raised under inventive step, including objections raised against the method claims, were not dealt with.

40. This means that the admittance of auxiliary requests 5 to 9 into the appeal proceedings would require remittal to the opposition division for the evaluation of, *inter alia*, inventive step of the claims. Such remittal of the case would not have been necessary if the appellant had submitted these claim requests in the opposition proceedings such that they could have been dealt with there immediately. It follows from the fact that novelty objections against the product claims relating to freeze-dried or lyophilised starter culture composition were raised in the notices of opposition and were the subject of extensive discussions in the opposition proceedings, that the appellant had sufficient opportunities during the opposition proceedings to file requests in which the product

claims were deleted to address these novelty objections.

41. By not filing such claim requests in the opposition proceedings, the appellant deprived the opposition division of the opportunity to arrive at a conclusion on patentability, in particular inventive step, of these claims. In view of this, the admittance of auxiliary requests 5 to 9 on appeal and remittal of the case to the opposition division are contrary to procedural economy and against the principles of a fair trial for the respondent.

42. Hence, the board decided not to admit any of auxiliary requests 5 to 9 into appeal proceedings. To conclude, there is no allowable request.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chair:

K. Boelicke T. Sommerfeld

Decision electronically authenticated