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Datasheet for the decision of 8 July 2025

Case Number: T 1783/23 - 3.2.05

Application Number: 17706809.5

Publication Number: 3420264

IPC: F16L59/02, F16L59/065, F16L59/153, F16L11/22

Language of the proceedings: EN

Title of invention:
Insulated pipe

Patent Proprietor:
Uponor Innovation AB

Opponent:
Elydan

Relevant legal provisions:
EPC Art. 100(b)

Keyword:
Grounds for opposition - insufficiency of disclosure (no)

Decisions cited:
G 0001/03, T 0019/90, T 0890/02, T 1811/13, T 1845/14, T 1305/15

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Case Number: T 1783/23 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 8 July 2025

Appellant: (Patent Proprietor)	Uponor Innovation AB P.O. Box 101 73061 Virsbo (SE)
Representative:	Epping - Hermann - Fischer Patentanwaltsgesellschaft mbH Schloßschmidstraße 5 80639 München (DE)
Respondent: (Opponent)	Elydan 33 route de Grenoble 38590 Saint-Etienne-de-Saint-Geoirs (FR)
Representative:	Schuffenecker, Thierry 120 Chemin de la Maure 06800 Cagnes-sur-Mer (FR)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 24 August 2023 revoking European patent No. 3420264 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	P. Lanz
Members:	T. Vermeulen
	F. Blumer

Summary of Facts and Submissions

I. The patent proprietor filed an appeal against the decision of the opposition division to revoke European patent No. 3 420 264 ("the patent").

II. The opposition had been filed against the patent as a whole on the basis of the grounds for opposition under Article 100(a) together with Article 56 EPC (lack of inventive step) and under Article 100(b) EPC.

III. In the decision under appeal, the opposition division came to the conclusion that neither the patent as granted nor the patent as amended on the basis of the claims of auxiliary requests 1 to 11 disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

IV. The following document was referred to during appeal proceedings.

D14 "Exhibit A - Flexibility Measurement of Classic Terrendis Pipe and « DK » Terrendis Pipe", Elydan, 30 September 2021, pages 1/2 and 2/2

V. Oral proceedings before the board were held on 8 July 2025.

VI. The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or as amended on the basis of the claims of one of auxiliary requests 1 to 11 filed with the statement setting out the grounds

of appeal. The appellant further requested that the case be remitted to the opposition division for further prosecution.

The respondent (opponent) requested that the appeal be dismissed.

VII. Claims 1, 8 and 9 of the patent as granted have the following wording (the feature numbering used for claim 1 in the decision under appeal appears in square brackets):

"1. An insulated pipe comprising:
- [**a**] one or more inner pipes comprising a plastic
- [**b**] an outer jacket,
characterized in that
[**c**] the insulated pipe further comprises a flexible vacuum insulation panel surrounding the one or more inner pipes,
[**d**] wherein the one or more inner pipes comprise a cross-linked or non-cross-linked polyolefine, preferably selected from the group consisting of polyethylene (PE), preferably PE-RT (Polyethylene of Raised Temperature resistance), polypropylene, polybutylene (PB), cross-linked polyethylene (PEX), and mixtures thereof,
[**e**] wherein the bending force for 90° bending a pipe piece having an inner pipe with a diameter of 20 to 60 mm clamped at a distance of 1m around a support differs less than 40% compared to the same pipe without vacuum insulation panel, or
[**f**] wherein the bending force for 90° bending a pipe piece having an inner pipe with a diameter of 60 to 120 mm in particular 65 to 90 mm, clamped at a distance of 1m around a support differs less than 20% compared to the same pipe without vaccum *[sic]* insulation panel."

"8. The insulated pipe according to one of the preceding claims, wherein the bending force for 90° bending a pipe piece having an inner pipe with a diameter of 20 to 60 mm, preferably 25 to 50 mm, in particular 25 to 40 mm, clamped at a distance of 1m around a support differs less than 30% compared to the same pipe without vacuum insulation panel."

"9. The insulated pipe according to one of the preceding claims, wherein the bending force for 90° bending a pipe piece having an inner pipe with a diameter of 60 to 120 mm, preferably 65 to 100 mm, in particular 65 to 90 mm, clamped at a distance of 1m around a support differs less than 10% compared to the same pipe without vaccum [*sic*] insulation panel."

VIII. The appellant's submissions may be summarised as follows.

Sufficiency of disclosure

The general description of the patent specified all features of the insulated pipe of granted claim 1:

- the inner pipe was specified in paragraphs [0015] to [0018],
- the vacuum insulation panel (VIP) was specified in paragraphs [0019] to [0025] and [0030] to [0034], which contained references to two patent documents,
- the outer jacket was specified in paragraph [0027].

Specific embodiments were shown in Figures 1 to 5 of the patent. Examples of measurements were set forth in paragraphs [0058] to [0064] in connection with Tables 2 and 3 of the patent. Through paragraphs [0050] and [0051] of the patent, these examples were linked to the

embodiments illustrated by Figures 1 and 2 which were limited to just one inner pipe. The test procedure detailed in paragraph [0059] could be carried out in all cases. The measurements for "Thermo single 75/D175 (VIP long)" and "Thermo single 75/D140 (VIP long)" in Table 2 of the patent fell under the wording of feature **f**. The fact that no measurement was carried out for the same pipe without VIP did not affect the ability of a skilled person to reproduce such pipes.

Moreover, the respondent showed by means of document D14 that a skilled person was able to reproduce the claimed invention. This document provided further examples of insulated pipes falling under the scope of claim 1. Hence, there were no serious doubts, let alone substantiated by verifiable facts, that the invention could be carried out by a skilled person without undue burden.

As to the opposition division's remark in the decision under appeal regarding the influence of the outer jacket on the required bending force, it was noted that, for a pipe with a given diameter, the flexibility of the VIP - and not the structure and thickness of the outer jacket - was decisive for the bending force.

The opposition division also erred in its assessment that features **e** and **f**, by being unusual parameters not reflected in the relevant prior art, did not permit to carry out a comparison with the prior art. To the extent that some dimensions or materials were not defined in claim 1, the claimed insulated pipe was allowed to have any dimension or material.

In essence, the respondent's objection against features **e** and **f** primarily concerned a lack of clarity which

was, however, not a ground for opposition. The respondent's argument in respect of the curvature caused by coiling up the pipe was not convincing because the insulated pipe of the invention was known to be produced in a perfectly straight manner. Even if an insulated pipe comprised two inner pipes that allowed for different orientations each of which resulting in a different bending force, this was irrelevant when the pipe was compared with the same pipe without VIP.

In sum, the ground for opposition under Article 100(b) EPC did not prejudice the maintenance of the patent as granted.

Remittal

A remittal to the opposition division for further prosecution was requested in case the board found that the claimed invention was sufficiently disclosed.

IX. The respondent's submissions may be summarised as follows.

Sufficiency of disclosure

Feature **e** had been added in the proceedings before grant to overcome an inventive-step objection against claim 1. It was therefore a critical feature. Together with feature **f**, it was formulated as a result to be achieved and addressed the problem of flexibility of the insulated pipe. However, without a corresponding structural feature, there was no clear indication on how to achieve such a result. Ultimately, the flexibility of the individual components determined the flexibility of the insulated pipe. But no information

was provided by the patent on the flexibility of the inner pipe, the foam layer or the outer jacket. Apart from the mention of some grooves in paragraph [0025] and the use of silica powder in paragraph [0030] of the patent, there was also nothing disclosed on the flexibility of the vacuum insulation panel (VIP). Thus, features **e** and **f** were so unclear that they deprived the skilled person of the promise of invention. Reference was made to decision T 1305/15.

The patent only disclosed two examples of insulated pipes, each having an inner pipe with diameter of 75 and 32 mm, respectively, a PEX foam layer, an outer plastic jacket and a specific VIP with one of two alternative lengths. Only in respect of the example "Thermo single 32/D140" comparative results were available for measurements performed on the same pipe with and without a VIP. For all other pipes listed in Tables 2 and 3 of the patent no such comparative results had been provided. A single example was, however, unable to support the general definition of feature **e**.

Apart from the examples, no further details or conditions were provided by the patent on how to achieve - for a given pipe comprising an inner tube, a VIP and an outer jacket - a bending force differing less than 40% and 20%, respectively, compared to the same pipe without VIP. The skilled person, looking at the description of the patent, could not identify without undue burden which insulated pipe defined by features **a** to **d** would fulfil the claimed functional requirement of either feature **e** or feature **f**. No information was provided regarding the type of material for embodying the VIP, the particular dimensions or size of the VIP and the other layers, or how often the

VIP was to be wrapped around the inner pipe in order to comply with feature **e** or **f**. In particular, neither the paragraphs concerning the different conducted tests nor any other passage in the patent provided any information about the thickness and the structure of the outer jacket, despite the fact that the outer jacket appeared to have a great influence on the bending force. Such information was also not directly derivable from the common general knowledge at the priority date of the patent.

The description of the bending procedure starting from paragraph [0058] of the patent had many gaps and raised questions particularly regarding the apparatus to be assembled, the clamp or clamps, the wire/pipe angle of 45 degrees and the use of the camera. The patent drawings did not explain the procedure. Moreover, the experiments that were carried out by the respondent did not produce systematic results. This was all the more so since coiling up the pipe resulted in a curved configuration that would exhibit a different bending force depending on the orientation of the pipe in the machine. Similarly, the bending force of insulated pipes having two inner pipes would vary as a function of the relative position of the inner pipes in the clamped position.

Therefore, the patent was nothing more than an invitation to perform a research program for identifying suitable insulated pipes. This was an undue burden for a skilled person so that the invention underlying claim 1 was insufficiently disclosed.

Dependent claims 8 and 9 included functional features similar to features **e** and **f** but with more restricted

thresholds of 30% and 10%, respectively. The same argumentation applied in respect of these claims.

In conclusion, the ground for opposition under Article 100(b) EPC prejudiced the maintenance of the patent as granted.

Remittal

The respondent agreed to remit the case to the opposition division for further prosecution.

Reasons for the Decision

Sufficiency of disclosure

1. It is established case law of the boards of appeal that, for an objection of insufficiency of disclosure to be successful, there must be serious doubts, substantiated by verifiable facts. The burden of proof initially lies with the opponent to establish, on the balance of probabilities, that a skilled person reading the patent, using common general knowledge, would be unable to carry out the invention (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition, July 2025, in the following "Case Law", II.C.9.1 and II.C.9.3, for example T 19/90, OJ EPO 1990, 476, Reasons 3.3 and T 890/02, OJ EPO 2005, 497, Reasons 30, both mentioned therein).

(a) Claim 1

2. The invention defined by claim 1 of the patent as granted concerns an insulated pipe comprising a

flexible vacuum insulation panel (hereinafter: VIP) surrounding one or more polyolefine inner pipes and comprising an outer jacket (features **a** to **d**). The remaining features **e** and **f**, separated by 'or', express in terms of functional requirements a specific property of the pipe.

(b) Decision under appeal

3. In the decision under appeal, the opposition division followed the respondent's argument that the skilled person would be unable to identify without undue burden which particular pipes defined by features **a** to **d** fulfilled the functional requirement of feature **e** or of feature **f**. In particular, the appellant's arguments in respect of paragraphs [0058] to [0064] in connection with Tables 2 and 3 of the patent were found without merit for the reason that none of the measurements described therein allowed a comparison of the same pipe with and without VIP in accordance with the requirement of feature **f** (see points 1, 1.3.1 and 1.3.2 of the reasons for the decision under appeal).

(c) Tables 2 and 3 of the patent

4. Tables 2 and 3 of the patent are part of a section entitled "Flexibility measurements" which describes how pipes "in accordance with the embodiment of Figures 1 and 2" were examined with respect to their flexibility (paragraph [0050] of the patent). The first three paragraphs of that section provide the details of a test procedure that was used for bending a number of insulated pipes at 90 degrees and determining the bending force (paragraphs [0058] to [0060] of the patent). The measurement results for a first pipe of the type "Thermo single 75/Dxxx" and a second pipe of

the type "Thermo single 32/Dxxx" are summarised in Tables 2 and 3, respectively. It follows from paragraph [0063] of the patent that, similarly to the samples examined with respect to their heat conductance in Table 1 and in the table of paragraph [0056] of the patent, the first number "75" resp. "32" of the marker is the diameter of the inner pipe whereas the second part "Dxxx" of the marker refers to the outer jacket diameter, i.e. the outer diameter of the insulated pipe.

5. Table 2 of the patent gives the bending force in Newton at 90 degrees for three insulated pipes of the first type: one without VIP and two with VIP. The results are relatively close to each other.

Table 2: Bending Force [N]/90°

	Bending Force in [N] at 90°
Thermo single 75 / D200	688
Thermo single 75 / D175 (VIP long)	677
Thermo single 75 / D140 (VIP long)	703

Table 3 of the patent gives the bending force in Newton at 90 degrees for five insulated pipes of the second type: one without VIP and four with VIP. The results of the four pipes with VIP lie within 28% compared to the bending force of the pipe without VIP.

Table 3: Bending Force [N]/90°

	Bending Force in [N] at 90°
Thermo single 32 / D140	76
Thermo single 32 / D140 (VIP long)	97
Thermo single 32 / D140 (VIP short)	94
Thermo single 32 / D90 (VIP short)	69
Thermo single 32 / D90 (VIP long)	76

6. The respondent argues that, only for the example "Thermo single 32/D140" of Table 3, a comparison between the same pipe with and without VIP is possible. All the other examples had different outer jacket diameters compared to the reference pipe without VIP. Following the logic of the opposition division set out in point 2.4 of the reasons for the decision under appeal, even the example "Thermo single 32/D140" would not constitute an embodiment of the claimed subject-matter since the identical outer jacket diameter ("D140") of the reference pipe without VIP implied that the latter had a thicker foam layer and would, therefore, not be the same pipe.

7. In the board's view, the last point can be rejected offhand. Table 1 in conjunction with paragraph [0051] of the patent indicates that two pipes that differ only in the presence of a VIP are to be regarded as "the same pipes" even if they have the same outer jacket diameter. Thus it must be concluded that Table 3 of the patent presents at least two examples ("Thermo single 32/D140 (VIP long)" and "Thermo single 32/D140 (VIP short)") of an insulated pipe in accordance with claim 1 as granted (features **a** to **e**).

8. With respect to the alternative subject-matter defined by features **a** to **d** and **f**, the board concurs with the respondent and the opposition division that no example is disclosed by the patent. The only example of an insulated pipe having an inner pipe with a diameter between 60 and 120 mm is found in Table 2 of the patent. However, the pipe without VIP has a different outer diameter ("D200") compared to the examples with VIP ("D175 (VIP long)" resp. "D140 (VIP long)"). They cannot be regarded as "the same pipe" in the sense of

feature **f**. The appellant's argument that the absence of comparative measurement results for a pipe with an outer diameter of 175 or 140 mm did not affect the ability of a skilled person to reproduce such a pipe overlooks the central issue that the reproduction must occur within the permissible range set by feature **f**. In other words, it must be shown that the bending force for bending the pipes of Table 2 with VIP differs less than 20% compared to the same pipe without VIP. On the basis of the patent alone, such a conclusion cannot be reached.

(d) *Experimental results of document D14*

9. Nevertheless, document D14 makes a convincing case that it can be done. This experimental report was filed by the respondent as "Exhibit A" with the notice of opposition in the context of an objection of lack of inventive step. In the proceedings before the opposition division, the appellant took it up as proof that the skilled person was able to reproduce the claimed invention. Despite mentioning the appellant's argument in point 1.2 of the reasons for the decision under appeal, the opposition division did not discuss the content of document D14 in the decision under appeal.

10. Document D14 describes how the respondent undertook to bend four conventional insulated pipes - two with and two without VIPs - using the methodology set out in the patent ("page 16" mentioned on page 1/2 of document D14 refers to the corresponding page of the European patent application that led to the patent, paragraph [0059] of which is identical to the first fifteen lines of page 16 of the patent application). The table on page 2/2 of document D14 (reproduced below) lists for each of the

four pipes the bending force in Newton at an angle of 90 degrees. The results for the two pipes with inner diameter of 40 mm and outer diameter of 140 mm ("HD14040") differ 15,6%, those for the pipes with inner diameter of 75 mm and outer diameter of 160 mm ("HD16075") differ 5,6%. Both percentages lie well within the boundaries of features **e** and **f**, respectively.

Pipe	Force (N)	Pipe	Force (N)
HD14040 Classique	160 N	HD16075 Classique	535 N
HD14040 DK	185 N	HD16075 DK	565 N
Difference	**15,6%**	**Difference**	**5,6%**

The last paragraph of document D14 concludes as follows: "Likewise, we easily obtain flexibility values of less than 20% for pipes with a diameter of 60 to 120mm".

11. In view of the above, the board concludes that the skilled person was able to reproduce not only insulated pipes having features **a** to **e** but also insulated pipes complying with the requirements of features **a** to **d** in combination with feature **f**. Reproducing these pipes did not require undue burden but could be "easily" achieved based on information disclosed in the patent and common general knowledge.

12. The respondent's concerns with the methodology set forth in paragraph [0059] of the patent are not shared by the board. The set-up and the procedure described by virtue of photographs in document D14 illustrate that the methodology of the patent was sufficiently comprehensible to put the test procedure into practice. Any doubts there may have been on the assembly of the apparatus or the purpose of the clamps, the angle of 45 degrees and the camera mentioned in paragraph [0059]

must have been resolved by the author of document D14 by relying on common general knowledge.

13. Although the respondent is right in saying that a curved insulated pipe would exhibit a different bending force depending on the orientation in which it were clamped in the bending apparatus, the skilled person can reasonably be expected to consider this orientation when comparing the bending force of the same pipes with and without VIP. Likewise, it stands to reason that insulated pipes having two inner pipes are tested in the same orientation in terms of the relative position of the inner pipes when the goal of the test consists of comparing the bending force between the pipes.

14. In any event, the respondent did not submit any evidence, for example in the form of further experimental results, that would support its allegation that systematic results could not be achieved by the methodology indicated in the patent.

(e) *Further issues*

15. The decision under appeal includes, and the respondent put forward in the appeal proceedings, a number of further issues which both the opposition division and the respondent believe raise doubts on whether the invention was sufficiently disclosed. The board is not persuaded, for the following reasons.

(i) Lacking information on materials, thickness, structure

16. Regarding the materials of the different pipe layers, the appellant convincingly argues by referring to paragraphs [0015] to [0018], paragraphs [0019] to

[0025], paragraph [0027] and paragraphs [0030] to [0034] of the patent that the description specifies each of the inner pipe, the VIP and the outer jacket. Paragraphs [0019] and [0025] of the patent also provide information on the thickness and structure (the grooves) of the VIPs. The mere fact that these passages are in the general part of the description do not disqualify them as part of the teaching of the patent which the skilled person takes into account when establishing whether the requirements of sufficiency of disclosure are fulfilled. Moreover, the description of the heat conductance measurements in paragraphs [0051] to [0057] of the patent provides further details on materials and dimensions of the insulated pipes in accordance with the embodiments of Figures 1 and 2, i.e. the same pipes on which the flexibility measurements [0058] to [0064] were carried out (see paragraph [0050]). With respect to the dimensions of the outer jacket, the board is not persuaded that these are decisive when comparing bending forces of pipes that only differ in the presence (or not) of a VIP. The opposition division's opposite conclusion in point 1.4 of the reasons for the decision under appeal is based on the misconception that the outer jacket - and not the PEX foam layer - has a different thickness in the pipes "Thermo single 75/D200" and "Thermo single 75/D175 (VIP long)" of Table 2 of the patent. The board adds that nothing in the patent seems to suggest a corrugation or any other specific structure of the outer jacket.

(ii) *Result to be achieved*

17. The respondent also argues that features **e** and **f** correspond to a result to be achieved that is not accompanied by a corresponding structural feature. The

board concurs with the appellant that, if at all, this issue pertains to the requirement of clarity under Article 84 EPC. It may very well be that measuring a bending force at a bending angle of 90 degrees is an unusual parameter in the relevant field. Likewise, it may not be possible to ascertain whether known insulated pipes are comparable to the claimed insulated pipe in other aspects that determine the bending force (see point 3 of the reasons for the decision under appeal). However, in the present case, any such unclarity that has its origin in feature **e** or **f** does not affect the patent as a whole in such a way that the skilled person would be hindered from carrying out the invention. In this respect, the board refers to section II.C.8.2.2.a of "Case Law" and, in particular, to decision T 1811/13 (Reasons 5.1) mentioned therein.

18. In this context, the respondent mentioned decision T 1305/15. In the appeal case underlying this decision, the board judged that the claimed invention was insufficiently disclosed because experimental results filed by the opponent (respondent) had succeeded in shifting the burden of proof to the patent proprietor (appellant), which, in turn, had not demonstrated on the basis of verifiable facts that the skilled person, based on the information contained in the patent and using common general knowledge, was able to reliably carry out the measurement of a claimed parameter (Reasons 4.13). In particular, it was held that, due to the severe lack of information concerning the measurement method, the parameter was so ill-defined that the skilled person was at a loss whether or not a reworked example solved the problem underlying the invention, which posed an undue burden on the skilled person, depriving them of the promise of the invention (Reasons 4.17).

The present case is different from the appeal case underlying the decision in T 1305/15 in that the experimental results presented in the form of document D14 are unable to discharge the burden of proof resting on the respondent. In contrast, they actually corroborate the appellant's case that the skilled person is able to reproduce the invention in a reliable manner (see points 9. to 11. above). Moreover, in the present case, there is no severe lack of information concerning the method for measuring the bending force that would impair reproducing an insulated pipe with the functional requirements of features **e** and **f** (see point 12. above). Therefore, the cases are not comparable.

(iii) The object of the invention

19. In point 1.7 of the reasons for the decision under appeal, the opposition division was of the view that features **e** and **f** were "incidentally fulfilled by some pipes that were tested by the proprietor, rather than a pursued objective of the invention"; they were "actually irrelevant for the fulfillment of the alleged object of the invention defined in paragraph [0013] of the patent". In this respect, the board refers to section II.C.3.3 of "Case Law" and, in particular, to the Enlarged Board's decision G 1/03 (OJ EPO 2004, 413, Reasons 2.5.2), according to which, if an effect is not expressed in a claim but is part of the problem to be solved, this would be an issue to be examined under inventive step rather than under sufficiency of disclosure. This has led to settled case law that an objection of insufficient disclosure cannot legitimately be based on an argument that the patent would not enable a skilled person to achieve a non-

claimed technical effect (see for example decision T 1845/14, Reasons 9.8).

(f) Conclusion on claim 1

20. The board concludes that there are no serious doubts, let alone substantiated by verifiable facts, that the invention of claim 1 of the patent as granted can be carried out by a skilled person without undue burden. The opposition division therefore erred in its decision that the invention of claim 1 of the patent as granted was not disclosed in a manner sufficiently clear and complete for it to be carried out by a skilled person.

(g) Dependent claims 8 and 9

21. The same reasoning applies to the insulated pipe according to dependent claims 8 and 9 of the patent as granted. The additional features of these claims further restrict the permissible range of the bending force defined by features **e** and **f** to 30% and 10%, respectively, compared to the same pipe without VIP. The measurement results of the "Thermo single 32/D140" pipes of Table 3 fall within that range (see points 4. and 5. above). Also all experimental results presented by document D14 comply with the more restricted requirements (see point 10. above).

22. Thus, the ground for opposition under Article 100(b) EPC does not prejudice the maintenance of the patent as granted. The decision under appeal is to be set aside.

Remittal to the opposition division

23. In the present case, the patent was revoked on the basis of the ground for opposition under

Article 100(b) EPC. The opposition division did not carry out a substantive examination as to the allowability of the claims of the patent as granted in view of the ground for opposition under Article 100(a) EPC. Taking further into account that the appellant requested a remittal in case the board found that the claimed invention was sufficiently disclosed and that the respondent expressed its agreement with such a course of action, the board exercised its discretion pursuant to Article 111(1) EPC and Article 11 RPBA and decided to remit the case to the opposition division for further prosecution.

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.

The Registrar: The Chairman:

N. Schneider P. Lanz

Decision electronically authenticated