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D E C I S I O N
of 16 March 2000

Case Number: T 0987/98 - 3.2.1

Application Number: 94200120.7

Publication Number: 0608034

IPC: B60H 3/06, B01D 46/10, B01D 46/52

Language of the proceedings: EN

Title of invention:
Filter device

Patentee:
CARBON HEALTHFILTER V.o.f.

Opponent:
(01) Bayerische Motoren Werke Aktiengesellschaft
(02) Minnesota Mining & Manufacturing Company

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56, 104
EPC R. 67
Keyword:
"Novelty (no)"
"Inventive step (no)"
"Apportionment of costs (no)"
"Reimbursement of appeal fee (no)"
Decisions cited:
-

Catchword:
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Case Number: T 0987/98 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 16 March 2000

Appellant: (Proprietor of the patent)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 29 July 1998 revoking European patent No. 0 608 034 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: F. Gumbel
Members: S. Crane
J. Van Moer

Summary of Facts and Submissions

I. European patent No. 0 608 034 was granted on 3 April 1996 on the basis of European patent application No. 94 200 120.7.

II. The granted patent was opposed by the present respondents on the grounds that its subject-matter lacked novelty and/or inventive step (Article 100(a) EPC). Of the extensive state of the art relied upon in the opposition proceedings only the following pre-published documents have played any significant role on appeal:

(D2) DE-U-7 823 120

(D8) FR-A-2 636 014

(D10) DE-U-8 700 521

III. With its decision posted on 29 July 1998 the Opposition Division revoked the patent.

The reasons given for the decision were that the subject-matter of claim 1 according to the main request lacked novelty with respect to documents D8 and D10 and that the subject-matter of the respective claims 1 according to the first to fifth auxiliary requests lacked novelty with respect to document D8.

IV. An appeal against this decision was filed on 8 October 1998 and the fee for appeal paid at the same time. The statement of grounds of appeal was filed on 8 December 1998.

The appellants (proprietors of the patent) requested that the decision under appeal be set aside and the patent maintained in amended form on the basis of claim 1 according to the main request considered by the Opposition Division. They also requested reimbursement of the appeal fee.

The relevant claim 1 reads as follows:

"Filter device (5), in particular for a motor vehicle (1), provided with a base part (6) comprising means (22,23) adapted for fixing to the vehicle (1) and defining at least one receiving space (11), the form and dimensions of the base part (6) being adapted to the vehicle (1), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

V. In a communication dated 22 September 1999 pursuant to Article 11(2) RPBA the Board indicated that it was not clear to it what technical limitations were imposed on the form and dimensions of the receiving space and the filter part by the requirement of claim 1 that they be "independent of the vehicle". It appeared to the Board that any filter part which was capable of being used in various vehicles by virtue of an appropriate adaptor comprising a base part which was fixed to the vehicle could be considered as being "independent of the vehicle" as was the receiving space for the filter part

in the base part.

VI. With a letter received on 16 February 2000 the appellants requested that the claims according to the first to fifth auxiliary requests considered by the Opposition Division also be considered in the appeal as first to fifth auxiliary requests and submitted ten further proposals for the wording of claim 1 according to sixth to fifteenth auxiliary requests. The new proposals were intended to highlight the basic concept underlying the invention.

The wording of the respective claims 1 according to the first to fifteenth auxiliary requests is as follows:

First auxiliary request:

"Filter device (5), in particular for a motor vehicle (1), provided with a base part (6) comprising means (22,23) adapted for fixing onto a suction opening of a heating and ventilation system (2) of the vehicle (1) and defining at least one receiving space (11), the form and dimensions of the base part (6) being adapted to the heating and ventilation system (2) of the vehicle (1), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the heating and ventilation system (2) of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Second auxiliary request:

"Filter device (5), in particular for a motor vehicle (1), provided with a base part (6) comprising means (22,23) adapted for fixing to the inflow side of a suction opening of a heating and ventilation system (2) of the vehicle (1) and defining at least one receiving space (11), the form and dimensions of the base part (6) being adapted to the suction opening of the heating and ventilation system (2) of the vehicle (l), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of but smaller than the base part (6), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Third auxiliary request:

"Motor vehicle (1), provided with a filter device (5) comprising a base part (6) having means (22,23) adapted for fixing to the vehicle (1) and defining at least one receiving space (11), the form and dimensions of the base part (6) being adapted to the vehicle (1), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the

inflow side of the base part (6)."

Fourth auxiliary request:

"Motor vehicle (1), provided with a filter device (5) comprising a base part (6) having means (22,23) adapted for fixing onto a suction opening of a heating and ventilation system (2) of the vehicle (1) and defining at least one receiving space (11), the form and dimensions of the base part (6) being adapted to the heating and ventilation system (2) of the vehicle (1), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the heating and ventilation system (2) of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Fifth auxiliary request:

"Motor vehicle (1), provided with a filter device (5) comprising a base part (6) having means (22,23) adapted for fixing to the inflow side of a suction opening of a heating and ventilation system (2) of the vehicle (1) and defining at least one receiving space (11), the form and dimensions of the base part (6) being adapted to the suction opening of the heating and ventilation system (2) of the vehicle (1), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being

independent of but smaller than the base part (6), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Sixth auxiliary request:

"Filter device (5) for a motor vehicle (1), provided with a base part (6) selected from a plurality of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), said selected base part (6) comprising means (22,23) adapted for fixing to the vehicle (1) and defining at least one receiving space (11), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Seventh auxiliary request:

"Filter device (5) for a motor vehicle (1), provided with a base part (6) selected from a plurality of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), said selected base part (6) comprising means (22,23) adapted for fixing to the inflow side of a suction opening of a heating and

ventilation system (2) of the vehicle (1) and defining at least one receiving space (11), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Eighth auxiliary request:

"Motor vehicle (1), provided with a filter device (5) comprising a base part (6) selected from a plurality of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), said selected base part (6) having means (22,23) adapted for fixing to the vehicle (1) and defining at least one receiving space (11), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Ninth auxiliary request

"Motor vehicle (1), provided with a filter device (5) comprising a base part (6) selected from a

plurality of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), said selected base part (6) having means (22,23) adapted for fixing to the inflow side of a suction opening of a heating and ventilation system (2) of the vehicle (1), and defining at least one receiving space (11), and with at least one exchangeable filter part (7) arranged in the receiving space (11), the form and dimensions of the receiving space (11) and the filter part (7) being independent of the vehicle (1), the filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19), and the receiving space (11) being accessible from the inflow side of the base part (6)."

Tenth auxiliary request,

"Collection of filter devices (5) for motor vehicles (1), comprising:

- a number of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), each said base part (6) comprising means (22,23) adapted for fixing to said specific vehicle (1) and defining at least one receiving space (11) accessible from the inflow side of the base part (6), the form and dimensions of the receiving space (11) being independent of the specific vehicle (1), and

- a corresponding number of exchangeable filter parts (7) for arranging in the receiving spaces (11) of the base parts (6), the form and dimensions of the filter parts (7) being independent of the vehicles (1), each said filter part (7) being form retaining and

comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19)."

Eleventh auxiliary request:

"Method of providing a plurality of different motor vehicles (1) with filter devices (5), comprising the steps of:

- providing a number of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), each said base part (6) comprising means (22,23) adapted for fixing to said specific vehicle (1) and defining at least one receiving space (11) accessible from the inflow side of the base part (6), the form and dimensions of the receiving space (11) being independent of the specific vehicle (1),

- providing a corresponding number of exchangeable filter parts (7) for arranging in the receiving spaces (11) of the base parts (6), the form and dimensions of the filter parts (7) being independent of the vehicles (1), each said filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (l9),

- fixing each said base part (6) in a selected motor vehicle (1), and

- removably arranging each said filter part (7) in the receiving space (11) of one of said base parts (6)."

Twelfth auxiliary request:

"Collection of filter devices (5) for motor

vehicles (1), comprising:

- a number of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), each said base part (6) comprising means (22,23) adapted for fixing to the inflow side of a suction opening of a heating and ventilation system (2) of said specific vehicle (1) and defining at least one receiving space (11) accessible from the inflow side of the base part (6), the form and dimensions of the receiving space (11) being independent of the specific vehicle (1), and

- a corresponding number of exchangeable filter parts (7) for arranging in the receiving spaces (11) of the base parts (6), the form and dimensions of the filter parts (7) being independent of the vehicles (1), each said filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19)."

Thirteenth auxiliary request:

"Method of providing a plurality of different motor vehicles (1) with filter devices (5), comprising the steps of:

- providing a number of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), each said base part (6) comprising means (22,23) adapted for fixing to the inflow side of a suction opening of a heating and ventilation system (2) of said specific vehicle (1) and defining at least one receiving space (11) accessible from the inflow side of the base part (6), the form and dimensions of the receiving space (11) being independent of the specific vehicle (1),

- providing a corresponding number of exchangeable filter parts (7) for arranging in the receiving spaces (11) of the base parts (6), the form and dimensions of the filter parts (7) being independent of the vehicles (1), each said filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (l9),

- fixing each said base part (6) to the inflow side of a suction opening of a heating and ventilation system (2) of a selected motor vehicle (1), and

- removably arranging each said filter part (7) in the receiving space (11) of one of said base parts (6)."

Fourteenth auxiliary request:

"Collection of different motor vehicles (1) provided with filter devices (5) the filter device (5) of each said motor vehicle (1), comprising:

- a base part (6) fixed to said motor vehicle (1) by fixing means (22,23), said base part (6) having been selected from a plurality of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), said base part (6) defining at least one receiving space (11) accessible from the inflow side of the base part (6), the form and dimensions of the receiving space (11) being independent of the specific vehicle (1), and

- an exchangeable filter part (7) arranged in the receiving space (11) of the base part (6), the form and dimensions of the filter part (7) being independent of the vehicles (1), each said filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled

with active carbon (19)."

Fifteenth auxiliary request:

"Collection of different motor vehicles (1) provided with filter devices (5) the filter device (5) of each said motor vehicle (1), comprising:

- a base part (6) fixed to the inflow side of a suction opening of a heat and ventilation system (2) of said motor vehicle (1) by fixing means (22,23), said base part (6) having been selected from a plurality of different base parts, the form and dimensions of each different base part (6) being adapted to a specific vehicle (1), said base part (6) defining at least one receiving space (11) accessible from the inflow side of the base part (6), the form and dimensions of the receiving space (11) being independent of the specific vehicle (1), and

- an exchangeable filter part (7) arranged in the receiving space (11) of the base part (6), the form and dimensions of the filter part (7) being independent of the vehicles (1), each said filter part (7) being form retaining and comprising a filter element (12) placed between a pre-filter and an after-filter and filled with active carbon (19)."

VII. Oral proceedings before the Board were held on 16 March 2000.

At the oral proceedings the appellants maintained their previous requests and in addition requested an apportionment of costs.

The respondents requested that the appeal be dismissed and revocation of the patent in its entirety confirmed.

The second respondents (opponents 02) also requested an apportionment of costs.

VIII. The arguments of the appellants in support of their requests can be summarised as follows:

The essence of the invention lay in the idea of providing a plurality of different base parts, each specifically adapted to a certain vehicle, in combination with a standard filter part which would fit into any of these base parts and was thus independent of the vehicle in which it was used. In this way the problem of an insufficient supply of cheap, efficient and easy to maintain filter devices for vehicle heating and ventilating systems had been effectively solved. This concept was neither known from, nor obvious with regard to, the prior art relied upon in the contested decision.

In particular, all that could be derived from the somewhat sparse disclosure of document D8 was a proposal to provide a base part which could be used in principle with a number of different vehicles and which would be physically modified to this end by the person installing the filter device. This was clearly different to the provision of specifically adapted base parts dedicated to a particular vehicle type. As for document D10 the filter part disclosed there was not exchangeable as required by the claims. Furthermore there was no clear teaching in this document of the use of a standard filter part being used with a plurality of different vehicles by virtue of appropriately designed base parts specific to those vehicles.

The meaning of the term "independent" as used in the claims was clear from the patent specification when read as a whole. In particular, it required that the filter part was not custom-made for one particular vehicle but could be used with many different vehicles. Insofar as the claims to the filter device per se or to a motor vehicle including such a filter device might be open to objection on the basis that the independence of the filter part from the vehicle was not a recognisable technical feature of the filter part considered in isolation, then this objection would be overcome by the claims of the auxiliary requests directed to collections of filter devices or motor vehicles or to methods of making the same.

The contested decision was inadequately reasoned with regard to its finding of lack of novelty with respect to documents D8 and D10. This constituted a substantial procedural violation which warranted reimbursement of the appeal fee.

An apportionment of costs in favour of the appellants was justified on the grounds of the excessive number of prior art documents cited by the respondents in the opposition proceedings.

IX. In reply the respondents argued substantially as follows:

Each of the documents D2, D8 and D10 disclosed not only the basis idea on which the alleged invention was founded but also the application of this idea to the specific type of filter part claimed, namely one comprising a filter element filled with active carbon and placed between a pre-filter and an after-filter.

The subject-matter of claim 1 of the main request therefore lacked novelty.

The introduction of a large number of auxiliary requests at a late stage constituted a misuse of the procedure and should not be allowed. In any case, the newly submitted claims were inadmissible for one or more of the reasons of lack of clarity, addition of subject-matter or extension of scope. Insofar as the subject-matter of the claims according to the auxiliary requests had to be considered as novel then any distinctions were of a trivial nature devoid of an inventive significance.

In view of the misuse of the procedure by the appellants, the second respondents requested an apportionment of costs in their favour.

Reasons for the Decision

1. The appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.

2. As portrayed in the patent specification and presented by the appellants in the course of their submissions the alleged invention sets out to solve the problem of providing a filter device for a vehicle heating and ventilation system which can effectively remove from the ambient air a large proportion of the unpleasant or unhealthy substances which may be present therein, which is cheap and can be readily retro-fitted, and which is easy to maintain by the user of the vehicle. The basic concept underlying the claimed invention

resides in the use of a filter part which is not specifically custom-made for a particular vehicle type in combination with a base part for receiving the filter part which is specifically adapted to the particular vehicle type. In this way the filter part can be economically produced in large numbers and when a replacement filter part is required the user or the vehicle can readily obtain this without being forced to resort to a specialist dealer associated with the manufacture of the vehicle involved. In order to be able to remove not only solid substances (dust, pollen etc) from the ambient air being drawn into the vehicle but also nitrogen compounds and volatile organic substances (benzene, toluene etc) the filter part comprises a filter element filled with active carbon and placed between a pre-filter and an after-filter.

The appellants do not seek to contend that the general principle of allowing the same piece of equipment to be used with different machines by means of corresponding adaptors is new in itself. Indeed, in the introductory description of the patent specification reference is made to EP-A-0 380 026, which clearly makes such a proposal, see column 10, lines 45 to 56, in the context of filter devices for vehicle heating and ventilation systems, albeit not with a filter part containing active carbon. The idea of using active carbon filters to improve the quality of the air being fed into the interior of a vehicle by its heating and ventilation system was however also well known per se. Corresponding proposals are to be found for example in the documents D2, D8 and D10.

Turning to document D8 in more detail, this proposes a filter device including an exchangeable filter part

which is form retaining and comprises a filter element filled with active carbon placed between a pre-filter and an after-filter. (The latter is not specifically mentioned in the document but it is apparent in the circumstances that the downstream perforated sheet shown in the Figures 3 and 4 of the drawings must constitute such an after-filter, as is accepted by the appellants). The filter part is arranged in the receiving space of a base part ("adapteur") which is fixed onto the suction opening of the heating and ventilation system of a vehicle, the receiving space being accessible from the inflow side of the base part. The base part is designed to allow the same filter part to be used with different types of vehicles, see page 1, lines 15 to 18. To this end it is provided with lines of rupture allowing the user to adapt its form and dimensions to those of the suction opening to which it is to be fixed. With respect to document D8 the appellants argue that there is a significant difference between what is proposed there and providing, as is the case in the claimed invention, a plurality of different base parts from which one is selected for a particular vehicle without the need for it to be modified in any way. Claim 1 of the main request is however very broad in ambit with respect to the manner in which the base part is "adapted" for fixing to the vehicle and certainly extends to cover the arrangement disclosed in document D8. The subject-matter of claim 1 of the main request therefore lacks novelty with respect to this state of the art (Article 54 EPC).

The same is true with respect to the state of the art according to document D10. In Figure 2 of this document there is disclosed a filter device for a vehicle heating and ventilation system comprising a filter part

with three layers of filter material, one or more of which may include active carbon. The filter part is received in a base part ("Adapter") mounted in a duct of the system. In order to allow simple retro-fitting of the filter device in an existing system the outer dimensions of the base part are adapted to the cross-section of the duct, see page 8. In such an arrangement it is apparent that the form and dimensions of receiving space in the base part and of the filter part are independent of the vehicle involved. The appellants have sought to argue on the basis of what is said in page 6, paragraph 4, of document D10 that the filter part is not exchangeable as required by the claim. However, all that is indicated there is a preferred, inexpensive, way of replacing the filter material in the filter part. There is no suggestion that this should be done with the filter part still in the duct because it is permanently fixed thereto, which would be very impractical.

Considering now the claims according to the auxiliary requests, the Board agrees with the finding of the Opposition Division that the subject-matter of the respective claims 1 according to the first to fifth auxiliary requests lack novelty with respect to document D8. As already indicated above the filter device is fixed via its base part to the inlet side of the suction opening of the heating and ventilation system of a motor vehicle. Thus all of the features contained in these claims over and above the features of claim 1 according to the main request are also disclosed in document D8.

The claims 1 of the six to ninth auxiliary requests correspond in essence to claims 1 of the main request

and the first, third and fourth auxiliary requests respectively with the addition of the requirement that the base part is selected from a plurality of different base parts, the form and dimensions of each different base part being adapted to a specific vehicle. As already explained above, the appellants take the view that this represents a significant difference to what is proposed in document D8. Now, it is arguable that according to that proposal a plurality of different base parts is indeed made available, at least in a virtual sense, and that one is selected therefrom by suitable adaptation of the multi-purpose base part. The Board does not however have to decide on this since in any case a modification of the teaching of document D8 in the sense that different base parts are provided rather than integrating these into a multi-purpose base part from which they have to be separated is an obvious measure in the light of document D10 and common general knowledge and accordingly cannot be considered as involving an inventive step (Article 56 EPC).

Similar considerations apply to the claims according to the remaining auxiliary requests which are directed to a "collection of filter devices" (tenth and twelfth requests), a "method of providing a plurality of different motor vehicles with filter devices" (eleventh and thirteenth requests) and a "collection of different motor vehicles provided with filter devices" (fourteenth and fifteenth requests). Insofar as the subject-matter of these claims can be seen as being novel with respect to the state of the art, especially document D8, then it must be considered as being the logical consequence of the practical application of the teachings of that document, possibly modified in the obvious manner discussed above. In particular, it is

apparent that a manufacture of filter devices following the general teachings of document D8 will be required to provide a number of different base parts adapted to different vehicles, either in a virtual sense, which is the specific proposal of the document, or in a real sense, which is an obvious modification of that proposal, and a corresponding number of general purpose filter parts, thus forming a "collection of filter devices" within the meaning of the relevant claims. In use these filter devices will be selected and fixed to corresponding different vehicles according to the methods set out in claim 1 of the eleventh and thirteenth auxiliary requests. The end result is a "collection of different motor vehicles" as set out in the relevant claims.

As a consequence the respective subject-matter of claim 1 according to each of the tenth to fifteenth auxiliary requests also lacks inventive step.

3. Both the appellants and the second respondents have requested that costs be apportioned in their favour.

According to Article 104 EPC each party to the proceedings shall normally meet its own costs. For the reasons given below the Board can see no justification for departing from that basic principle in the present case.

The request of the appellants, first made at the oral proceedings before the Board, is based on their allegation that an excessive number of prior art documents had been cited by the respondents in the opposition proceedings. In the first place, the Board considers it generally inappropriate to raise for the

first time issues relating to the conduct of the opposition proceedings, and a possible apportionment of costs deriving therefrom, in the appeal proceedings, especially at a late stage thereof. In the second place, the allegation of the appellants is in very broad terms and unsubstantiated; they have not sought to identify which of the citations should be considered as frivolous, on the face of it none of them are, nor have they identified which of the respondents should be held responsible.

As for the request of the second respondents, it is based on the filing of ten new auxiliary requests by the appellants with their letter received on 16 February 2000, which the second respondents, according to their letter dated 9 March 2000, said was a misuse of the procedure which would unnecessarily prolong the duration of the oral proceedings. Their fears in this respect did not however prove to be justified. In view of the fact that the new claim proposals were merely intended to highlight the basic concept underlying the claimed invention it was possible at the oral proceedings, with the consent of all parties, to deal with the substantive merits of the claimed subject-matter expeditiously and, in view of the negative conclusions reached, it was unnecessary to go extensively into the various questions of a more formal nature associated with the admissibility of the new claims. Having regard to the outcome of the appeal there is also no need to consider here the more fundamental procedural objections of the second respondents to the filing of these requests or to direct a question to the Enlarged Board of Appeal in this context.

4. According to Rule 67 EPC it is one prerequisite for the reimbursement of the appeal fee that the appeal be held to be allowable. Since this is not the case the request of the appellants in this respect cannot succeed for this reason alone.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

2. The requests for reimbursement of the appeal fee and for apportionment of costs are rejected.

The Registrar: The Chairman:

S. Fabiani F. Gumbel