Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Local Division Mannheim
UPC_CFI_716/2024
(CCfR: UPC_CFI_205/2025)

Decision

of the Court of First Instance of the Unified Patent Court

Local Division Mannheim

delivered on 18 December 2025

concerning EP 2 037 175

CLAIMANT:

Polidoro S.p.a. - via Lago di Misurina 76 - 36015 - Schio (Vicenza) - IT	Represented by Tilmann Müller-Stoy

DEFENDANTS:

1)	**Bekaert Combustion Technology B.V.** - J.C. van Markenstraat, 19 - 9403 - AR Assen - NL	Represented by Marc van Wijngaarden
2)	**NV Bekaert SA** - Bekaertstraat 2 - Zwevegem - 8550 - BE	Represented by Marc van Wijngaarden

PATENT AT ISSUE

European Patent No. EP 2 037 175

PANEL/DEVISION:

Panel of the Local Division in Mannheim

DECIDING JUDGES:

This decision is delivered by the presiding judge Tochtermann, the judge-rapporteur Böttcher, the legally qualified judge Gillet and the technically qualified judge Papa.

LANGUAGE OF PROCEEDINGS: English

SUBJECT-MATTER OF THE PROCEEDINGS: Patent infringement

DATE OF THE ORAL HEARING: 6 November 2025

SUMMARY OF FACTS:

1. Claimant is suing Defendants for the alleged infringement of EP 2 037 175, which relates to a premixed burner. The granting of the patent-in-suit was published on 23 November 2016. It was filed on 2 September 2008, claiming the priority of the Italian patent application IT MI20071751 of 12 September 2007. It was upheld in limited form in opposition proceedings (cf. B2-patent specification (exhibit B&B1), decision of the Board of Appeal of the European Patent office (exhibits BP 2, 4)) with the opposition decision being published and mentioned in the register on 27 November 2024. Claimant, a designer and manufacturer of gas burners, is the registered proprietor of the patent-in-suit which is in force inter alia in Austria, Belgium, Germany, France, Italy, the Netherlands, and Portugal (Exhibit BP 1). For these UPCA contracting member states, Claimant is seeking injunctive relief, recall/definite removal, destruction, communication of information, interim awards of damages, publication of the decision on the merits in public media and a declaration on Defendants' liability for damages.

2. Claim 1 of the patent-in-suit after opposition procedure reads as follows in the language of the patent:

> 1. A premixed burner (10), especially for condensation boilers, comprising:
>
> a tubular body (12), the side surface of which is provided with a plurality of holes and slits (14), the tubular body (12) having one head constituting an inlet (20),
> and at least one disk (16), fixed to said head of said tubular body (12) and constituting the distribution head of the air-gas mixture into the same body (12),
> wherein the at least one disk (16) is provided with through openings or holes (22)
> and said tubular body (12) is closed on the other head by a plate (24), said plate (24) being welded or crimped along the said side surface of the tubular body (12),

wherein the disk (16) with holes (22) which closes one of the ends of the tubular body (12) is provided with a flange (18) with circumferential lowering (18') for coupling with the inlet (20) of the tubular body (12) opposite the head closed by said plate (24),

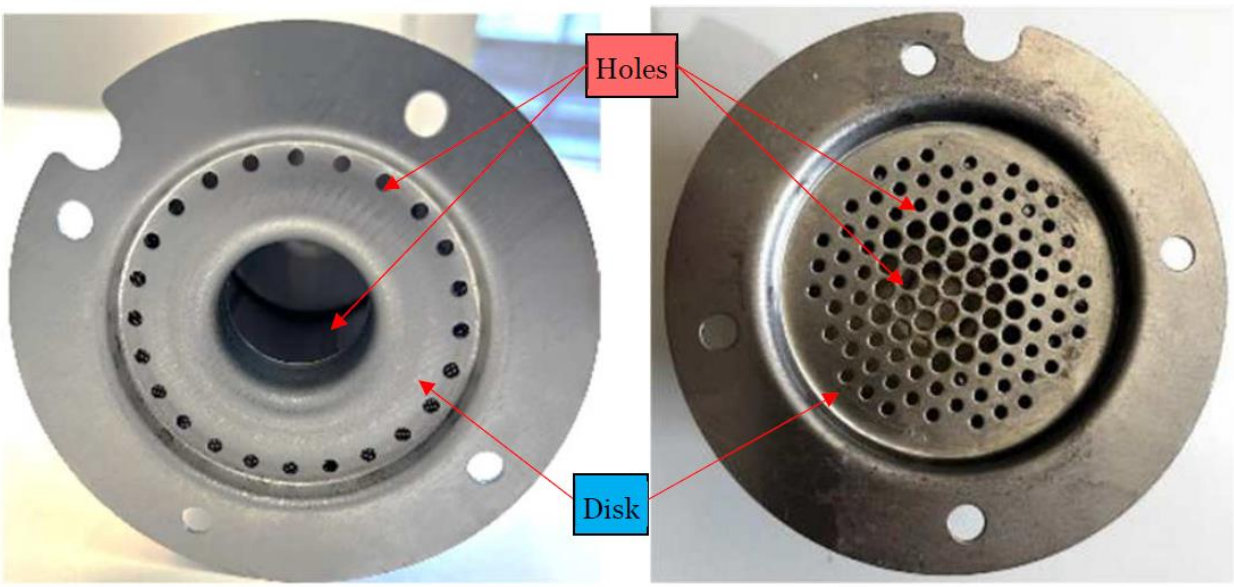
characterized in that

the premixed burner (10) does not comprise an internal distributor for distributing the air-gas mixture into the burner (10), the disc (16) with holes (22) performing the function of the internal distributor for distributing the air-gas mixture,
and
the at least one disk (16) is made integrally with the flange (18).

3. Defendants belong to the Bekaert group that is engaged in steel wire transformation and coating. Defendant 2 is the parent company. Defendant 1, a 100 % subsidiary of Defendant 2, is responsible for the group's heating business encompassing premix burners for residential and commercial applications. Negotiations between the parties with regard to a cross-license agreement were not successful.

4. Claimant aims with its infringement action at two types of premixed burners of the "Multipat" series of Defendants, which are designated as attacked embodiment A and attacked embodiment B respectively and are pictured below (cf. Statement of Claim ("**SoC**", paras. 41, 61; annotations added by Claimant):

Ill. 2 Front (upstream) side view of the Infringing Embodiments A (left) and B (right)



Ill. 5 *Front view of the Infringing Embodiments A (left) and B (right); annotations added*

5. In addition, Claimant submitted, with the statement of claim, inter alia a brochure with copy right note 2012 (exhibit BP 7), a brochure with copy right note 2017 (exhibit BP 8) and additional pictures of the attacked embodiments (exhibit BP 6; SoC passim).

6. Defendant 1 is designated as the point of contact for the attacked embodiments with regard to the territory of "Europe" in the brochures (Exhibits BP 7 and BP 8: right column at the end) and offers and sells them in particular in the aforementioned UPCA contracting member states. Defendant 1 produces the attacked embodiment at least in its factory in Assen, Netherlands. Defendant 2 is responsible for the website www.bekaert.com, where the attacked embodiments were advertised until at least May 2024 (cf. screenshots exhibit BP 9) and to which the brochures (BP 7 and BP 8) refer on their last page and from which the "EU General Catalog" (exhibit BP 10, screenshot on p. 2 of exhibit BP 9) can be downloaded.

REQUESTS OF THE PARTIES

7. Claimant requests:

   A. The Defendants are ordered

      I. to cease and desist in Austria, Belgium, Germany, France, Italy, the Netherlands, and Portugal

      making (limited to Defendant 1 and the Netherlands), offering, placing on the market, using and/or importing and/or storing for those purposes

a premixed burner, especially for condensation boilers, comprising: a tubular body, the side surface of which is provided with a plurality of holes and slits, the tubular body having one head, constituting an inlet, and at least one disk fixed to said head of said tubular body and constituting the distribution head of the air-gas mixture into the same body, wherein the at least one disk is provided with through openings or holes and said tubular body is closed on the other head by a plate, said plate being welded or crimped along the said side surface of the tubular body, wherein the disk with holes which closes one of the ends of the tubular body is provided with a flange with circumferential lowering for coupling with the inlet of the tubular body opposite the head closed by said plate, characterized in that the premixed burner does not comprise an inner distributor for distributing the air-gas mixture into the burner, the disk with holes performing the function of the internal distributor for distributing the air gas mixture, and the at least one disk is made integrally with the flange.

(direct infringement of claim 1);

II. to recall, permanently remove from the distribution channels and destroy, at their expense, the infringing products pursuant to request A.I.;

III. to provide Claimant with information on the extent to which they have committed the acts referred to in request A.I. since December 23, 2016, stating

1. the origin and distribution channels of the products referred to in request A.I., including

   a. the names and addresses of manufacturers, suppliers and other previous owners, and

   b. the names and addresses of the commercial customers and the points of sale for which the products were intended;

2. the quantity of products made, delivered, received or ordered, as well as the prices paid for the products concerned; and

3. the identity of any third party involved in the production or distribution of the products referred to in request A.I.,

whereby copies of the relevant purchase documents (namely invoices, alternatively delivery bills) are to be submitted as proof of the information, whereby details requiring secrecy outside the required information may be redacted.

IV. to pay Claimant an amount of EUR 224,000 as interim award of damages.

B. Defendants are obligated to compensate Claimant for all damages that Claimant has suffered and will suffer as a result of the acts set forth in request A.I. above, committed since December 23, 2016.

C. Claimant is permitted, at Defendants' expense, to announce and publish the decision in whole or in part in public media, in particular on the internet**.**

D. In case of any violation of the orders under requests A.I.- A.III., the respective Defendant shall pay a penalty payment in the amount of

up to EUR 100,000 for each day of violation of the order A.I.,

up to EUR 50,000 for each day of violation of the order A.II.,

up to EUR 10,000 for each day of violation of the order A.III.,

to be paid to the court.

E. Defendants shall bear the costs of the proceedings.

F. The judgment is directly enforceable. In the event that a security is ordered, Claimant is permitted to provide it also in the form of a bank or savings bank guarantee, and the amount of the security is determined separately for the individual enforceable parts of the judgment, with the following individual amounts proposed:

Injunction:	EUR 1.500,000.-
Recall, removal and destruction:	EUR 200,000.-
Information:	EUR 50,000.-

8. Defendants request:

1. to dismiss the action,

2. to order the Claimant to bear the costs of the proceedings (Art. 69(1) UPCA) and to order an interim award of the Defendants' costs of at least EUR 17,735,

3. [procedural request, not relevant to the decision at hand],

4. in the auxiliary, to make the enforcement of the decision subject to the provision of security by the Claimant in an amount to be determined by the Court (Art. 82(2) UPCA).

9. In its Reply in the infringement proceedings ("**Reply-IA**", para. 116), responding to Defendants' criticism, Claimant limited its request under above A.IV. (interim award of damages) to an amount of EUR 216.000 and, corresponding to its Application to amend the patent, further requests:

I. To issue an order pursuant to Requests A.-F. of the Statement of Claim,

<u>alternatively</u>,

to issue an order pursuant to Requests A.-F. of the Statement of Claim wherein Request A.I is amended in accordance with one of the Auxiliary Requests 1 to 7, submitted in this order.

II. To reject Defendants' request to order an interim award of the Defendants' costs.

III. To reject Defendants' request to make the enforcement of the decision subject to the provision of security by the Claimant in an amount to be determined by the Court.

10. Defendants request in their rejoinder in the infringement proceedings ("**RJ-IA**"):

to also dismiss Claimant's alternative requests based on Auxiliary Requests 1 to 7.

11. By brief of 3 November 2025, based on the value in dispute set by the judge-rapporteur in his order of 28 October 2025 preparing the oral hearing, Defendants raised the amount requested as interim award on costs to EUR 42.485,00.

COUNTERCLAIM FOR REVOCATION

12. With regard to their Counterclaim for revocation (UPC_CFI_205/2025), Defendants request:

1. Substantive request

to declare the European Patent EP 2 037 175 as invalid in its entirety,

therefore, for the territories of the Republic of Austria, the Kingdom of Belgium, the French Republic, the Federal Republic of Germany, the Italian Republic, the Kingdom of the Netherlands and the Portuguese Republic

2. Procedural requests

2.1 [procedural request, not relevant to the decision at hand];

2.2 [procedural request, not relevant to the decision at hand];

2.3 to set the value in dispute of the counterclaim for revocation at EUR 500,000;

2.4 to order an interim award of the defendant's costs at first instance in the amount of at least EUR 17,735; and

2.5 to order the claimant and counter defendant to pay the costs of the proceedings (Art. 69 (1) UPCA).

13. Claimant requests:

I. The counterclaim for revocation of the Defendants is rejected.

II. The value in dispute of the counterclaim for revocation is set at EUR 3,000,000.

III. Defendants' request to order an interim award of the Defendant's costs at first instance is rejected.

IV. Defendants are ordered to jointly pay the costs of the proceedings re. the counterclaim for revocation.

14. By brief of 3 November 2025, based on the value in dispute set by the judge-rapporteur in his order of 28 October 2025 preparing the oral hearing, Defendants raised the amount requested as interim award on costs to EUR 42.485,00.

15. In its conditional Application to amend the patent, Claimant relies on seven auxiliary requests AR 1 to 7 (exhibits AR 1 to AR 7) for which it provided the following tabular overview (Reply-IA of 19 May 2025, para. 359):

AR	Amendments
1	the through openings or holes (22) of the disk (16) have heterogeneous diameter.
2	the through openings or holes (22) of the disk (16) are made in groups with different diameters.
3	the premixed burner (10) has a cylindrical shape.
The following auxiliary requests are combinations of the foregoing ones	
4	**AR 1 + AR 2**
5	**AR 1 + AR 3**
6	**AR 2 + AR 3**
7	**AR 1 + AR 2 + AR 3**

16. Defendants request:

to also dismiss Claimants' alternative requests based on Auxiliary Requests 1 to 7.

17. By brief of 15 October 2025 in the counterclaim for revocation ("**CCfR**") proceedings (UPC_CFI_205/2025), Claimant requested to disregard certain parts of the Defendants' Rejoinder regarding the Application to amend the patent on the grounds that these parts were not limited to a response to the reply regarding the Application to amend the patent. By brief of 22 October 2025, the Defendants opposed. By order of 28 October 2025 that prepared the oral hearing, in the light of the imminent oral hearing, the judge-rapporteur postponed a decision until the oral hearing and therefore transferred it to the panel.

POINTS AT ISSUE

18. The parties are in dispute about different aspects of the case at hand.

INFRINGEMENT

19. Claimant asserts that both attacked embodiments implement the features of claim 1 as upheld in the opposition decision of the European Patent Office (EPO) and as amended by the present auxiliary requests. To support its argument with regard to feature 13 [6.] (cf. feature breakdown in para. 40 infra, numbers in brackets relate to the numbering of Defendants), Claimant presents computer-simulated tests concerning the velocity profile of the air-gas mixture in case of a 90° inlet manifold (Reply-IA, p. 18 et seqq., exhibit BP 15) as well as temperature measurements with thermocouples arranged at two locations within the attacked burners, in proximity of their inlet (Reply-IA, p. 25 et seqq., exhibit BP17). Defendants provide tests comparing the flame pattern with and without the inlet disk in a burner according to Embodiments A and B (Soc, p. 28 et seqq., exhibit B&B7). All tests are criticized by the opposite side.

20. Defendants dispute that the attacked embodiments realize in particular feature 13 [6.]. They argue that the disk with holes has to provide precisely the function of an internal distributor, i.e. homogeneously distributing the air-gas mixture over the burner surface, thereby ensuring an even flame pattern of the burner (no inverted “Christmas tree”), which avoids localized overheating and backfires, while achieving the same level of efficiency of the known solutions with an internal distributor (cf. paras. [0005], [0016] of the patent-in-suit). In addition, the disk with holes has to avoid the criticized drawbacks of a solution using an internal distributor, namely an unevenness of the temperature on the burner surface that potentially leads to microfissures and ultimately to breakage. If any disk with holes was sufficient, feature 13 [6.] would be rendered meaningless, as feature 7 [1.2.2] already calls for a distribution functionality of the disk with holes and feature 12 [5.] excludes the use of an internal distributor. They point out that the inlet disk with holes implemented in the attacked embodiments had the sole function of an inlet and of noise reduction. A homogeneous flame distribution would exclusively be achieved through the pattern of the perforations in the tabular body of the attacked embodiments, whereas the flow within the tabular body would be inhomogeneous. The perforations having different shapes, sizes and configurations would determine varying porosity along the length of the

attacked burners, thereby guaranteeing that more or less equal amounts of the air-gas mixture passing through the holes in the outer burner surface, resulting in an even flame distribution over the length of the tubular body/burner despite the different pressures inside it. In Defendants' opinion, as far as Claimant attempts to compare the flame pattern of the attacked embodiments with and without the disk by means of alleged computer-simulations of flows, these simulations are flawed in several respects. In particular, a meaningful comparison would have to compare the flame pattern of an attacked embodiment with a disk with holes to an embodiment with an internal distributor. Moreover, in Defendant's view, the patent does not require or envisage the use of specific inlet manifold with a 90° bent. Apart from that, the flawed simulations of Claimant would make the statement of claim inconclusive with regard to attacked embodiment B as this embodiment does not show more homogeneous flow with a disk. In the opinion of Defendants, the alleged temperature measurements by Claimant are also flawed, whereas the observation of flame patterns as carried out by Defendants would conclusively demonstrate that the flame pattern of the attacked embodiments is exclusively determined by the perforation pattern in the burner body without any impact of the inlet disk.

21. In the view of Defendants, for the same reasons as discussed in relation to feature 13 [6.], the attacked embodiments do not realize feature 7 [1.2.2] either, as their inlet disk does not constitute the distribution head in the meaning of this feature.

22. Moreover, the Defendants argue that, based on the wrong understanding of the claim regarding the absence of an internal distributor (feature 12 [5.]) and the disk with holes (features 5 [1.2] and 8 [1.2.3]) by the Board of Appeal of the European Patent Office in the opposition proceedings concerning the patent-in-suit, the attacked embodiment A would not implement these features for the same reasons as to why the Board of Appeal (erroneously) missed a disk with holes and identified an internal distributor in the public prior use Remeha Quinta 65 burner. In Defendants' view, there are no relevant differences between embodiment A and the Quinta 65 burner in this regard.

23. Defendants further point out that, in any event, Claimant has no claim for publishing, at Defendants' cost, the judgement in public media on the instant facts, and that any grant of the requests must be made subject to the provision of enforcement security in the amount specified in the statement of defence.

24. For further details, it is referred to the parties' briefs and exhibits.

COUNTERCLAIM FOR REVOCATION

25. Defendants base their Counterclaim for revocation on the following grounds of Art. 138 EPC in conjunction with Art. 65 (2) UPCA:

    - lack of novelty (Art. 138(1)a) in conjunction with Art. 54 EPC)
    - lack of inventive step (Art. 138(1)a) in conjunction with Art. 56 EPC)
    - lack of disclosure in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art (Art. 138(1)b) EPC)
    - added matter (Art. 138(1) c) EPC)

26. Defendants argue that the subject-matter of claim 1 lacks novelty in view of

    - US 4 766 883 A (exhibit CC33, "US'883", "CC34"),
    - Public prior use by Eco-Hometec (exhibit CC1),
    - Public prior use by Remeha (exhibit CC7),
    - Public prior use by Worgas (exhibit CC21),
    - WO 2009/065733 A1 (exhibit CC31, "WO'733", "CC31").

27. In the Defendants' view, WO 2009/065733 A1 belongs to the relevant prior art pursuant to Art. 54(3) EPC, as the patent-in-suit cannot benefit from the priority date of IT MI20071751.

28. Defendants further argue that the subject-matter does not involve an inventive step,

    - starting from anyone of the above public prior use products or
    - starting from any one of the documents US'883 (CC34) and EP 1 813 864 A2 (exhibit CC37, "EP'864", "CC37")

    combined with the general knowledge of the skilled person in the art (cf. private expert opinion, exhibit CC38, "CC38") or any one of the documents DE 1 973 5512 C1 (exhibit CC 32, "DE'512", "CC32") and Handbuch der Stanzereitechnik, Romanowski (exhibit

CC33, “handbook”, “CC33”).

29. Claimant rejects the attacks on the validity of the patent-in-suit as unfounded. In its rejoinder in the CCfR proceedings (“**RJ-CCR**”, para. 248), Claimant requests to reduce Defendants’ attacks to a reasonable number, as this would better serve the Court’s mandate under the UPCA and the Rules of Procedure to ensure that proceedings are conducted efficiently, while avoiding undue duplication and complexity.

30. For further details, it is referred to the parties’ briefs and exhibits.

REASONS FOR THE DECISION

31. Both, the Infringement action and the Counterclaim for revocation are admissible. The Infringement action is successful in part, whereas the Counterclaim for revocation is unfounded.

A. ADMISSIBILITY

32. The international jurisdiction of the UPC for the Infringement action finds its basis in Art. 31 UPCA, Art. 71b (1), Art. 4 (1), Art. 63 Brussels Ia Reg., as Defendant 1 is domiciled in The Netherlands and Defendant 2 is domiciled in Belgium, both UPCA member states. Apart from that, the international jurisdiction follows from Art. 31 UPCA, Art. 71b (1), Art. 26 Brussels Ia Reg., as Defendants entered an appearance within the meaning of Art. 26 (1) Brussels Ia Reg. before the UPC by filing their statement of defence rightfully without rejecting the international jurisdiction of the court seized.

33. The competence of the Local Division Mannheim for the infringement action follows from Art. 33 (1) (a) UPCA, as the Claimant relevantly asserts infringing acts in relation to Germany. This competence also extends to alleged infringements of the patent-in-suit in relation to other UPCA member states (Art. 33 (2) UPCA). Apart from that, internal competence also follows from R. 19.7 RoP, as Defendants – rightfully – did not file a preliminary objection.

34. The international jurisdiction for the Counterclaim for revocation against Claimant as patent owner domiciled in an EU member state follows from Art. 31 UPCA, Art. 71b (1), Art. 24 (4), Art. 63 Brussels Ia Reg., the competence of the Local Division Mannheim from Art. 33 (3) (a) UPCA.

B. SUBSTANTIVE SCOPE OF THE PATENT-IN-SUIT

35. The patent-in-suit relates to a premixed burner especially suitable for a combustion boiler (para. [0002][1]), and specifically for a condensation boiler (claim 1). A premixed burner is designed to provide the air and gas mixture before combustion, a method known for enhancing combustion efficiency and reducing emissions (SoC, para. 13; Statement of defence ("**SoD**"), para. 22).

36. According to the patent-in-suit, prior art premixed burners include a main body, typically of cylindrical shape, having an inlet attached to a "header". The latter feeds a premixed flow of gaseous fuel and combustion air into an "inner liner or distributor" of the burner provided with through openings which lead the mixture to the inner skirt of the main body, i.e. the "burner surface". The latter has through slits or holes that allow the mixture to reach the burner external surface, wherein ignition and combustion occur. A smaller size of these holes and slits than that of the header prevents backfires (cf. paras. [2], [3]).

37. The patent-in-suit criticizes that the need of using an inner liner for distributing and delivering the air-gas mixture to the burner implies a considerable cost, both for making the "burner" [presumably correct: the liner] itself and for the relative perforations and for assembling the same to the burner body. Moreover, an inner liner or distributor causes considerable unevenness of temperature on the burner surface due to the fact that the mixture that flows from the inner distributor holes directly impinges the outer body, cooling it in correspondingly localized zones. This results in creating thermal gradients with consequent cyclical endurance stress, caused by the same boiler cycle. In consequence, microfissures may occur on the burner surface that over time, cause real and extended breakage; in these cases, the burner must be replaced in full, as it cannot be repaired anymore, but there is also a concrete risk of explosion due to backfire (cf. paras. [0004], [0005]).

38. The patent-in-suit refers to EP 1 840 460 A1 as disclosing a premixed burner according to the preamble of claim 1. It also refers to EP 1 813 864 (A2-document submitted as CC37 in the proceedings at hand) and details that it discloses a burner with a double-wall diffusor, whereas the diffusor comprises a plate-like body with two opposite diffusion surfaces facing the outside of the formed plate-like body (cf. [0006], [0007]).

[1] The numbering of paragraphs refers here and in the following to the B2-specification of the patent-in-suit as published without any adjustments due to the clerical artefact in para. [00012].

39. Against this background, the patent-in-suit describes the object of the invention as obviating the aforementioned drawbacks, more particular, providing a premixed burner which should not require setting up and coupling an inner distributor of the air-gas mixture to the burner itself. As further object it refers to providing a premixed burner the surface whereof should show a substantial temperature evenness in operation, preventing or at least reducing in a substantial manner the risk of formation of microfissures and backfires. As further – more general – object the patent-in-suit lists providing the users with a premixed burner suitable for ensuring high level of resistance and reliability over time, also such as to be easily and inexpensively constructed (cf. paras. [0008]-[0011]).

40. As a solution, the patent-in-suit proposes in claim 1 a premixed burner, the features of which can be structured as follows:

    1. A premixed burner (10), especially for condensation boilers, comprising*:*
    2. [1.1] a tubular body (12),

       [1.1.1] the side surface of which is provided with a plurality of holes and slits (14),
    3. [1.1.2] the tubular body (12) having one head
    4. [1.1.3] constituting an inlet (20),
    5. [1.2] and at least one disk (16),
    6. [1.2.1] fixed to said head of said tubular body (12)
    7. [1.2.2] and constituting the distribution head of the air-gas mixture into the same body (12),
    8. [1.2.3] wherein the at least one disk (16) is provided with through openings or holes (22)
    9. [2.] and said tubular body (12) is closed on the other head by a plate (24),
    10. [3.] said plate (24) being welded or crimped along the said side surface of the tubular body (12),
    11. [4.] wherein the disk (16) with holes (22)

        [4.1] which closes one of the ends of the tubular body (12)

        [4.2] is provided with a flange (18) with circumferential lowering (18') for coupling with the inlet (20) of the tubular body (12) opposite the head closed by said plate (24),

12. [5.] characterised in that the premixed burner (10) does not comprise an internal distributor for distributing the air-gas mixture into the burner (10),

13. [6.] the disk (16) with holes (22) performing the function of the internal distributor for distributing the air-gas mixture,

14. [7.] and the at least one disk (16) is made integrally with the flange (18).

41. Some features require explanation. The average person skilled in the art – not detailed by the parties –, a mechanical engineer with expertise in the field of burners and combustion boilers, will understand the features as follows:

Feature 2 [1.1.1.] – "holes and slits"

42. Slits and holes are not specifically defined in the patent description. However, the ordinary understanding of the skilled person, that a slit is to be understood as a hole that is longer than wide, is confirmed by Fig. 1, 2 and 3.

Feature 9 [2.] -said tubular body (12) is closed on the other head by a plate

43. The term "other head" refers to the end of the tubular body opposite to the head that constitutes the inlet (features 3. [1.1.2.], 4 [1.1.3]). A tubular body has the shape of a tube. Being closed on the other head by a plate means in this context that the body is closed across the entire head of the tube. This understanding is further corroborated by the description and the figures. All embodiments discussed and shown therein have a plate that closes the respective head of the tubular body in its entirety and prevents the air-gas mixture from leaving the tubular body through an outlet in the head so that it flows through the holes and slits of the burner surface.

Feature 12 [5.] – the premixed burner (10) does not comprise an internal distributor for distributing the air-gas mixture into the burner (10)

44. An internal distributor is a device that leads the air-gas mixture to its target, i.e. the burner surface, thereby distributing it in particular in longitudinal direction, i.e. in the direction of the axis of the tubular body. This understanding already follows from the wording of the claim, which characterizes the internal distributor as being "for distributing the air-gas mixture into the burner (10)" (feature 12 [5.]). As the combustion process takes place on the outer side of the burner surface, distributing into the burner implies that the air-gas mixture is guided so that it reaches the entire inner side of the burner surface from where it

can flow outwards and that it is distributed over the inner side of the burner surface in particular in longitudinal direction. In demarcation from a disk with holes, the means, by which the internal distributor achieves this, is shifting the entry points of the air-gas mixture in longitudinal direction at least in part. In this context, the attribute “internal” refers to the fact that the internal distributor resides inside and extends into the burner.

45. This understanding is confirmed by the description and the figures. The description uses the term “inner liner” as synonym for an internal distributor (cf. paras. [0003], [0004], [0005]). Para. [0003] explicitly states that an inner liner or distributor leads the air-gas mixture to the burner surface. Para. [0004] explicitly refers to using the inner liner for distributing and delivering the air-gas mixture to the burner. Para. [0010] speaks of setting up and coupling of an internal distributor “of the air-gas mixture” to the burner itself. Consequently, the burner body shown in Figures 1 and 3 has no component that resides inside or extends significantly into the body. Such a component would imply considerable costs, both for making the component itself and for assembling it to the burner body (cf. para. [0004]), a drawback, which the patent-in-suit wishes to deviate (cf. paras. [0008], [0009], [0011]).

46. The fact that the through openings or holes (22) of the disk (feature 8 [1.2.3]) may be bounded by an embossed collar (26) oriented towards the inner part of the tubular body (12) (subclaim 3, Fig. 4) does not yield another result. Such embossed collars do not shift the entry point of the mixture significantly above the bottom of the tubular body.

47. Contrary to Defendants auxiliary argument, an internal distributor neither has to have holes in its circumferential skirt nor has to be closed at its downstream end. It is true that the inner liner or distributor criticized by the patent-in-suit causes considerable unevenness of temperature on the burner surface due to the fact that the mixture that flows from the inner distributor’s holes directly impinges the outer body, cooling it in correspondingly localized zones (cf. para. [0005]). This is also in line with the explanation in para. [0016] that points out that, due to the disk with holes that replaces the traditional inner distributor in this embodiment, the air-gas mixture enters frontally rather than circumferentially into the body 12 constituting the burner. The term “circumferentially” obviously relates to the flow between the internal distributor and the burner surface, and means that this flow is directed radially with respect to the radius of the burner body. The foregoing implies that

the internal distributor discussed in paras. [0005] and [0016] has indeed holes in its circumferential skirt. However, such design of an internal distributor with holes in its circumferential skirt is not reflected in the claim. Since para. [0016] speaks of "the traditional inner distributor" in this regard, there is no sufficiently strong pointer that the design with said holes discussed in paras. [0005] and [0016] is a definition of the term internal distributor in a way that an internal distributor must necessarily also have holes in its circumferential skirt, in addition to the more general description contained in para. [0003] that only speaks of suitable through openings and leading the mixture to the burner surface without further specification. The same applies to a design with a closed end downstream, a feature that is not even explicitly mentioned in the description, let alone reflected in the claim.

48. Feature 12 [5.] categorically excludes an internal distributor from being a component of the claimed premixed burner. This applies even if there are other components that also influence the distribution of the mixture.

49. Contrary to the Claimant's arguments, an internal distributor is also present, if it is made integrally with other components of the burner. The patent-in-suits teaches to avoid the drawbacks of an internal distributor by getting rid-off it, not be making it integral with other components. In particular, an internal distributor is also given, if it resides on a disk that has holes around the foot of a protrusion of the internal distributor that shifts the entry point of the air-gas mixture significantly above the level of the disk.

<u>Feature 13 [6.] – performing the function of an internal distributor</u>

50. Feature 13 [6.] requires that the disk (16) with holes (22) (which does not have to be flat, cf. para. [0016], subclaim 6) performs the function of the (missing) internal distributor for distributing the air-gas mixture. Again, as already indicated by the wording, the function of the internal distributor to be performed by the disk with holes is distributing the air-gas mixture across the inner side of the burner surface in particular in longitudinal direction (cf. supra). Using a disk with holes avoids that the air-gas mixture impinges on certain points of the inner side of the burner surfaces, thereby causing temperature unevenness across the burner surface with the discussed potential negative consequences for the resistance and reliability of the burner overtime, as at it might by the case when using a traditional internal distributor (cf. [0005] i.c.w. [0010], [0011]).

51. Contrary to the Defendants' arguments, the feature does not require that the disk with holes causes a certain even flame pattern or otherwise achieves the same level of efficiency as an (properly calibrated) internal distributor. In particular, the disk with holes does not have to avoid the flame pattern of a "reverted Christmas tree" as an (again, properly calibrated) internal distributor does. Such requirements as to the quality of the performance are not reflected in the claim. The claim only calls for "performing the function of the (missing) internal distributor for distributing the air-gas mixture" without any further specification as to the level of performance, thereby merely addressing the general function of the internal distributor for guiding and distributing the air-gas mixtures to the entire burner surface as outlined above.

52. In consequence, the claim does not protect a certain implementation or performance level. It rather protects a different technical design concept in which the disk with holes takes over the general function of distributing the air-gas mixtures from and instead of an internal distributor.

53. The above understanding is corroborated by the description (cf. [0003, [0004], [0005], [0009]), as already discussed supra, and the figures. As far as para. [0016] states that experimental tests carried out by the applicant have enabled checking that the burner according to the invention at hand ensures the same levels of efficiency of the known solutions that envisage the use of the inner distributor, with the further advantage of preventing lack of homogeneity in the heat distribution on the tubular body 12, this merely explains that there is no conceptual disadvantage in terms of efficiency in comparison to solutions with internal distributor. The reason for this is result is that, by using the technical design with the disk, upon proper calibration (as addressed in para. [00015]), the same levels of efficiency of solutions with an internal distributor (that also have to be properly calibrated) can be achieved. Furthermore, by this solution the above-discussed harmful temperature gradients on the burner surface caused by traditional internal distributors are avoided. As already discussed, a certain level of performance is not reflected in the claim. Apart from that, para. [00016] only relates to an exemplary embodiment to which the broader claim must not be limited in absence of any sufficient pointer to the opposite.

54. Different from Defendants' view, this understanding does not render feature 13 [6.] superfluous/meaningless. It is true that, in case of doubt, no meaning should be attributed to a feature that renders it superfluous in relation to the other features of the patent claim.

However, the understanding outlined above does not render feature 13 [6.] meaningless in relation to other features, in particular not to features 7 [1.2.2] and 12 [5.]. Feature 7 [1.2.2] already establishes that the disk with holes is "constituting the distribution head of the air-gas mixture into same tubular body (12)". However, feature 7 [1.2.2.] only addresses the function of distributing the air-gas mixture into the tubular body (12) without addressing the distribution across the burner surface. For instants, a thick disk with outward-facing slanted holes arranged on a single ring so that the air-gas mixture predominantly impinges certain spots in the lower part of the tubular body would realize feature 7 [1.2.2]. Only feature 13 [6.] calls for a distribution into the burner and therefore across the burner surface by requiring that the disk with holes must perform the function of the internal distributor within the meaning of features 12 [5.] for distributing the air-gas mixture into the burner, i.e. delivering and guiding the air-gas mixture to and across the entire burner surface in particular in longitudinal direction (cf. supra).

55. For these reasons, the Panel reaches a similar conclusion to that of the Board of Appeal (BoA) of the European Patent Office (EPO) in the opposition decision regarding the patent-in-suit (cf. BP2, p. 40, second paragraph, item 3.6: *"[…] when feature 13 is interpreted in a technically reasonable way, it is understood that the function defined only refers to leading the air-gas mixture toward its target and not to precisely imitating the particular distribution pattern provided by the traditional internal distributor discussed in paragraphs [0003] and [0005]"*).

<u>Feature 14 [7.] – integrally made with the flange</u>

56. Based on the wording, the skilled person understands the term "integrally made with" as meaning that the disk with holes and the flange are made from a single body. Contrary to the Defendants' view, it does not suffice, that disk and flange are (inseparably) joint together into a single body, e.g. by welding.

57. The meaning of "integrally made with" is not different from the meaning in para. [0014] of the description according to which the disk (16) "is made in a single body with the flange 18".

58. Subclaim 8 invoked by Defendants does not alter the fact, that at least one disk with holes has to be integrally made with the flange within the above sense. Any additional disk with holes does not have to fulfil this requirement (cf. also para. [0016]).

59. In consequence, being a product claim, the premixed burner has to have a single body as component that forms both the disk with holes and the flange.

60. As a patent constitutes its own lexicon, the entry in the Shorter Oxford Dictionary (exhibit B&B5) for the adjective “integral” invoked by Defendants is not decisive. Apart from this, the entry only relates to the adjective “integral” not to the phrase “integrally made with”.

61. Again, the Panel reaches a similar conclusion to that the BoA of the EPO in the opposition decision regarding the patent-in-suit (cf. exhibit BP2, p. 55 4th paragraph, p. 56 2nd to 4th paragraph).

C. COUNTERCLAIM FOR REVOCATION

62. The Counterclaim for revocation, being directed against the Austrian, Belgium, Dutch, French, German, Italian, and Portuguese part of the patent-in-suit, is unsuccessful. The subject-matter of patent-in-suit as upheld in the opposition proceedings is novel and involves an inventive step in view of the prior art presented in the proceedings at hand. The subject-matter of the patent-in-suit does not extend beyond the content of the application as filed, and is disclosed in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

I. Added matter

63. Contrary to Defendants, the subject-matter of the patent-in-suit does extend beyond the content of the original application as filed.

1. Legal framework

64. Pursuant to Art. 138(1)(c) EPC, a European patent may be revoked, if its subject-matter extends beyond the content of the application as filed or, if it was granted on a divisional application, extends beyond the content of the earlier application as filed.

65. In order to ascertain whether there is added matter contrary to Art. 123(2) EPC, the Court must thus first ascertain, what the skilled person would derive directly and unambiguously using his common general knowledge and seen objectively and relative to the date of filing, from the whole of the application as filed, whereby implicitly disclosed subject-matter, i.e. matter that is a clear and unambiguous consequence of what is explicitly mentioned, shall also be considered as part of its content (Court of Appeal, decision of 25 November 2025,

UPC_CoA_528/2024, Amgen v Sanofi, para. 54; order of 14 February 2025, UPC_CoA_382/2024, Abbott v Sibio, para. 52).

2. No added matter in the case at hand

66. First, Defendant opine that feature 13 [6.], by requiring that the disk with holes performs the function of an internal distributor for distributing the air-gas mixture, would extend beyond the content of the application as filed. They argue that the application merely speaks of the disk with holes replacing the internal distributor or making it unnecessary and that this is not the same as actually performing the function of the internal distributor.

67. Contrary to Defendants' view, the disk with holes performing the function of the internal distributor for distributing the air-gas mixture does only require that the disk guides and distributes the air-gas mixture in particular in longitudinal direction to the entire burner surface. Para. [0014] of the application as published (exhibit CC26, submitted by Defendants for the content of the application as filed), which corresponds to para. [0016] of the patent-in-suit insofar, discloses that the disk 16 with holes replaces the traditional internal distributor and, in the practice, defines the distribution head of burner 10, thus making the inner distributor unnecessary. This para. [0014] further explains that the burner according to the invention ensures the same levels of efficiency of the known solutions that envisage the use of the inner distributor, with the further advantage of preventing lack of homogeneity in the heat distribution on the tubular body 12. Para. [0007] of the application (exhibit CC26), corresponding to [0009] of the patent-in-suit, describes the object of this invention to provide a premixed burner which should not require setting up and coupling an inner distributor of the air-gas mixture to the burner itself. Against this background, the whole of the application directly and unambiguously discloses that the disk with holes performs the function of the internal distributor for distributing the air-gas mixture instead of the internal distributor performing such function.

68. Second, Defendants object that feature 14 [7.] is supported by the application. The published application (exhibit CC26) contains in its para. [0012], corresponding to para. [0014] of the patent-in-suit, that the "[…] *disk is preferably made in a single body with flange 18*". It further contains subclaim 5 that foresees that *"[…] the disk (16) is obtained integrally with the flange (18)*". Contrary to Defendants, as already discussed in the section on claim

construction, there is no difference between “integrally made with” and “made in a single body with” within the overall disclosure. The same applies to “obtained integrally with”.

69. In this context, Defendants further note that originally-filed claim 4 – from which original claim 5 solely depends - relates to feature 11 [4.2] of claim 1 as maintained in opposition proceedings and its dependency, in turn, reads “*according to previous claim*”. Therefore, the feature of the disk being obtained integrally with the flange would be only disclosed in combination with the features of original claim 3 relating to the embodiment of Fig. 5, having “embossed tongues”.

70. However, the disclosure of the application as filed must not be restricted to the subject-matter of the claims as filed. The overall disclosure, and particularly paras. [0012]-[0014] of the originally-filed application (exhibit CC26), do not establish any inextricable link, either structurally or functionally, between the “integral making” of flange and disk and the presence of said tongues. Indeed, said “integral making” is disclosed in conjunction with the embodiment of Fig.s 1 to 3 and recognizable in all the drawings. Therefore, the application as originally filed directly and unambiguously discloses the subject-matter of feature 14 [7.] and no inadmissible generalization has been carried out.

71. Consequently, in all points raised, the panel comes to the same conclusion as the BoA of the EPO in the opposition decision regarding the patent-in-suit (cf. exhibit BP2, point 3.6 and 3.8 respectively).

II. Sufficiency of disclosure

1. Legal framework

72. Sufficiency has to be examined on the basis of the patent as a whole, thus on the basis of the claims, description and drawings, from the perspective of the skilled person with his common general knowledge at the filing or priority date. The test to be applied is whether the skilled person is able to reproduce the claimed subject-matter on the basis of the patent without any inventive effort and without undue burden. An invention is sufficiently disclosed if the patent specification shows the skilled person at least one way – and in case of functional features: one technical concept – of performing the claimed invention. Where a claim contains one or more functional features, it is not required that the disclosure includes specific instructions as to how each and every conceivable embodiment within the

functional definition(s) should be obtained. A fair protection requires that variants of specifically disclosed embodiments that are equally suitable to achieve the same effect, which could not have been envisaged without the invention, should also be protected by the claim. Consequently, any non-availability of some embodiments of a functionally defined claim is immaterial to sufficiency, as long as the skilled person through the disclosure is able to obtain suitable embodiments within the scope of the claim. The burden of presentation and proof lies with the party invoking invalidity of the patent (cf. Court of Appeal, decision of 25 November 2025, UPC_CoA_528/2024, Amgen v Sanofi, paras. 105 et seqq.)

2. Sufficiency in the case at hand

73. Based on their claim construction, Defendants assert that the claimed arrangement does not achieve the claimed technical effect with regard to the disk with holes performing the function of an internal distributor (feature 13 [6.]), i.e. mainly providing an even flow and thermal distribution at the side surface of the burner tubular body. In this context, Defendants in particular refer to a simulation test report (Exhibit CC43) comparing the flow of the mixture in a burner with and without a disk. Apart from that, Defendants argue that, besides the disk with holes, several factors influence the distribution of the air-gas mixtures, in particular the depth of the tubular body and the design of the holes and slits in the tubular body. The required testing when providing a perforated disk that can replace the internal distributor while providing the same amount of efficiency would therefore constitute an undue burden. Moreover, a satisfactory result could only be achieved by chance without any sufficient guidance from the patent-in-suit. At most, only the embodiments of Fig.s 4 and 5 could disclose a design of the disk with holes with a sufficient degree of specificity so that the patent-in-suit should be restricted to such embodiments as the object of dependent claims 3 and 4. However, such subject-matter is not entitled to the claimed priority date.

74. Contrary to the Defendants' view, the subject-matter of the patent-in-suit is sufficiently disclosed to be carried out by the skilled person, independently from Fig.s 4 and 5. As discussed supra in the section on claim construction, the claimed "function of the internal distributor […]" only implies guiding and distributing the air-gas mixture to the entire burner surface in particular in longitudinal direction. No specific level of efficiency and no specific flame pattern ("(no) inverted Christmas tree") are claimed. The disk with holes as shown in Fig.s 1 to 3 of the patent-in-suit allows the mixture to reach the internal side

surface of the burner body along its longitudinal extension and along the side surface of the burner body, thus in a “distributed” manner.

75. Consistent with said claim construction, at least one way for carrying out the claimed premixed burner is disclosed, such that the persons skilled in the art can implement its structure and make routine calibrations to fit the number, shape and pattern of the disk holes to desired flow conditions at the inlet of the burner (reference to such calibration process is made in para. [0015] of the patent-in-suit). Therefore, the claimed configuration is sufficiently disclosed.

76. The fact that Defendants found an example with settings in which the disk with holes does not have a positive effect on the distribution of the flow does not cast any doubt that there are calibrations for which the disk with holes has the desired effects in respect of distributing the air-gas mixture.

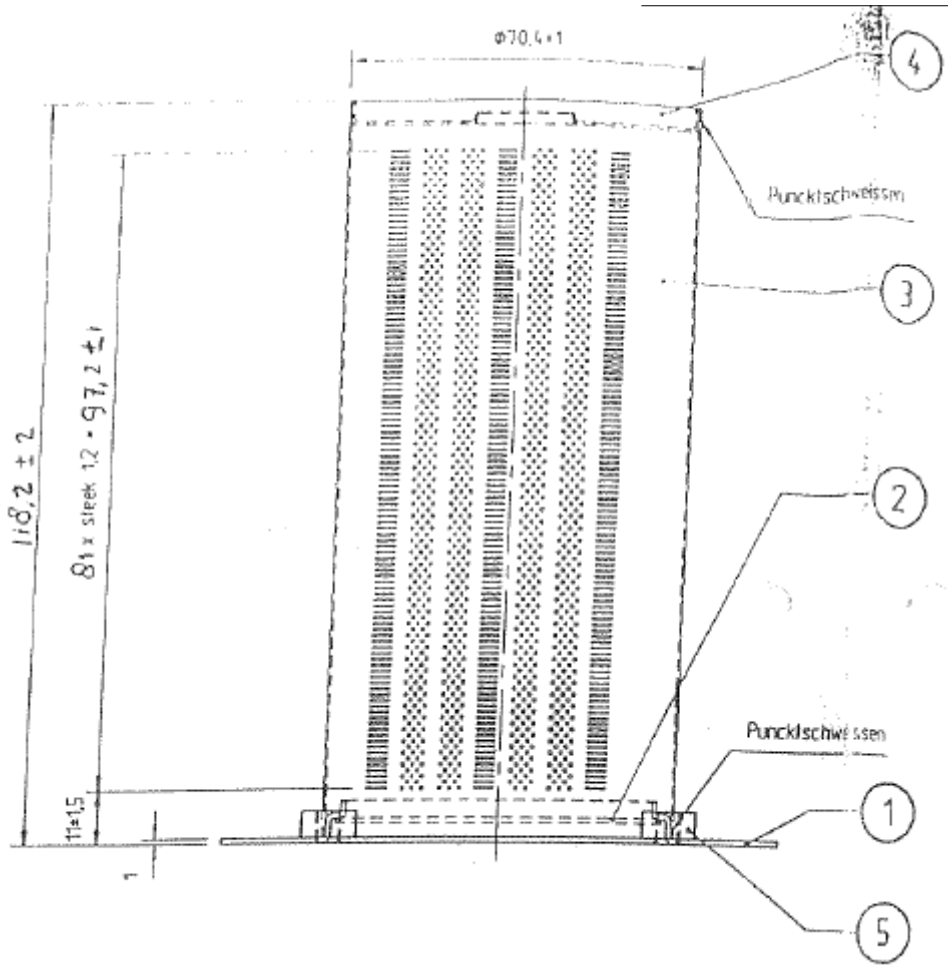
III. Novelty

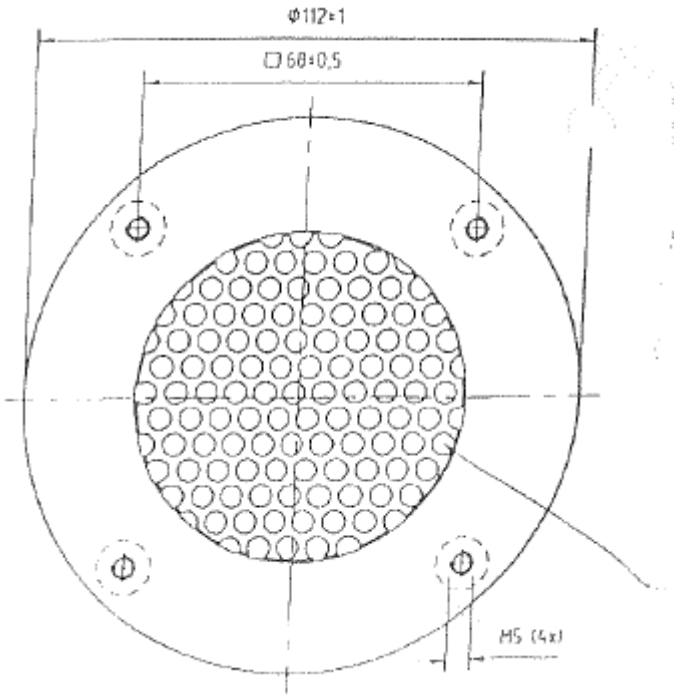
1. Legal framework

77. The assessment of novelty pursuant to Art. 54 EPC requires an assessment of the entire content of the prior source of disclosure. It is decisive whether the subject-matter of the patent claim with all its features is directly and unambiguously disclosed in the prior single source of disclosure (cf. Court of Appeal, order of 25 September 2024, UPC_CoA_182/2024, para. 123).

2. Novelty in the view of the alleged public prior use regarding Eco-Hometec (in particular Exhibits CC1, CC2, CC3, CC4, CC11)

78. The subject-matter of the alleged Eco-Hometec burner is shown in particular in the technical drawing no. 6003.008.001 stamped with the date of 18 April 1996 (exhibit CC1) that forms the focus of the technical discussions of the parties. The two main technical drawings thereof and the explanation of references are pictured below:


ø70,4±1
4
Punktschweissen
3
2
Punktschweissen
1
5
118,2 ± 2
81 x Steek 1,2 = 97,2 ±1
11=1,5
1

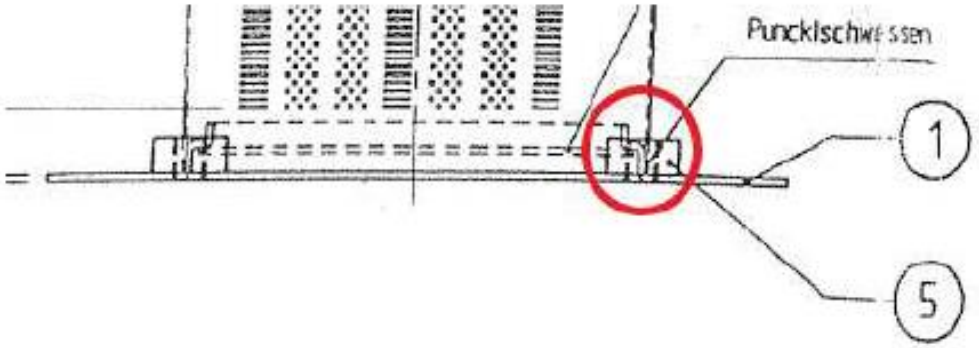


Pos.nr.	Bezeichnung	Material
5	Mutter	St.37
4	Endplatte	Werkstoff nr. 14509
3	Brennerkorper	NCF.
2	Platte	R.V.S. Perforiert
1	Flansch	Werkstoff nr. 14301

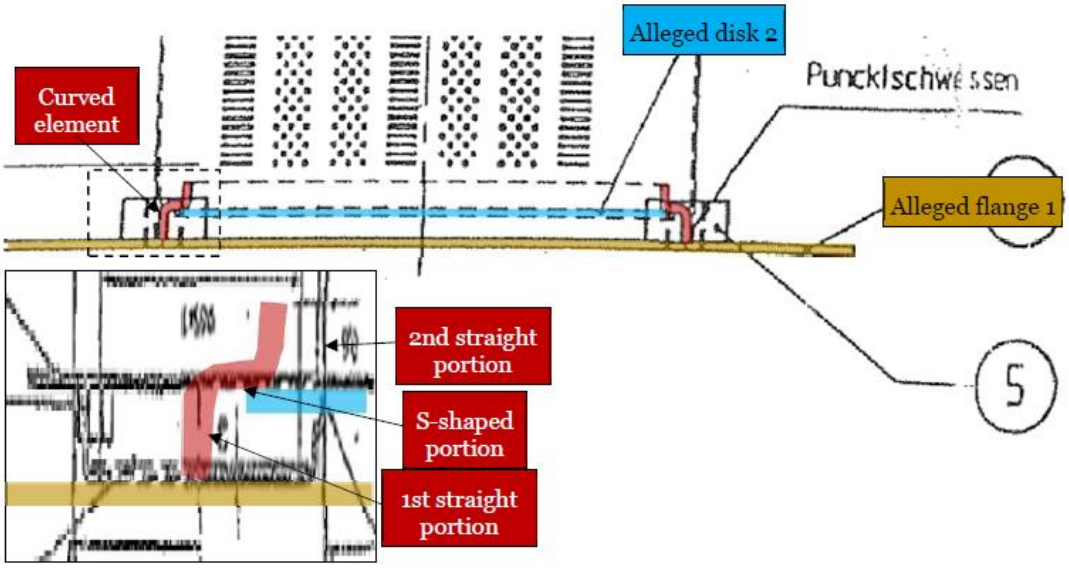
79. Claimant rightfully disputes the disclosure of features 14 [7.] and 11 [4.2].

80. In the first drawing above, a burner is shown having, at one longitudinal end, a perforated plate (“Platte”, denoted by 2, and separately depicted in the second drawing above) and a flange (“Flansch”, denoted by 1). At the opposite longitudinal end, an end plate (“Endplatte” 4) is shown. A tubular body with holes and slits (“Brennerkörper” 3) is interposed between the two plates. Other connection means in the form of screw nuts (“Mutter” 5) are shown. Spotwelding (“Puncktschweissen”, typographical error in the original) is indicated at the two ends of the tubular body as a connection mode between components.

81. The parties provided inter alia the following enlarged and annotated views of the lower part of the first drawing above:

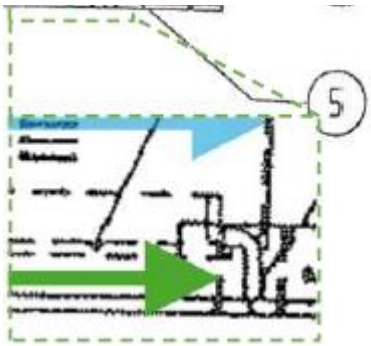


(Defendants, Rejoinder-IA and Reply-CCR, para. 255)



(Claimant, Reply-IA and SoD-CCR, para. 240)

82. It can be left open whether the burner was publicly available at the priority date as Defendants allege. It can also remain open, whether enlarged excerpts of drawings are the correct basis for determining a direct and unambiguously disclosure, because none of the enlarged excerpts discloses the aforementioned features sufficiently. Furthermore, it can remain open whether the small black line, which coincides with the tip of the green arrow inserted by Claimant in the enlarged and annotated excerpt below, indicates the screw/screw hole associated with the screw nut or the inner diameter of the flange and whether that tip of the green arrow corresponds to the inner diameter of the flange as derived from the measures, as Claimant asserts, so that the inner radius of the flange then would appear smaller than the radius of the perforated “Platte” 2.



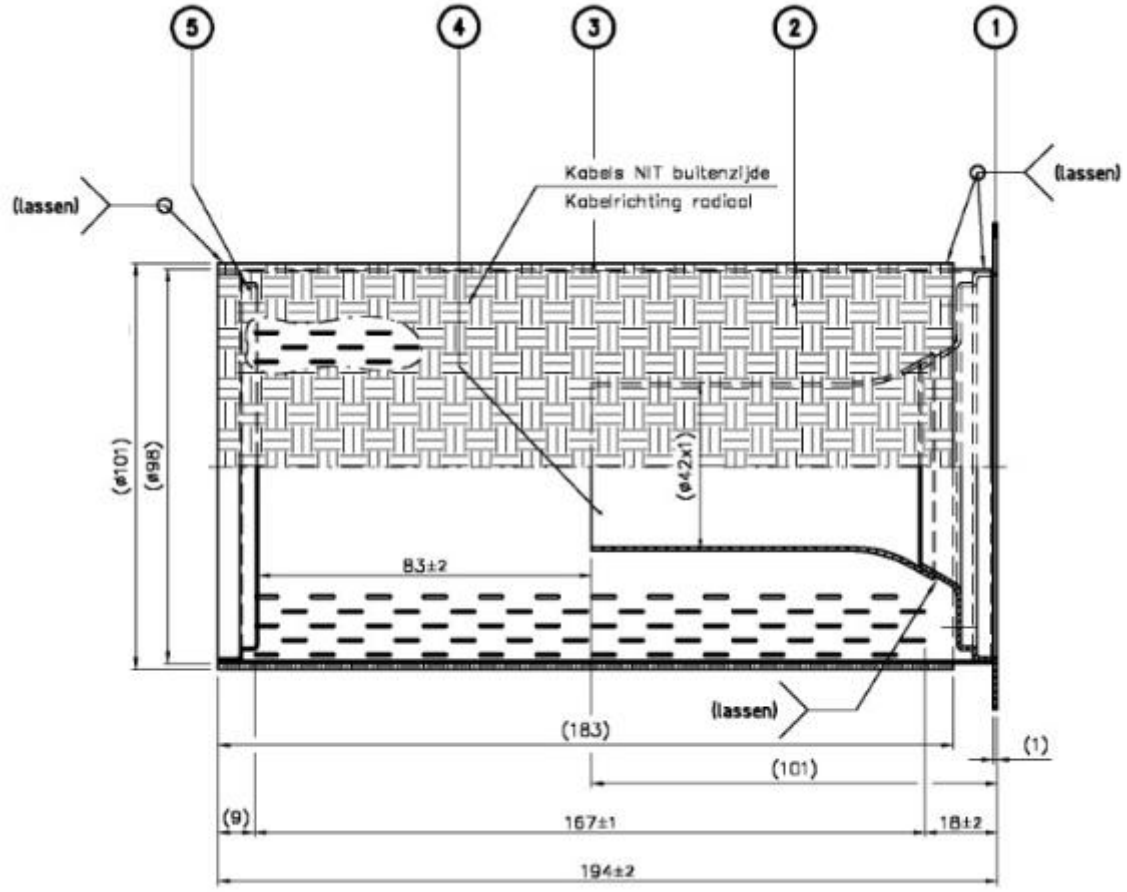
(Rejoinder-CCR, para. 205)

83. In any event, the burner as presented by the Defendants does not directly and unambiguously disclose at least feature 11 [4.2.] and 14 [7.], because the exact structural relationship and connection modes of the "Flansch 2" (being the flange), the perforated "Platte" 2 (being the disk with holes) and the S-curved element are not sufficiently clear from the drawing(s) alone. In particular, also the arrows pointing to the "Puncktschweissen" cannot be associated with certainty to the connection between the above components. They rather imply that at least one connection at the bottom part is welded. Thus, it is not directly and unambiguously disclosed that these three parts are formed from one body (feature 14 [7.]). Moreover, it is not directly and unambiguously disclosed that the S-curved element belongs to flange and disk, so that the form an arrangement of flange and lowering in association with a disk (feature 11 [4.2]).

84. The further drawings provided as proof for sales (exhibits CC2, CC11) yield no other result.

3. Novelty in the view of the alleged public prior use regarding Remeha (in particular exhibits CC4, CC7, CC39, CC40)

85. The alleged public prior use is mainly based upon technical drawings no. 146.071.001-G (Exhibit CC7, drawings and the explanation of which are copied below) dated 20 October 1998 and illustrating a "Premix Brander" "type Quinta 65" provided from Bekaert to Remeha. Moreover, pictures of specific installation of a product allegedly consistent with the drawings are provided (one of which is copied below, as taken from RJ-IA and Reply-CCR, para. 277).


5
4
3
2
1
(lassen)
Kabels NIT buitenzijde
Kabelrichting radiaal
(lassen)
(ø101)
(ø98)
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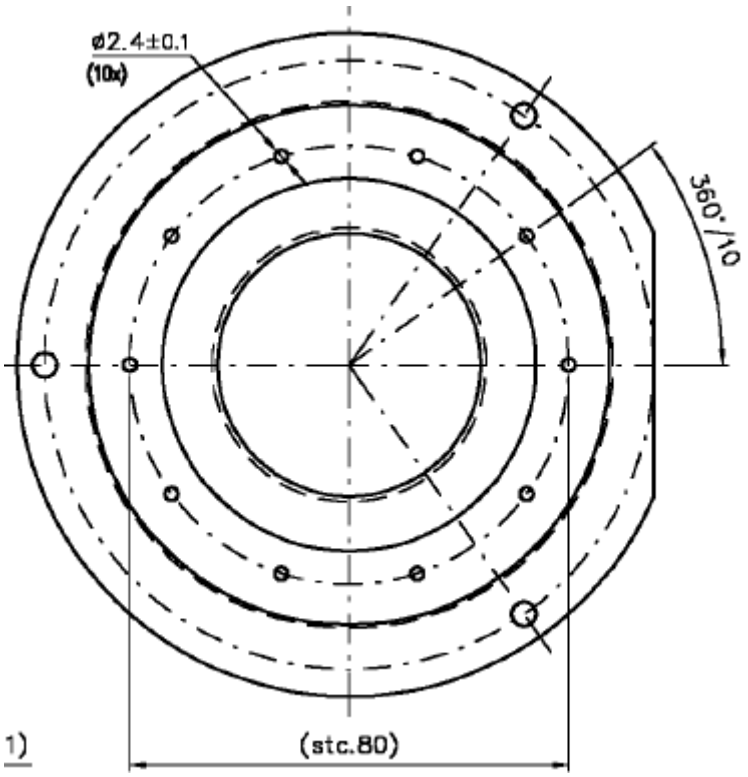
83±2
(lassen)
(183)
(101)
(1)
(9)
167±1
18±2
194±2


ø2.4±0.1
(10x)
360°/10
1)
(stc.80)

Pos.	Aantal	Omschrijving	Materiaal	Opmerking
5	1	Kopplaat	18 SR	
4	1	Binnenbuis	RVS	ø42x1
3	1	NIT	NIT–100 S	
2	1	Branderhuis	RVS	
1	1	Flens	RVS	

Wijz. 1516	B.E.	G	15/04/2004	H.K.	Toevoegen artikelcode; Update tekening
	PAR		DATE	PAR	MODIFICATION

86. Defendants acknowledge that the perforated ring-shaped component and the flange are connected by welding (cf., CCR, para. 223) (feature 14 [7.]). In addition, Claimant rightfully disputes the disclosure of feature 12 [5.].

87. Exhibit CC7 shows a premixed burner (“Premix-brander”) having: a main tubular body (“Branderhuis” denoted by 2); an endplate of the tubular body (“Kapplaat” denoted by 5); a flange with a lowering associated with a perforated ring-shaped component and coupled at the other end of the main tubular body (“Flens” 1); an inner tubular body originating centrally from the ring-shaped component (“Binnenbuis” 4).

88. “Lassen” (Dutch for welding) is indicated at various points as connection modes between components.

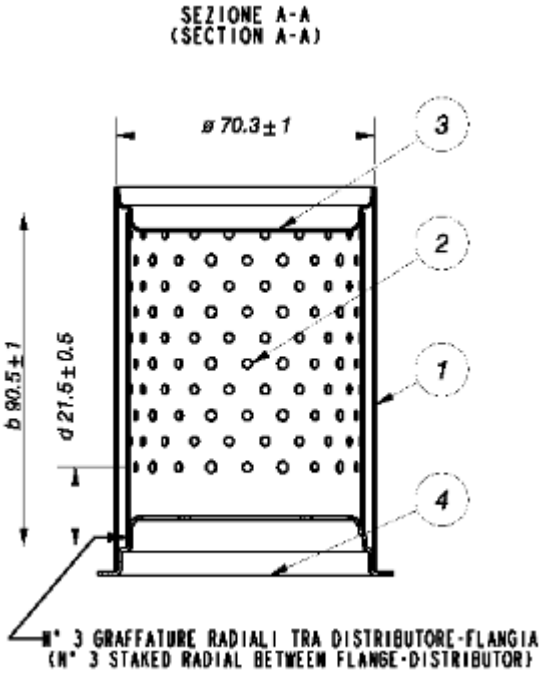
89. Again, it can be left open whether the burner was publicly available at the priority date as Defendants allege. Furthermore, it can remain open whether the perforated ring-shaped component qualifies as disk with holes within the meaning of the patent-in-suit and whether the inner tube ("Binnenbuis" 4) discloses holes in its sidewall.

90. In any event, the alleged public prior use regarding Remeha does not directly and unambiguously disclose at least features 12 [5.] and 14 [7.]. Defendants themselves acknowledge that the perforated ring-shaped component (claimed as being the disk with holes) and the flange are connected by welding (cf., CCR, para. 223), which is counter to feature 14 [7.]. With regard to feature 12 [5.], it is clear that the inner tube ("Binnenbuis" 4) is open at both ends, as no specific wall thickness is indicated in the drawing. At least, it is not directly and ambiguously disclosed, that the inner tube is closed at its top end downstream and has no holes in its sidewalls, given that the air-gas mixture has to enter somehow from the inner tube into the burner, be it by means of an open top end or of holes in the sidewalls. Thus, the entry point of the air-gas mixture in part is significantly shifted above the level of the disk, and an axial guidance of the flow is thus provided. Therefore, considering the claim construction as explained supra, feature 12 [5.] cannot be considered as unambiguously disclosed.

4. Novelty in the view of the alleged public prior use regarding Worgas (in particular exhibits CC13, CC15, CC17, CC19)

91. Claimant disputes the disclosure of features 10 [3.], 12 [5.] and 13 [6.].

92. The contested public prior use relates to the Worgas premix burner "PRX0038". The drawings of Exhibit CC17 (partly copied herein below) show a burner having a burner body (denoted by 1), an internal distributor ("*distributore interno*" 2), a rear end plate (3) and an inlet flange (4) including a perforated disk.



WORGAS RIF. PROG. RVP 060057

Pos. Pos.	Codice Code	Denominazione Description	Q.tà Q.ty	Materiale Material	Trattamento Treatment
4	RX0017_	FLANGIA ANTERIORE (INLET FLANGE)	1	W000040	-------
3	FPX0001E	FONDELLO POST. (REAR FLANGE)	1	W000043	-------
2	DX0038_	DISTRIB. INTERNO (INT. DISTRIB)	1	W000041	-------
1	BX0038_	CORPO BRUCIATORE (BURNER BODY)	1	W000042	-------

93. As the burner includes an internal distributor, at least feature 12 [5.] is not disclosed. In consequence, it is not directly and unambiguously disclosed that the burner has a disk with holes that performs the function of the internal distributor for distributing the air-gas mixture (feature 13 [6.]).

94. The Defendants, also referring to Worgas PX0439/PRX0045 burner (in particular exhibits CC21, CC23, CC24, CC25), did not substantiate any aspect of these burners that would yield another result.

5. Novelty in the view of US 4 766 883 A (US'883; CC34)

95. Claimant disputes the disclosure of features 2 [1.1.1], 6 [1.2.1], 11 [4.1, 4.2], 12 [5.], 13 [6.] and 14 [7.].

96. US'883 (CC34) discloses a heating system, in particular for water. The system (globally de-

noted by A in the figures, two of which copied herein below) includes a combustion chamber (14) contained in a water tank (10). Heat is provided to the body of water (22) by fuel combustion in the combustion chamber (14) (Fig. 1; from column 3, line 64, to column 4, line 36).

FIG. 3

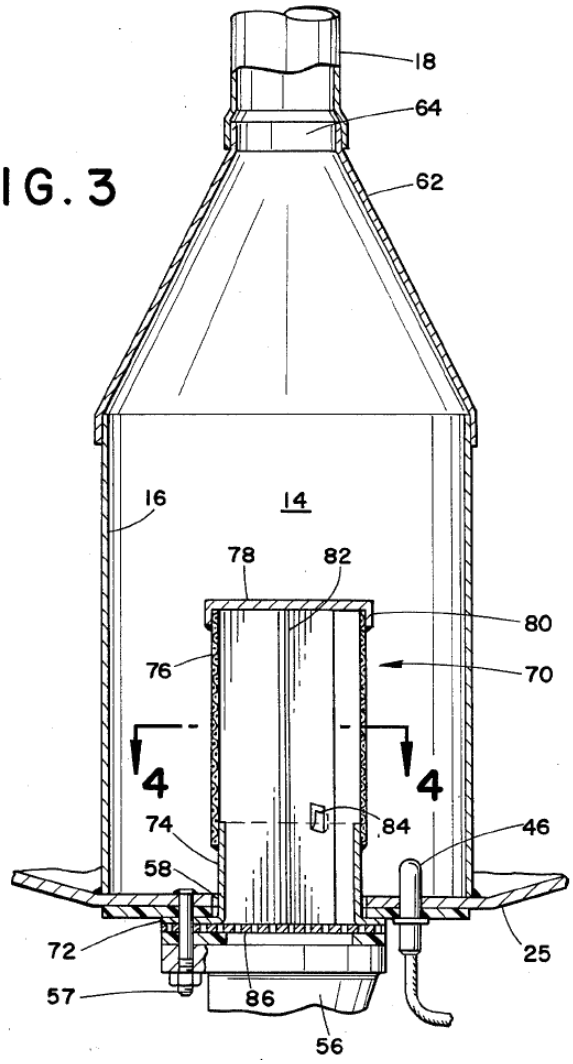
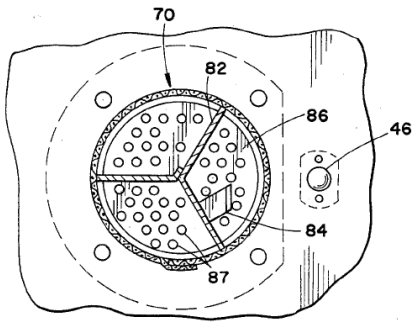


FIG. 4



97. The system is aimed at achieving high efficiency and safe operation. In particular, the system aims at having the amount of fuel introduced into the combustion chamber precisely controlled with respect to an amount of air, with a homogenized air and fuel mixture of uniform proportions for efficient combustion (column 1, lines 10-12; column 3, lines 13-43).

98. The mixture of air and fuel (e.g. natural gas) is provided from the output horn (56) of a blower (48) into the combustion chamber through an inlet opening (58) of the latter (column 5, lines 9-14).

99. A flange of the output horn is fastened (from below, in the view of Fig. 3) to a bottom plate

(25) of the water tank (10) through studs (57) (Fig. 3, column 5, lines 16-19).

100. The outer cylindrical wall (16) of the combustion chamber is welded above the same tank bottom plate (25) (column 5, lines 21-24).

101. A burner (70) is contained within the lower portion of the combustion chamber and includes, from top to bottom: a burner mounting plate (72) arranged below the tank bottom plate (25) and welded to a cylindrical burner ring (74) passing through the inlet opening (58) of the combustion chamber; a burner distribution plate (86) having a uniform pattern of small holes (87) and arranged just below the burner mounting plate (72) at the interface between the burner and the blower output horn (56). Burner (70), burner distribution plate (86) and the blower output horn (56) are disclosed as being *"firmly and airtightly fixed to the bottom plate 25 of the water containing tank 10*" (from column 5, line 16, to column 6, line 31).

102. A cylindrical burner screen (76) is welded to the top of the burner ring (74). A burner end cap (78) is welded to the top of the burner screen (column 5, lines 49-51). A burner divider (82), parting the interior volume of the burner into three wedge sectors, is contained within the burner ring 74 and the burner screen 76. One of the burner divider plates is provided with a deflector (84) which deviates a portion of the flow of combustion gases toward an igniter (46) located in the combustion chamber (column 5, lines 60-68).

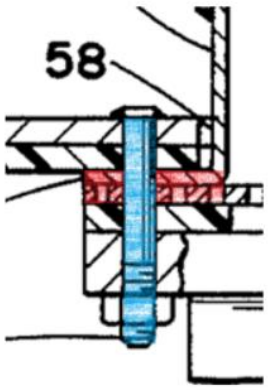
103. In operation, the air and fuel mixture from blower 48 is forced through the burner distribution plate 86 into the interior volume of the burner 70. The burner distribution plate 86 assures an even distribution of combustion gases. These gases flow upwardly through the sectors of the burner defined by the burner divider 82. The burner divider prevents the swirling of these combustion gases which might otherwise result in noisy operation (column 6, lines 12-20).

104. At least features 2 [1.1.1], 11 [4.2] and 14 [7.] are not directly and unambiguously disclosed.

105. Slits on the burner screen (76) are neither mentioned in the description nor shown in the drawings (feature 2 [1.1.1]).

106. The arrangement of the burner mounting plate (72), burner ring (74) and distribution plate (86), an enlarged, annotated excerpt of Fig. 3 by Defendants is pictured below, does

not directly and unambiguously disclose a lowering in a flange of a disk that closes one end of the burner screen (76) (feature 11 [4.2]). It is not disclosed that the mounting plates belongs to the distribution plate (86) being regarded as disk with holes and therefore constitutes a flange with lowering of that disk. There is no lowering either.



(Rejoinder-IA and Reply-CCR, para. 233, colouring by Defendants)

107. Furthermore, the burner mounting plate (72) and the distribution plate (86) are not integrally made (feature 14 [7.]).

108. It can remain open, whether the burner divider (82) acts as an internal distributor.

6. Novelty in the view of WO 2009/065 733 A1 (WO‘733, CC31)

109. WO’733 (CC31) does not constitute prior art within the meaning of Art. 54(3) EPC, as, contrary to the Defendants, claim 1 of the patent-in-suit validly claims priority.

110. Defendants challenge the validity of the priority claim with regard to three aspects.

111. Defendants rightfully point out that the subject-matter of dependent claims 3 and 4, which relate to the specific configuration of the disk openings or holes of Fig.s 4 and 5, respectively, as disclosed in the last passage of para. [16], and said figures and related description have no basis in the priority application. However, with regard to the validity of the priority claim with respect to the subject-matter of independent claim 1, this is not decisive.

112. With regard to feature 14 [7.], Defendants assert that the term “integrally” has no basis in the priority application, which contains the expressions: “in corpo unico” at page 5, lines 22-23 (corresponding to “in a single body” at the end of the respective para. [14] of

the patent-in-suit) and “ottenuto in solido” (translatable as “obtained jointly”) in claim 3. According to Defendants, none of said expressions of the priority document denotes the same technical elements as “is made integrally with” in feature 14 [7.]. However, the terms “*integrally*”, “*in a single body*” and “*ottenuto in solido*” define the same technical feature, i.e. the making of the flange and disk starting from a single piece and the substantial properties derived therefrom, as opposed to joining the disk and the flange after they have been manufactured separately. The same considerations as in the above section on claim construction do apply.

113. The Defendants finally opine that the priority application does not provide an enabling disclosure of feature 13 [6.] of claim 1 by only disclosing that the disk with holes replaces the internal distributor. As already discussed supra in the sections on claim construction and sufficiency of disclosure, this is not correct. The above line of argument applies *mutatis mutandis*.

IV. Inventive step

1. Request to reduce the number of attacks against inventive step to a “reasonable” number

114. It can be left open, what a reasonable number of attacks is and how to proceed if this number is exceeded. In the case at hand, a reasonable number is not exceeded, given the circumstances of the individual case, in particular the fact that several attacks can be dealt with in parallel.

2. Legal framework

115. According to Art. 56 EPC, an invention shall be considered as involving an inventive step if, having regard to the state of art, it is not obvious to a person skilled in the art when being faced with the objective task of the invention.

116. The suitable starting point for the assessment of inventive step is not limited to the closest prior art. Since there may be several ways to arrive at a conclusion, there may accordingly exist several starting points. The decisive point is rather whether such starting point constitutes a suitable starting point which the relevant person skilled in the art would take into account, if confronted with the problem to be solved (cf. Central Division Munich Section, decision of 16 July 2024, UPC_CFI_14/2023 mn. 8.6; Central Division Paris

Seat, decision of 21 January 2025, UPC_CFI_311/2023 mn. 57). In this regard, on a regular basis, a solution as claimed is obvious, if, starting from a suitable starting point in the prior art, the skilled person would be motivated (i.e., have an incentive) to consider the solution and implement it as a next step (cf. Central Division Munich Section, decision of 16 July 2024, UPC_CFI_14/2023 mn. 8.6; Court of Appeal, decision of 25 November 2025, UPC_CoA_528/2024, *Amgen v Sanofi-Aventis*; decision of 25 November 2025, UPC_CoA 464/2024, *Meril v Edwards*).

3. Inventive step, starting from anyone of the alleged public prior use burners (Eco-Hometec, Remeha, Worgas) or from US 4 766 883 A (exhibit CC33, "US'883", "CC34")

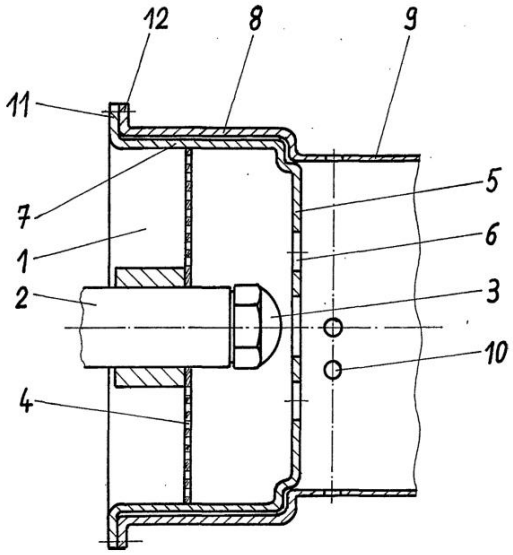
117. Defendants base their attack on above-mentioned alternative starting points combined with the general knowledge of the skilled person in the art (cf. private expert opinion exhibit CC38) or any one of the documents DE 1 973 5512 C1 (exhibit CC 32, "DE'512", "CC32") and Handbuch der Stanzereitechnik, Romanowski (exhibit CC33, "Handbook", "CC33"). All the invoked starting points are of interest for the skilled person and therefore form reasonable starting points, as they relate to burners.

118. However, starting from Eco-Hometec, Remeha or US'883 (CC 34), the skilled person in the art has no motivation to make the element regarded as disk with holes integral with the element regarded as flange. With a view of simplifying the structure of the above-mentioned burners, the skilled person would have multiple alternatives, which need taking into consideration the starting arrangement; substituting the relevant connections by an integral manufacture of pieces is not the only, or a straightforward, solution, and even less so choosing to make the disk integral with the flange. Said differently, in order to solve the general technical problem of simplifying / making less expensive the overall burner arrangement, the skilled person would have had no apparent reason to focus upon those specific components and will therefore not get to a solution that implements feature 14 [7.]. Reasonings asserting such specific modification appear be based upon hindsight.

119. This is all the more true for the Eco-Hometec burner, where the S-curved element extends on both sides of the perforated disk. To make the perforated disk, the S-curved element and the flange integral, a greater redesign would be needed without any pointer to do so, especially if the S-curved element has the function to allow movements due to thermal

expansion, as Claimant alleges.

120. The fact that common general knowledge (CGK) (private expert opinion, exhibit CC38) suggests using deep drawing to make components at the inlet of the burner integral to each other, does not constitute a direct pointer to changing the configuration of the prior art burners, in particular as they do not contain a clear allocation of the element regarded as flange to the element regarded as disk. The same applies with regard to the handbook of Romanowski (exhibit CC33) showing, among others, how to produce a flange, also having stepped portions and a central disk, by a deep drawing technique. Finally, DE'512 (exhibit CC 32) does not add significant specific teachings to those already discussed above in conjunction with CGK (CC38) and Romanowski (CC33). DE'512 (CC 32) discloses a mixing device for an oil and gas burner (cf. Figure 1, copied below), wherein the baffle (5) and collar (7) are made in a single piece (Fig. 1; claim 4) that can be manufactured by deep-drawing (claim 3). However, it does not give a motivation to make the disk integrally with the flange in the specific context of the discussed starting points.



121. Incidentally, the presence of inventive step starting from Eco-Hometec has been affirmed by the BoA of the EPO with a similar reasoning in the opposition proceedings regarding the patent-in-suit (cf. BP2, Reasons item 8.1).

122. Apart from that, even if there was a motivation to implement feature 14 [7.] into the burner of Eco-Hometec, Remeha or US'883 (CC34), they still would not implement claim 1 of the patent-in-suit in its entirety. As discussed supra in the section on novelty, Eco-Hometec (CC1) does not unambiguously disclose the claimed arrangement of flange and

lowering in association with the disk (feature 11 [4.2]), and Remeha (CC7) does not unambiguously disclose the absence of an internal distributor (feature 12 [5.]). US'883 (CC 34) at least does not unambiguously disclose feature 11 [4.2] either and in addition not feature 2 [1.1.1]. There is no motivation apparent to overcome the missing features, let alone at the same time, and to arrive at the claimed solution.

123. With regard to Worgas, Defendants did not substantiate their attack on inventive step. In fact, Worgas even explicitly discloses an inner distributor with no motivation apparent to replace it.

4. Inventive step, starting from EP 1 813 864 A2 (EP' 864, CC37) in combination with GCK (private expert opinion, CC38), DE 1973 5512 C1 (DE'523, CC32) or Romanowski, Handbuch der Stanzereitechnik (CC33)

Disclosure of EP'864 (CC37)

124. According to Defendants, EP'864 (CC37) discloses all features but feature 10 [3.]. Claimant, in addition, disputes the disclosure of in particular features 9 [2.], 11 [4.] and 14 [7.]. It criticizes Defendants for mixing up different embodiments.

125. EP'864 (CC37) discloses a premixed burner (paras. [0001]-[0002]). The technical problem addressed therein is providing a burner device with an increased ratio of the combustion power vs the overall dimensions (para. [0004]).

126. The burner (denoted by 1 in Fig. 1 copied below) comprises a diffuser (3) having a plate-like body (8) with opposite perforated diffusion surfaces (9, 10) (paras. [0008]-[0009], [0014]; Fig.s 1, 9). The burner may have a tubular configuration, as explained at para. [0014] cited below.

> *[0014] In accordance with an embodiment (Fig. 1, 9, 19B), the plate-like body 8 develops across its width along a substantially annular or polygonal line, such as to form the wall of a globally tubular structure, such as a cylinder, a truncated cone, a cone, a polyhedron, a prism, or a parallelepiped, which results in that the opposite diffusion surfaces 9, 10 allow the combustion outside 17 and inside 18 the tubular structure.*

127. As far as the technical effects of the diffuser configuration are concerned, para. [0010] (copied below, emphasis added) is pertinent.

> *[0010] In accordance with an embodiment, the plate-like body 8 has a substantially box-like*

hollow shape, with at least two opposite diffusion walls 12, 13, which form said diffusion surfaces 9, 10 on the outside thereof, and define a space 14 within the plate-like body 8 for fuel conduction. The plate-like body 8 defines, at a base side 15, one or more openings 16 for the fuel to flow in the conduction space 14, and advantageously, the conduction space is tapered away from said base side 15, i.e. said inlet opening 16 in the plate-like body 8. Due to the conduction space 14 tapering away from the fuel inlet opening 16, a gradual reduction in the flow section is obtained, which compensates the reduction in the overall flow rate of the fuel while moving away from this inlet opening 16 (which reduction is due to the fuel being diffused through the diffusion openings 5 arranged along the fuel conduction pathway). Due to this "geometric" compensation, the flow speed, and thus the fluid dynamic pressure of the fuel on the diffusion walls is substantially evenly distributed all over the combustion surface. Thereby, the requirement of providing a suitable distribution wall along each diffusion wall is avoided. According to a particularly advantageous embodiment, the fuel conduction space 14 is tapered in a substantially linear manner in order to compensate substantially even flow rate "drops" along the conduction pathway, and consequently, in order to allow providing a pattern of diffusion opening 5 that is substantially even, i.e. with a ratio of the passage area to the diffusion surface being substantially even, regardless of the distance from the inlet opening 16. This contributes to an even distribution of the combustion areas within the total combustion volume, and thus to an optimum use of the total space available.

128. A ring-shaped distribution wall (4), or distributor, may be arranged at the base of the diffuser (3). It has a plurality of openings (6) for the premix to be supplied to the diffuser in an evenly distributed manner, which openings, in this embodiment, provide the inlet opening (16) for the fuel (para. [0013]). This distributor (4) is arranged in a fuel conduction pathway extending within the burner from an external fuel source to the diffuser (paras. [0008], [0013]; Fig. 17 copied below).

129. A base support structure (2) forms a seat (24) for an interference connection of the distributor (4) with the base side (15) of the plate-like body (8) (par. [0026]; Fig.s 11, 17).

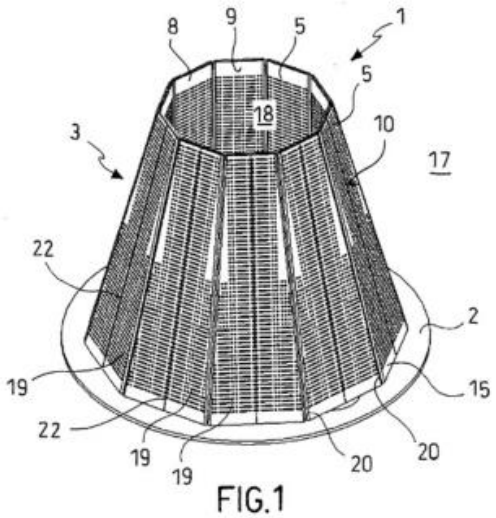


FIG.1

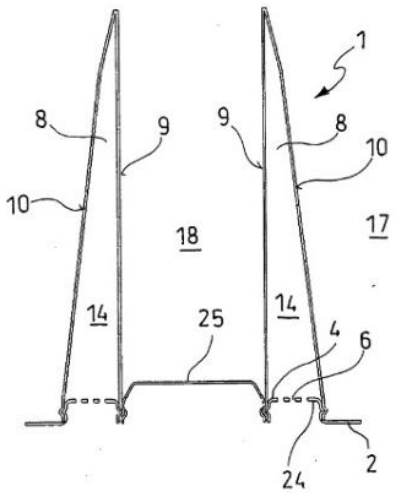


FIG.17

130. In some embodiments, a distribution wall (28) is arranged inside the plate-like body parallel to the diffusion walls (12, 13) (Fig. 23; paras. [001]-[0012]).

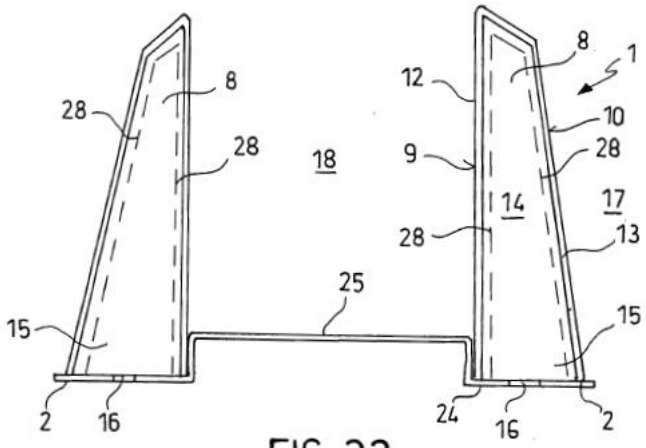


FIG. 23

131. The plate-like body defining the diffuser can be arranged so that the distance between the two opposite diffusion walls is substantially even (para. [32]; Fig. 24 copied below).

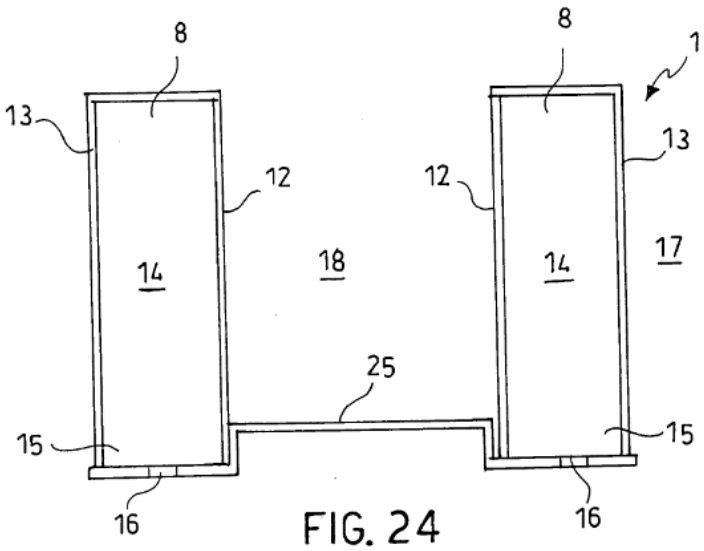


FIG. 24

132. Fig. 15 shows a further detail belonging to the embodiments of Fig. 9 and 17 (cf. para. [0007]):

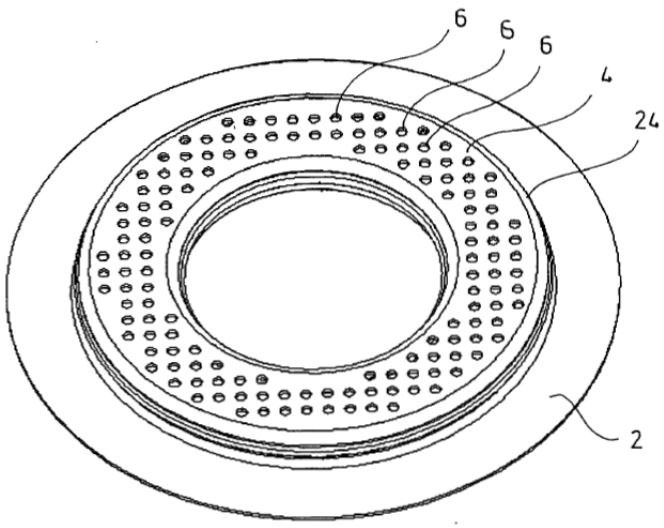


FIG.15

133. EP'864 (CC37) does not unambiguously disclose at least features 10 [3.] and 9 [2.]. With respect to this latter feature, the structure of EP'864 has a toroidal shape with a central cylindrical opening. This structure is indicated as "tubular" in EP'864 and has a ring-shaped distribution disk (4). However, due to the tapered, frusto-conical shape of the structure, no element closing the upper end can be identified in most of the embodiments except that of Fig. 24, because in such other embodiments the lateral walls simply converge and join each other at the top of the structure.

134. Even if the embodiment of Fig. 24 is considered, no separate plate closing the upper toroidal walls can be identified. Moreover, Fig. 24 relates to a different embodiment with respect to that of, e.g., Fig. 17, and represents a very schematic drawing wherein, at least features 9 [2.], 10 [3.] and 11[4.2] are not shown. The allegedly "closure plate" of Fig. 24 does not extend to the central part of the "tubular" structure formed from an ensemble, if any, of modular diffuser elements.

135. Incidentally, the BoA of the EPO expresses a similar view concerning the not disclosed features in the opposition decision regarding the patent-in-suit (BP2, Reasons, item 7.1).

Inventive step starting from EP'864

136. EP'864 (CC37), which is discussed as prior art in para. [0007] of the patent-in-suit, discloses a pre-mixed burner having an inlet distribution plate. It is therefore regarded as a realistic starting point for developing the claimed configuration.

137. Given the not disclosed features discussed supra, it appears that multiple modifications should be made to the structure of EP'864, starting from one of its embodiments and particularly from that of Fig. 24, in order to attain the combination of features of claim 1, without a clear motivation to do so. In particular, it is contra-indicative to close the tubular body at its top end and, moreover, runs counter to the teaching of EP'864 to increase the ratio of combustion power and burner surface respectively to volume (cf. paras. [0004]-[0006]).

138. In addition, the embodiment of the diffuser with slanted walls and distributor (4) (see, e.g., Fig. 11) is specifically conceived for allowing an even distribution of the flow pressure and speed over the combustion surface (as indicated at para. [0010]). It is not straightforward that the skilled would have applied the relevant features thereof (e.g. the distributor fitted with interference connection at the base of the plate-like body) in the embodiment of Fig. 24, which clearly implies a different fluid dynamics.

139. Therefore, considering all the three differences mentioned above (features 9 [2.], 10 [3.] and 11 [4.2]), claim 1 involves an inventive step in the view of combinations starting from EP'864.

V. Claimant's request to disregard certain parts of Defendants' Rejoinder to the Application to amend the patent

140. Against the backdrop of the foregoing, Claimant's request can remain open, because the impugned parts are not relevant to the decision at hand. Whether the alleged public prior use is sufficiently established timewise, is not decisive, because its respective subject-matter is not detrimental to the validity of the patent-in-suit. The claim construction and the assessment of the disclosure content of alleged prior art drawings are question of law. In this regard the panel has to come to the legally correct assessment, regardless of the submissions of the parties.

D. IMPLEMENTATION OF CLAIM 1 BY THE ATTACKED EMBODIMENTS

141. Based on the claim construction above, only attacked embodiment B implements the teaching of claim 1 of the patent-in-suit. As far as the Defendants do not dispute the implementation of features of claim 1, this is not based on a flawed analysis of the patent claim. However, the attacked embodiment B also implements features 7 [1.2.2] and 13

[6.] disputed by the Defendants. Attacked embodiment A has an internal distributor and therefore does not implement feature 12 [5.].

I. Implementation of features 13 [6.] and 7 [1.2.2]

142. The presence of a disk with holes in the attacked embodiments influences the flow of the air-gas mixture and necessarily entails a distribution into the tubular body and across the entire burner surface. Based upon the claim construction as discussed supra, this suffices to implement features 13 [6.] and 7 [1.2.2]. As already discussed, the position of Defendants according to which the patent-in-suit is only concerned with the outflow of the mixture from the burner body and the associated flame profile has no basis in the patent-in-suit.

2. Implementation of feature 12 [5.]

143. The protrusion into the burner body of attacked embodiment A is an internal distributor according to the patent claim. Based on the claim construction discussed supra, an internal distributor neither has to have holes in its sidewalls nor has to have a closed top end. It does not have to be separate from other components of the burner. In particular, it can be designed integrally with a disk with holes. It only has to shift the entry point of at least parts of the air-gas mixtures significantly above the level of the bottom, and has to guide and distribute the air-gas mixture to the burner surface. This is the case for the annulus-shaped element of the attacked embodiment A, that distributes the air-gas mixtures in this sense and shifts the entry point of the gas-mixture at least in part significantly above the level of the bottom of the burner. The attacked embodiment A therefore does not implement feature 12 [5.].

E. LEGAL CONSEQUENCES

144. Defendant 1 undisputedly offers and sells the attacked embodiment B in the territories of the relevant UPCA member states, and has produced it in its factory in the Netherlands at least in the relevant past. This infringement (Art. 25 (a) UPCA) justifies the injunctive relief (Art. 63 (1) UPCA), the corrective measures of recall, definite removal and destruction (Art. 64 (1), (2) (b), (d) and (e) UPCA), and the order to communicate information (Art. 67 (1) UPCA and Art. 68 (3) (a) (b) UPCA in conjunction with R. 191 sentence 1 alternative 2 RoP; cf. LD Mannheim, decision of 11 March 2025, UPC_CFI_159/2024, Hurom v

NUC Europe, paras. 103, 121) as well as the declaration on damages (Art. 68 (1) UPCA), in particular in their respective territorial scope.

145. Defendant 2 also infringes upon the patent-in-suit with regard to attacked embodiment B, as it undisputedly provided the advertisement for the sales of attacked embodiment B on its website www.bekaert.com at least until May 2024. In consequence, the order of the operative part of this decision are similarly justified.

146. Defendants did not sufficiently bring forward any reason as to why the requested measures should not be proportionate or otherwise excluded (Art. 64 (4) UPCA)

147. While the claimant of an infringement action may, in its requests, specify the acts in details, which have to be done by a defendant in order to recall from the channel of commerce, definitely remove from the channel of commerce and destroy the infringing products, and specify the evidence to be produced in this regard (cf. Court of appeal, order of 14 October 2025, UPC_CoA_699/2025, Kodak v Fujifim, para. 44), the claimant is equally allowed to give the defendant the freedom of choice with regard to the details of the acts for executing the corrective measure. In this event, the defendant is only obliged to achieve the effect of those measures to the extent owed.

148. Considering the circumstances of the individual case, the panel sets the period for fulfilling the order to communicate information to eight weeks, starting from the service of the respective enforcement notice on the Defendant concerned. Considering the extent of the information, the time period concerned and the upcoming year's end, this time period seems to be sufficient and appropriate. The same applies to the fulfilment of the obligation to recall, definitely remove and destroy infringing products.

149. Claimant's request to permit it, at Defendants' expense, to announce and publish the decision at hand in whole or in part in public media, in particular on the internet (request C.) is dismissed. Claimant has not brought forward sufficient reasons as to why it requires the requested publication. As far it refers to lasting uncertainty among its (potential or former) customers the statement remains vague. Claimant does not convincingly explain why it is not sufficient that Claimant informs the single (former) customer, which it has specified in its Reply in the infringement proceeding (para. 101), by referring it to the publication of the decision at hand in the UPC register. The panel therefore exercise its discretion (Art. 80, 64 (1) UPCA) not to grant the request.

150. With regard to acts committed before the entry into force of the UPCA, the parties did not bring up that substantive national law, as far as applicable, would yield another result. The exact point in time from which on negligence has to be assumed before the entry into force of the UPCA in accordance with applicable substantive national law can be left to proceedings under R. 125 et seqq. RoP, as this only relates to the amount of damages (cf. LD Mannheim, decisions of 11 March 2025, UPC_CFI_159/2024, UPC_CFI_162/2024, Hurom v NUC).

151. Claimant bases its request for an interim award of damages on its costs incurred for the infringement action (cf. SoC, para. 104). The therefore mutual requests for interim awards on costs are dismissed. Both sides did not sufficiently substantiate why they need an interim award on cost prior to the final and binding decision in the proceedings at hand in order to enforce and defend, respectively, their rights in the further course of the proceedings. Therefore, the panel exercises its discretion (Art. 69 UPCA, R. 118(5), R. 119, R. 150(2) RoP) not to grant an interim award on costs.

F. PENALTY ORDER

152. The panel considers the requested and granted amounts of the penalty order both sufficient to force the Defendants to comply with the orders, if necessary, and appropriate on the instant facts. In this regard, it has to be taken into account that the amount cannot be raised for committed violation with retro-active effect (cf. Court of Appeal, order of 14 October 2025, UPC_CoA_699/2025, Kodak v Fujifilm). It therefore must provide for a penalty sum that is also sufficient in cases in which the first violation is a severe one, e.g. a deliberate destruction of books and accounts so as to make rendering information impossible.

G. COSTS

153. The decision on allocation of the (recoverable) costs with regard to both the infringement action and the counterclaim for revocation is based on Art. 69 (1), (2) UPCA, R. 118(5) RoP.

154. The allocation of cost corresponds to the degree of success of the parties in relation to the overall proceedings including infringement action and counterclaim for revocation.

As the patent-in-suit is valid and only one of two attacked embodiments is found infringing, the allocation of 25 % of the costs to Claimant and 75 % to Defendants seems appropriate. The dismissal of the request for publication and the dismissal of the mutual requests for interim awards on costs carry less weight and do not decisively influence the above allocation.

H. VALUE IN DISPUTE

155. After the parties having been heard, the value in dispute for the entire proceedings is set at EUR 4.000.000,00 (EUR 2.000.000,00 each for the Infringement action and the Counterclaim for revocation), in accordance with the judge-rapporteur's order pursuant to R. 370.6, R. 104 (i) RoP of 28 October 2025 (section VI of the order) for the reasons outlined therein. Defendants still have not communicated current information about their sales revenue, costs and profit with the attacked embodiments, so that there is no pointer that the value in dispute as indicated and substantiated by Claimant (and covering seven UPCA member states) is too high. On the contrary, the amount claimed by Defendants as enforcement security indicates that the value in dispute is not too high. On the other side, Claimant still has not submitted sufficient reasons that would justify a higher amount for the Counterclaim for revocation.

I. ENFORCEABILITY

156. When deciding on an enforcement security, the court has discretion. When exercising its discretion, the court has to take the circumstances of the individual case into account and balance the interests of the parties concerned. In the case at hand, the court exercises its discretion not to make the enforceability subject to the provision of an enforcement security on the instant facts.

157. The Claimant is domiciled in a UPCA member state and has provided a balance sheet in order to underpin its statement that it is in good financial shape and is able to pay for the damage that Defendants allegedly incur in the event that the decision at hand is enforced and afterwards overturned by the Court of Appeal. The Defendants did not bring forward any specific point as to why Claimant's funds should not be sufficient. Nor did Defendants substantiate that Claimant will be unwilling to fulfil an obligation to pay damages. Apart from that, no undue burden on enforcing damages is apparent. Moreover, Defendants who base their possible damages on […] during the period needed to design a workaround

and to obtain approval of competent authorities for it, should have started the necessary procedures at the latest after the opposition decision of the BoA of the EPO regarding the patent-in-suit and the failure of the licence negotiations between the parties in this context. The statement first made in the oral hearing that […] is belated. Apart from that, […] deprives Defendants' line of arguments of its base, as they estimate the damage […]. In any event, the orders of the decision at hand relate only to one of the two attacked embodiments, so that the alleged damage reduces accordingly.

DECISION:

A. The Defendants are ordered

I. to cease and desist in Austria, Belgium, Germany, France, Italy, the Netherlands, and Portugal

making (limited to Defendant 1 and the Netherlands), offering, placing on the market, using and/or importing and/or storing for those purposes

a premixed burner, especially for condensation boilers, comprising: a tubular body, the side surface of which is provided with a plurality of holes and slits, the tubular body having one head, constituting an inlet, and at least one disk fixed to said head of said tubular body and constituting the distribution head of the air-gas mixture into the same body, wherein the at least one disk is provided with through openings or holes and said tubular body is closed on the other head by a plate, said plate being welded or crimped along the said side surface of the tubular body, wherein the disk with holes which closes one of the ends of the tubular body is provided with a flange with circumferential lowering for coupling with the inlet of the tubular body opposite the head closed by said plate, characterized in that the premixed burner does not comprise an inner distributor for distributing the air-gas mixture into the burner, the disk with holes performing the function of the internal distributor for distributing the air gas mixture, and the at least one disk is made integrally with the flange.

(direct infringement of claim 1);

II. to recall, permanently remove from the distribution channels and destroy, at their expense, the infringing products pursuant to request A.I., within a period of eight weeks starting from the service of the respective enforcement notice on the Defendant concerned;

III. to provide Claimant, within a period of eight weeks starting from the service of the respective enforcement notice on the Defendant concerned, with information on the extent to which they have committed the acts referred to in request A.I. since December 23, 2016, stating

1. the origin and distribution channels of the products referred to in request A.I., including

a. the names and addresses of manufacturers, suppliers and other previous owners, and

b. the names and addresses of the commercial customers and the points of sale for which the products were intended;

2. the quantity of products made, delivered, received or ordered, as well as the prices paid for the products concerned; and

3. the identity of any third party involved in the production or distribution of the products referred to in request A.I.,

whereby copies of the relevant purchase documents (namely invoices, alternatively delivery bills) are to be submitted as proof of the information, whereby details requiring secrecy outside the required information may be redacted.

B. Defendants are obligated to compensate Claimant for all damages that Claimant has suffered and will suffer as a result of the acts set forth in request A.I. above, committed since December 23, 2016.

C. In case of any violation of the orders under requests A.I.- A.III., the respective Defendant shall pay a penalty payment in the amount of

up to EUR 100,000 for each day of violation of the order A.I.,

up to EUR 50,000 for each day of violation of the order A.II.,

up to EUR 10,000 for each day of violation of the order A.III.,

to be paid to the court.

D. The counterclaim for revocation is dismissed.

E. Claimant shall bear 25 % and Defendants 75 % of the costs of the proceedings.

F. The value in dispute for the proceeding in its entirety is set at EUR 4.000.000,00.

G. In all other respects, the requests of the parties regarding the Infringement action or the Counterclaim for revocation are dismissed.

H. The Orders A.I., A.II. and A.III shall be enforceable only after the Claimant has notified the Court which part of the orders it intends to enforce, this notification has been served on the Defendant concerned and a certified translation of the orders in the official language of a Contracting Member State in which the enforcement shall take place has been provided by the Claimant and served on the Defendant concerned.

Delivered in Mannheim on **18 December 2025**

NAMES AND SIGNATURES

Presiding judge Tochtermann	*[signed]*
Legally qualified judge Böttcher	*[signed]*
Legally qualified judge Gillet	*[signed]*
Technically qualified judge Papa	*[signed]*
For the Sub-Registrar: Kranz, Clerk LD Mannheim	*[signed]*

Information about appeal

An appeal against the present Decision may be lodged at the Court of Appeal, by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of the date of its notification (Art. 73(1) UPCA, R. 220.1(a), 224.1(a) RoP).

Information about enforcement (Art. 82 UPCA, Art. Art. 37(2) UPCS, R. 118.8, 158.2, 354, 355.4 RoP)

An authentic copy of the enforceable decision or order will be issued by the Deputy-Registrar upon request of the enforcing party, R. 69 RegR.