Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Central Division

Paris Seat

DECISION
of the Court of First Instance of the Unified Patent Court
Central division (Paris seat)
issued on 30 March 2026
in the revocation proceedings
UPC_CFI_258/2025

HEADNOTES: 1. The revocation of an independent claim does not automatically affect the validity of unchallenged dependent claims, as the latter may possess autonomous patentability due to additional technical features.

2. Following the revocation of an independent claim, the patent proprietor may amend the patent to recast surviving dependent claims into independent form, provided the resulting configuration complies with the requirements of clarity and unity of invention.

3. As a general rule, the mere deletion of claims does not necessitate a consolidated document.

4. A subsequent request to amend the patent under Rule 30 (2) 'RoP' is not justified by a need to 'react' to a Court of Appeal decision in parallel proceedings if there is no direct logical nexus between the new procedural development therein and the proposed amendments or where the findings of that decision were based on arguments already pleaded and were thus foreseeable.

KEYWORDS: revocation; added subject-matter; application to amend the patent.

CLAIMANT:

Emporia UK and Ireland Ltd. - Park Road, Cardinal Point, Rickmansworth, WD3 1 RE Hertfordshire United Kingdom

represented by Bernhard Ganahl (HGF Europe LLP) and Dirk Jestaedt (Krieger Mes PartG mbB)

DEFENDANT:

Seoul Viosys Co., Ltd. - 65-16, Sandan-ro 163 beongil, Danwongu, Ansansi, Gyeonggido, 15429 Republic of Korea

represented by Olaf Isfort (Schneiders & Behrendt PartmbB, Rechts- und Patentanwälte) and Bolko Ehlgen, Julia Schönbohm and Cordt-Magnus van Geuns-Rosch (Linklaters LLP)

PATENT AT ISSUE:

European patent n° EP 3 926 698 B1

PANEL:

Panel 2:

Presiding judge and judge-rapporteur	Paolo Catallozzi
Legally qualified judge	Tatyana Zhilova
Technically qualified judge	Alessandra Sani

DECIDING JUDGE:

This decision has been issued by the panel.

SUMMARY OF FACTS:

1. On 24 March 2024 Emporia UK and Ireland Ltd. filed a revocation action against Seoul Viosys Co., Ltd. before this Central Division, registered as No. UPC_CFI_258/2024, requesting that the Court declares EP 3 926 698 B1 ('EP 698') invalid with effect in the territory of Austria, Belgium, Germany, France, Italy, Luxembourg, the Netherlands and Sweden to the extent of claims 1 to 11.

2. The patent at issue was filed on 14 September 2012, as a second-generation divisional application originating from EP 3 323 320 A1, which in turn originated as divisional application of EP 2 757 598 A2. The underlying application was originally filed as PCT application KR 2012/007358, published as WO 2013/039344 A2). The patent claims priority from the KR 20110093396 of 16 September 2011, KR 20120015758 of 16 February 2012 and KR 20120052722 of 17 May 2012. The date of publication of the mention of the grant of the patent is 4 January 2023.

3. The patent relates to a light-emitting diode and comprises 14 claims, including one independent claim and 13 dependent claims.

4. Its independent claim 1 reads as follows:

   "A light emitting diode comprising:

a light emitting structure formed on a substrate (100) and comprising a first conductivity type semiconductor layer (110), an active layer (120) and a second conductivity type semiconductor layer (130);
mesa-etched areas (150) formed from the surface of the second conductivity type semiconductor layer (130) to the first conductivity type semiconductor layer (110);
a reflective electrode (140) formed on the second conductivity type semiconductor layer (130) and including a reflective metal layer (142), a barrier metal layer (144) and a stress relieving layer (143) formed between the reflective metal layer (142) and the barrier metal layer (144), wherein the stress relieving layer (143) has a coefficient of thermal expansion between the coefficient of thermal expansion of the reflective metal layer (142) and the coefficient of thermal expansion of the barrier metal layer (144);
a lower insulation layer (200) covering an overall surface of the structure formed by the conductivity type semiconductor layer (110), the active layer (120), the second conductivity type semiconductor layer (130), the mesa-etched areas (150) and the reflective electrode (140), with the lower insulation layer (200) allowing an upper surface of the reflective electrode (140) to be partially exposed therethrough and further having openings disposed near an edge of the substrate which allow the surface of the first conductivity type semiconductor layer (110) to be exposed therethrough in the mesa-etched areas (150);
a current spreading layer (210) formed on the lower insulation layer (200) covering the first conductivity type semiconductor layer (110) and being electrically connected to the first conductivity type semiconductor layer (110);
an upper insulation layer (220) formed on the current spreading layer (210), with both the current spreading layer (210) and the reflective electrode (140) being partially exposed through the upper insulation layer (220);
a first pad (230) electrically connected to the current spreading layer (210) exposed through the upper insulation layer (220); and
a second pad (240) electrically connected to the reflective electrode (140) exposed through the upper insulation layer (220).”

5. In the Statement for revocation the claimant argued that the patent is not valid because its subject matter extends beyond the content of the earlier application as initially filed and lacks inventive step.

6. The defendant initially filed a preliminary objection based on Article 33 (4), Sentence 2, of the Unified Patent Court Agreement (‘UPCA’), contending that the Central Division lacks competence as the patent at issue is already the subject of a parallel infringement action and a counterclaim for revocation between the same parties, currently pending before the Court of Appeal. This preliminary objection was dismissed by order of 1° September 2025 on the ground that expert Klein GmbH, a party of those proceedings, and Emporia UK and Ireland Ltd. could not be considered the same party for the purposes of applying Article 33 (4) ‘UPCA’, as asserted by the defendant.

7. Subsequently, on 29 July 2025 the defendant lodged the Defence to revocation and requested the Court to dismiss the revocation action and maintain ‘EP 698’ as granted or, in the alternative, in amended form, according one of the proposed Auxiliary Requests (1 to 13).

8. With its Reply to Defence to revocation, filed on 6 October 2025, the claimant informed the Court that in the separate infringement and counterclaim proceedings the Court of Appeal had revoked the patent in suit in respect of claims 1, 4, 5, 6 and 9. Furthermore, the claimant filed a further ground for revocation based on lack of novelty.

9. Simultaneously with the filing of its Rejoinder, the defendant submitted a subsequent application to amend the patent pursuant to Rule 30 (2) of the Rules of Procedure ('RoP'), seeking to supplement the existing auxiliary requests with further auxiliary requests ('AR0b'-'AR10b'). Consequently, the defendant amended its prayers for relief in the following order: to uphold the patent to the extent of claims 2, 3, 7, 8 and 10-14 as granted; or to maintain the patent according to Auxiliary Requests 'AR1'-'AR10' (recast as 'AR1a'-'AR10a'); to maintain the patent according to Auxiliary Requests 'AR0b'-'AR10b'; to maintain the patent according to Auxiliary Requests 'AR11'-'AR13' (recast as 'AR11a'-'AR13a').

10. The claimants objected to this application.

11. Then, on 23 December 2025 the defendant requested the permission to produce the expert declaration of Dr. Siddha Pimputkar ('SB40') and the translator declaration of Ms. Ji-Hyun Lee ('SB41'), asserting that these documents are intended to address issues arising solely from recent procedural developments.

12. Following the closure of the written procedure, an interim conference was held on 13 January 2026. The judge-rapporteur held that the ground for revocation based on lack of novelty, filed by the claimant in its Reply, should be disregarded, as late-filed. Decisions on other matters, namely the admissibility of the subsequent amendments of the patent and of the documents 'SB40' and 'SB41', were referred to the oral procedure.

13. Finally, the oral hearing was held on 12 February 2026.

GROUNDS FOR THE DECISION:

Revocation of claims 1, 4, 5, 6 and 9: consequences.

14. The patent in suit was judicially enforced by the defendant against expert e-Commerce GmbH and expert Klein GmbH before Düsseldorf Local Division by way of an infringement action (UPC_CFI_363/2023). In those proceedings the latter company filed a counterclaim for revocation. The litigation concluded with the decision of the Court of Appeal of 2 October 2025 (UPC_CoA_764 and 774/2024) which, setting aside the first instance decision, declared claims 1, 4, 5, 6 and 9 of the contested patent invalid in the territory of Austria, Belgium, Germany, France, Italy, Luxembourg, the Netherlands and Sweden, subsequently dismissing all claims brought by the patent proprietor.

15. The Court of Appeal held that claim 1 is invalid for added subject-matter and that claims 4, 5, 6 and 9, being dependent on claim 1, were equally invalid for the same reason. The Court noted that claim 1 contained added matter as it encompasses embodiments with a single mesa, which was not clearly and unambiguously disclosed in the parent application. Furthermore, it held that, in any case, the feature concerning the lower insulation layer (200) including openings disposed near an edge of the substrate (Feature 5.2, see *infra*) lacked a basis in the original disclosure.

16. In this regard, it must be noted that in the proceedings before the Court of Appeal, the counterclaim for revocation was limited to the claims subsequently declared null and void; it did not extend to the other claims, which remained outside the scope of the dispute.

17. As the decision followed proceedings on the merits and is no longer subject to ordinary means of appeal, it has become final and binding. Consequently, the claims declared invalid must be deemed excised from the patent specification.

18. At this juncture, this Court must examine the effects of the Court of Appeal's ruling on the surviving claims of the patent. The issue arises from the fact that claim 1 – the sole independent claim – is among those declared null and void; thus, the patent is now ostensibly devoid of an independent claim.

19. On this point, this Court finds that the invalidation of claim 1 does not, *per se*, invalidate the claims dependent thereon. These claims remain valid, as they were not challenged in the aforementioned proceedings. Indeed, by definition, a dependent claim incorporates all the limitations of the claim from which it depends, plus additional technical features. These features may provide the requisite novelty and inventive step that the independent claim lacked.

20. This conclusion appears consistent with the Court of Appeal's ruling which, while declaring certain claims null and void, remained silent as to any collateral invalidating effects on the unchallenged claims.

21. The remaining claims stay in force and shall operate as new independent or dependent claims, as the case may be. Evidently, where claim 1 is revoked, the patent proprietor is typically required to file an application to amend (either in judicial proceedings or before the granting authority) to recast a dependent claim into an independent form. The patent must be formally restructured to ensure that the new configuration is clear and consistent pursuant to Article 84 of the European Patent Convention ('EPC').

22. This is not in conflict with the principle of unity of invention under Article 82 'EPC', which requires that a patent application relates to a single inventive concept. It follows that, as permitted by Rule 43 (2) 'EPC', it is possible to include multiple independent claims in the same category where the subject-matter of the patent relates to interrelated products, different uses of a product or apparatus, or alternative solutions to a particular problem.

The patent at issue.

23. The invention relates to a light emitting diode (LED), and more particularly, to a flip-chip type LED having improved luminous efficacy (para. [0001] of 'EP 698).

24. The patent explains that LEDs are formed on a substrate and comprise an N-type semiconductor layer, a P-type semiconductor layer and an active layer between them. An N-electrode pad is formed on the N-semiconductor layer, and a P-electrode pad is formed on the P-semiconductor layer. For operation, the light-emitting diode is electrically connected to an external power source via the electrode pads. At this time, a current flow from the P-electrode pad to the N-electrode pad through the semiconductor layers (para. [0003]).

25. In order to improve heat dissipation and at the same time prevent light loss through the P-electrode pad, a LED with a flip-chip structure is used in the prior art, and various electrode

structures have been proposed to support current distribution in a large-area flip-chip type LED. For example, a reflective electrode is formed on the P-type semiconductor layer, and extensions for current propagation are formed on an area of the N-type semiconductor layer exposed by etching the P-type semiconductor layer and the active layer (para. [0004]).

26. Conventional techniques use linear extensions, which restrict current distribution due to their high resistance. Furthermore, since a reflective electrode is only arranged on the P-type semiconductor layer, significant light loss occurs through the pads and extensions instead of being reflected by the reflective electrode (para. [0006]).

27. Against this background the invention aims at providing a LED with improved current spreading performance, while also preventing a complicated manufacturing process, and light extraction efficiency by improving reflectivity (paras. [0014] - 0016]. Furthermore, the invention seeks to provide a light-emitting diode capable of relieving stress caused by a reflective layer, as well as a method for its manufacturing (para. [0017]).

28. According to one aspect of the invention, a LED structure is disclosed which comprises: a semiconductor layer of a first conductivity type, an active layer and a semiconductor layer of a second conductivity type; mesa-etched areas formed from the surface of the second conductivity type semiconductor layer to the first conductivity type semiconductor layer; reflective electrodes, each of which is arranged on the corresponding mesa and is in ohmic contact with the second semiconductor layer; a lower insulation layer covering the overall surface of the structure formed by the mesas, the mesa-etched areas and the reflective electrode, which allows the surface of the first conductivity type semiconductor layer to be exposed at the mesa-etched areas and a current spreading layer formed on the lower insulation layer covering the first conductivity type semiconductor layer and electrically connected to the first conductivity type semiconductor layer (para. [0019]). The patent specification explains that the LED exhibits improves current distribution performance due to the current spreading layer, which covers the first semiconductor layer (para. [0021]).

29. The features of original claim 1 of the patent at issue, now entirety integrated in claim 1 as restated, may be broke down as follows:

1. Light emitting diode, comprising:
    1.1. a light-emitting structure;
    1.2. mesa-etched areas (150);
    1.3. a reflective electrode (140);
    1.4. a lower insulation layer (200);
    1.5. a current spreading layer (210);
    1.6. an upper insulation layer (220);
    1.7. a first pad (230);
    1.8. a second pad (240).

2. The light emitting structure
    2.1. is formed on a substrate (100);
    2.2. comprising:
        2.2.1. a first conductivity type semiconductor layer (110),
        2.2.2. an active layer (120) and

2.2.3. a second conductivity type semiconductor layer (130).

3. The mesa-etched areas (150) are formed from the surface of the second conductivity type semiconductor layer (130) to the first conductivity type semiconductor layer (110).

4. The reflective electrode (140)
4.1. is formed on the second conductivity type semiconductor layer (130);
4.2. including:
4.2.1 a reflective metal layer (142);
4.2.2 a barrier metal layer (144);
4.2.3 a stress relieving layer (143);
4.2.1.1. The stress relieving layer (143)
4.2.1.1.1 is formed between the reflective metal layer (142) and the barrier metal layer (144);
4.2.1.1.2 comprising a coefficient of thermal expansion between the coefficient of thermal expansion of the reflective metal layer (142) and the coefficient of thermal expansion of the barrier metal layer (144).

5. The lower insulation layer (200)
5.1. covers an overall surface of the structure formed by:
5.1.1. the first conductivity type semiconductor layer (110),
5.1.2. the active layer (120),
5.1.3. the second conductivity type semiconductor layer (130);
5.1.4. the mesa-etched areas (150) and
5.1.5. the reflective electrode (140).
5.2. includes openings disposed near an edge of the substrate;
5.3. allows that
5.3.1 an upper surface of the reflective electrode (140) is partially exposed therethrough;
5.3.2 the first conductivity type semiconductor layer (110) is exposed therethrough in the mesa-etched areas (150).

6. The current spreading layer (210)
6.1. is formed on the lower insulation layer (200);
6.2. covers the first conductivity type semiconductor layer (110);
6.3. is electrically connected to the first conductivity type semiconductor layer (110).

7. The upper insulation layer (220)
7.1. is formed on the current spreading layer (210).
7.2. both the current spreading layer (210) and the reflective electrode (140) are partially exposed through the upper insulation layer (220).

8. The first pad (230) is electrically connected to the current spreading layer (210) exposed through the upper insulation layer (220).

9. The second pad (240) is electrically connected to the reflective electrode (140) exposed through the upper insulation layer (220).

30. In summary, the invention discloses a LED featuring a flip-chip structure, in which the light-emitting area faces the contact pads of the circuit board. Light is emitted through the substrate in an inverted mounting configuration. This structure increases the effective light-emitting surface, as the electrodes do not obstruct or shadow the emission. Since the light travels toward the substrate, it must be reflected from the electrode side; this is achieved by the reflective electrodes on the p-type semiconductor layer in conjunction with the electrode extensions on the n-type semiconductor layer.

Person skilled in the art.

31. In the absence of any specific submission from the parties, the Court finds that the relevant skilled person in the art is a graduate engineer or an individual holding a master's degree in electrical engineering or semiconductor physics or a technical college graduate with several years of professional experience in the development of LED technology and semiconductor manufacturing processes.

Claim interpretation.

32. With regard to the interpretation of the claims, it must be born in mind that: the patent claim is not only the starting point, but the decisive basis for determining the protective scope of the European patent; the interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used, as the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim, but this does not mean that the patent claim serves only as a guideline and that its subject-matter may extend to what, from a consideration of the description and drawings, the patent proprietor has contemplated (see, Court of Appeal, order of 26 February 2024, UPC_CoA_335/2023).

33. The relative assessment must be carried from the point of view of a person skilled in the art, as previously identified.

34. Feature 5.2, disclosing “openings near an edge of the substrate”, requires careful examination as the parties have disputed its interpretation and, in any event, it pertains to a material aspect of the claimed invention.

35. This feature describes the location of openings of the lower insulation layer, which allow the surface of the first type semiconductor layer to be exposed within the mesa-etched areas. The lower insulation layer covers the structure formed by the first type semiconductor layer, the active layer, the second type semiconductor layer, the mesa-etched areas and the reflective electrode. Given that the lower insulation layer is overlaid by the current spreading layer, the openings “near an edge of the substrate” serve the technical function of establishing physical and electrical contact between the first type semiconductor layer and the current spreading layer.

36. The parties disagree on the construction of the phrase “near an edge of the substrate”, specifically regarding where the person skilled in the art would understand these openings to be positioned within the device.

37. The claimant asserts that this feature should be interpreted in light of para. [0078], which states that “The openings 31a are disposed in a region between the mesas and near an edge of the

substrate". The claimant further argues that Fig. 7 confirms that that the openings 31a are arranged both between the mesas and in proximity of the edge of the substrate 21.

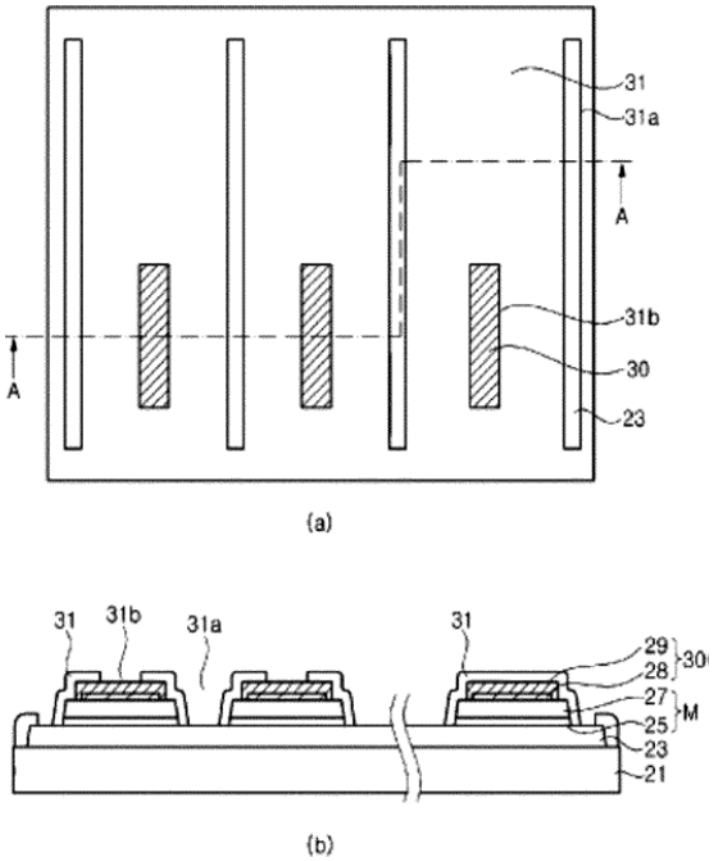


FIG. 7

38. Therefore, this region is not in the mesa area but between the mesas and between a mesa and near an edge of the substrate.

39. The claimant further contends that the person skilled in the art understands that the invention achieves improved current spreading by dividing the upper surface of the first conductive type semiconductor layer into a plurality of areas, in each of which a mesa is located and supplied with current from opposite sides. Consequently, the claimant argues that the term "near" makes only sense in that the openings are positioned specifically between the edge of the substrate and the outermost mesa.

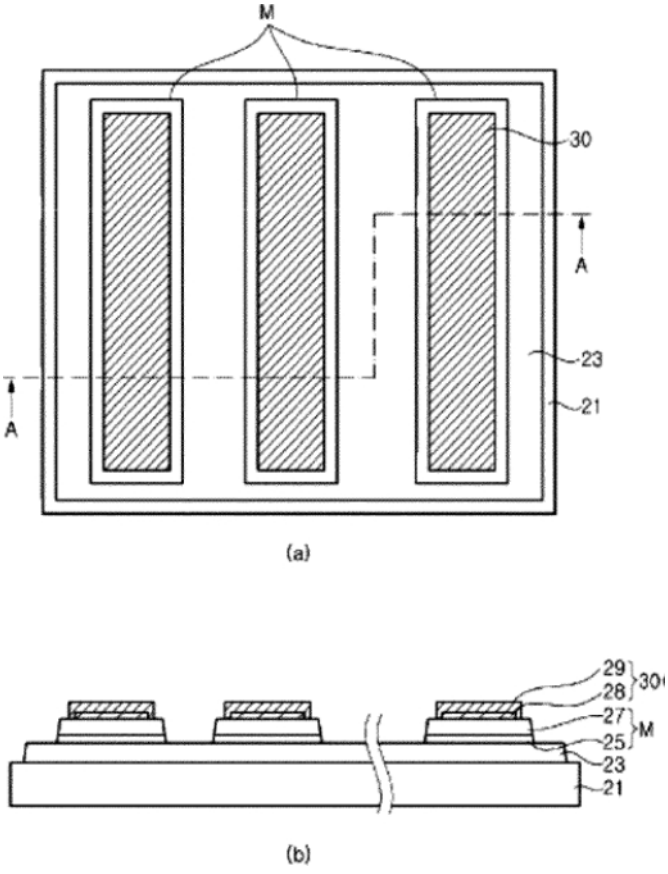
40. The defendant emphasizes that the interpretation of the Feature 5.2 must rely primarily on the technical function of the openings than on specific embodiments. According to this view, the purpose of the openings is to establish contact between the current spreading layer and first type semiconductor layer. Since the objective of the patent is to optimize the spreading of the current, it is irrelevant if there is a residual light-emitting area (mesa) beyond the outermost openings, provided that the requirement for uniform current distribution throughout the device is satisfied.

41. The Court notes that the patent specification does not explicitly define the phrase "near the edge of the substrate" in relation to any of the illustrated embodiments, not does it provide for specific metric indication (such as measurements) to pinpoint the exact location of these openings.

42. However, as agreeably stated by the Court of Appeal in the aforementioned decision (para. 46), and in view of the objective of improved current distribution, the skilled person will understand Feature 5.2 as requiring that, in presence of multiple mesas, the openings be arranged so that current flows into each mesa not only from the inter-mesa etched areas but also from the etched areas located at or near the periphery of the substrate. Thus, current flows into each mesa from all sides, regardless of whether the mesa is located centrally or peripherally of the LED chip. Consequently, the current path is kept as short and as evenly distributed as possible.

43. Therefore, the term "near" must be interpreted – consistent with both its ordinary meaning and the technical function of the openings – as denoting a region sufficiently proximate to the edge and distinct from the openings located at the inner part of the device. This construction allows the outer openings to fulfil their specific technical function, namely optimizing current uniformity.

44. This finding is consistent with the decision of the Court of Appeal which stated the purpose and effect of Feature 5.2, as derived from Figs. 6 and 7 and the corresponding description, would lead the skilled person to understand that there should be no further mesa area interposed between the outermost opening and the edge of the substrate (para. 51). Indeed, such a configuration ensures that the technical function of the openings, namely the optimization of current uniformity from the periphery, is fully realized.



45. FIG. 6

Added subject-matter: "openings near the edge" in feature 5.2.

46. The claimant contends that the subject matter of claim 1 – which is incorporated into the remaining challenged claims 2, 3, 7, 8, 10 and 11 – extends beyond the content of the original application because the phrase "openings disposed near an edge of the substrate" in feature 5.2 is only disclosed in the original application only in combination with openings positioned between the mesas. In support of this, they refer to para. [0078] of the patent at issue which states that "The openings 31a may be disposed in a region between the mesas M and near an edge of the substrate 21 …". Consequently, the claimant submits that omitting the requirement for openings between the mesas while including only the openings near the edge constitutes an unallowable extension of the application as filed.

47. This line of attack is clearly pleaded in the Statement for revocation and remained unaltered in the Reply. In the latter pleading, the claimant, when analysing the embodiment depicted in Fig. 24, clarifies that the openings near the edge provide a technical effect only in conjunction with all the other openings disclosed therein and in the regular pattern shown there. In substance, the claimant's allegation is that the original application provides for openings near the edge only together with openings within the inner part of the device (whether they are between the mesas or not).

48. The defendant objects, arguing that the exact number of mesas (or mesa-etched areas) is of no technical significance to the skilled person in the context of the invention as originally disclosed. Therefore, the defendant maintains that, according to the laws of logic, Feature 5.2 cannot constitute unallowable intermediate generalization, as the arrangement of openings near the edge is independent on whether further openings exist between the mesas. The defendant further asserts that there is no inextricable technical link between the arrangement of openings near the edge, functionally related to the improvement of current spreading – and the presence of additional openings in the central regions of the chip.

49. The Court agrees that the specific number of mesas in the device is not, *per se*, the core of the invention, as the optimization of current spreading uniformity depends primarily on the strategic positioning of the openings.

50. However, the Court observes that in every embodiment disclosed in the patent the openings of the lower insulation layer near the edge of the substrate are invariably depicted in conjunction with additional openings in the inner region of the device. The specific geometry of the openings (whether circular or stripe-shaped) does not alter this finding.

51. Furthermore, an embodiment featuring openings of the lower insulating layer exclusively near the edge of the substrate is not clearly and unambiguously disclosed in the original application, despite its inclusion in the granted claim 1.

52. It is technically counter-intuitive to consider a layout with openings located solely near the edge of the substrate. In the absence of contacts in the inner region of the device, current spreading would be significantly compromised in the centre, which would defeat the very objective of the invention.

53. In view of the above, the Court finds that the openings near the edge of the substrate are inextricably linked to the openings in the inner region. Isolating one of these features from the other constitutes an unallowable intermediate generalization of the invention as filed.

54. Consequently, the invalidity ground based upon Art. 76 (1) 'EPC' is considered well founded and the intermediate generalization resulting from the omission of the openings between the mesas

or within the inner part of the device is unallowable. Accordingly, no challenged claim of the patent can be maintained in the form as granted.

Added subject-matter: feature 5.2.

55. The claimant further argues that the subject matter of claim 1 extends beyond the content of the application, parent application and grand-parent application as filed also because feature 5.2 itself lacks a basis in the original disclosure.

56. The Court notes that the finding of invalidity based on the unallowable intermediate generalization (regarding the omission of inner openings) renders it unnecessary to examine this second line of attack against the patent for added subject-matter regarding the disclosure of Feature 5.2 *per se*.

Recast of the original Auxiliary Requests.

57. Having established the invalidity of the challenged claims of the patent, the Court must examine the defendant's contingent request to maintain the patent in amended form according to one of the proposed Auxiliary Requests.

58. Following the timely filing of the application to amend the patent, the defendant submitted a subsequent request to amend the patent, which proposed further amendments and recast the original requests in light of the Court of Appeal's declaration of invalidity regarding claim 1 and certain dependent claims ('AR1a'-'AR10a'). In essence, this recasting incorporated the features of claim 1 into dependent claim 2 and renumbered the remaining claims.

59. As a general rule, while the mere deletion of claims may not necessitate a consolidated document, any substantive amendment requires the applicant to submit a complete set of the amended claims (see CD Paris, decision issued on 7 January 2026, UPC_433/2024). Indeed, pursuant to the principle of judicial neutrality, the Court is prohibited from assisting the party in drafting or clarifying amendments. Consequently, proposed amendments must be immediately intelligible to the Court and the opposing party, without requiring subjective reconstruction of the applicant's intent, thereby ensuring the accuracy of subsequent annotations in the official patent registers.

60. In the present case, the Court finds that such a recasting does not constitute a substantive amendment of the claims already under judicial review, as it amounts to a mere, mandatory adaptation of the patent specification following the revocation of certain claims, devoid of any changes in the technical features As such, its introduction into the proceedings, although late with respect to the deadline under Rule 30 (1) 'RoP', does not require the leave of the Court pursuant to Rule 30 (2) 'RoP'.

61. In any event, even if one were to hold otherwise, such leave should be granted, given that, as noted, these are merely formal amendments necessitated by the need to take into account the Court of Appeal's decision. As such, they are not liable to cause an imbalance in the procedural dynamics or, in any case, to prejudice the interests of the claimant.

Auxiliary Requests 'AR1a'-'AR10a'.

62. Auxiliary Requests 'AR1a'–'AR10a' must be examined in the order of priority specified by the defendant.

63. These Auxiliary Requests comprise, in various combinations, five limitations of the granted version. In particular, Limitation A supplements the mesa-etched areas (in Feature 1.2) with the feature: "… mesa-etched areas formed with an oblique profile slanted at an angle of 20° to 70°".

64. Limitation B amends the current spreading layer (in Feature 1.5) to include: "… a current spreading layer (210), including a reflective metal such as Al".

65. Limitation C adds the following feature to the reflective electrode (in Feature 1.3): "… a reflective electrode (140) […], with the reflective metal layer comprising one of Al, Al alloys, Ag and Ag alloys, with the stress relieving layer being formed as a composite layer of Ni and Ti, and the barrier metal layer comprising one of W, TiW, Mo, Ti, Cr, Pt, Rh, Pd, and Ni".

66. Limitation D further defines the current spreading layer (in Feature 1.5) as being: "… a current spreading layer (210), formed substantially over the entirety of the upper surface of the substrate excluding an opening through which the reflective electrode is exposed".

67. Finally, Limitation E adds the following to feature 1.5 of claim 1, which relates to the current spreading layer: "… a closed current spreading layer […], and formed over the entirety of the upper surface of the substrate excluding an opening through which the reflective electrode is exposed".

68. It is evident that none of these Auxiliary Requests is capable of overcoming the found defect of added subject-matter, given that none of them addresses the issue of the omission of the openings between the mesas or within the inner part of the device.

Auxiliary Requests 'AR0b'-'AR10b'.

69. The defendant requested the permission of the Court, pursuant to Rules 30 (2) and 50 (2) 'RoP', to file a subsequent request to amend the patent according to further auxiliary requests numbered 'AR0b'-'AR10b'.

70. The defendant argues that these additional requests mirror the existing auxiliary requests and, additionally, each incorporate one further limiting feature (Limitation X), and are justified by the need to react to the decision of the Court of Appeal, issued more than two months after the defendant filed its initial request for amendment the patent, to revoke claims 1, 4, 5, 6 and 9. The defendant contends that based on Düsseldorf Local Division judgement, it could not have reasonably anticipated that the Court of Appeal would revoke the patent due to the lack of disclosure for a single mesa embodiment.

71. The defendant further asserts that the subsequent request to amend the patent responds to the added matter challenge raised by the claimant for the first time with its Reply, which is based on the fact that the patent's scope includes embodiments with a single mesa, but its original disclosure does not provide for this.

72. The claimant objected to this request, arguing that it is lacking any valid justification.

73. The Court observes that when deciding on a subsequent request to amend the patent, all the relevant circumstances of the case must be taken into account, including whether the party seeking the subsequent amendment is able to justify that: i) the amendment in question could not have been made with reasonable diligence at an earlier stage, and ii) the amendment will not unreasonably hinder the other party in the conduct of the action (CoA, decision issued on 25 November 2025, UPC_CoA_457-458-464-530-532-533/2024 and 21-27/2025).

74. Bearing this in mind, the Court considers that the patent proprietor, acting with due diligence, could have submitted the request to amend the patent in the desired manner within the time limit provided for by Rule 30(1), namely the deadline for the filing of the Defence to revocation.

75. It is observed, in the first instance, that the ground of invalidity for added matter raised by the claimant against the original claim 1 – and found to be well-founded by this Court – does not appear to have been pleaded in the parallel proceedings held before the Düsseldorf Local Division which concluded with the Court of Appeal's decision. It follows that there is no logical nexus between the findings made in that decision (which held the patent partially invalid for added subject matter relating to other aspects) and the subject matter of the present proceedings, as defined by the grounds of invalidity raised and the underlying circumstances. Consequently, the Court does not recognize the necessity alleged by the defendant – that the subsequent request was dictated by a need to react to the Court of Appeal's decision – given that the latter, as stated, does not interfere with the subject matter of the present case.

76. In the second instance, it is observed that the findings made by the Court of Appeal regarding the fact that claim 1 as granted contains added matter – since it covers embodiments with one mesa, while such an embodiment is not clearly and unambiguously disclosed in the parent application, and that even if this parent application were to disclose one mesa, it does not disclose feature 5.2 – follow the acceptance of the relevant arguments articulated in the statement of appeal. Therefore, the current defendant, as the respondent in those proceedings, could certainly have envisioned the possibility of interpretive theories on that point differing from those it maintained, and which were accepted by the Düsseldorf Local Division. Consequently, the decision rendered by the Court of Appeal in this regard cannot be considered unforeseeable for a reasonably diligent party, which could have addressed this possibility in the current proceedings with a timely application to amend the patent.

77. Regarding the argument that the subsequent request to amend the patent was dictated by the need to respond to a new line of attack by the claimant raised in the reply, this is not pertinent, given that the claimant has in no way modified the lines of attack articulated in the Statement for revocation - especially with reference to the ground of invalidity for added subject-matter – but has limited itself to reiterating and further elaborating upon them in light of the considerations expressed by the defendant in the Defence to revocation and the interpretation of the patent text and parent applications provided by the Court of Appeal.

78. In any case, it may be observed that in revocation claims, new grounds of invalidity of the attacked patent cannot be introduced after lodging the first written submission of the written procedure (see LD Hamburg, 30 April 2025, UPC_CFI_278/2023; LD Düsseldorf, 7 March 2025, UPC_CFI_459/2023; CD Paris, 21 January 2025, UPC_CFI 311/2023; LD Paris, 11 December 2024, UPC_CFI_395/2023). It follows that any new attacks on the patent would not be admissible in a subsequent pleading, and any violation of this prohibition would be observable by the Court *ex officio*.

Auxiliary Request 'AR11a'-'AR13a'.

79. Finally, Auxiliary Requests 'AR11a'-'AR13a' must be examined.

80. These Auxiliary Requests – timely filed together with the Defence to revocation – comprise, in various combinations, a further limitation (F) of the granted version. This limitation F adds the following to feature 2.1 of claim 1, which relates to the substrate: "… formed on a patterned

substrate having recessed depressions and an antireflective layer disposed between the depressions and comprising …".

81. Limitation F is further specified in Limitation F-1, according to which the substrate is: "… formed on a patterned substrate having recessed depressions and an antireflective layer disposed between the depressions, wherein the depressions are formed in a regular pattern and arranged at constant intervals, and comprising …", and in Limitation F,-2 according to which the substrate is "… formed on a patterned substrate having recessed depressions and an antireflective layer disposed between the depressions, wherein the depressions are formed in a regular pattern and arranged at constant intervals and wherein the anti-reflective layer has a thickness of an integer multiple of λ/4 with the incident light having a wavelength of λ and the thickness of the anti-reflective layer having a variation of ±30% of the integer multiple of λ/4, and comprising …".

82. It is evident that also in this case none of these Auxiliary Requests is capable of remedying the found defect of added subject-matter, given that none of them addresses the issue of the omission of the openings between the mesas or within the inner part of the device.

Conclusion.

83. For the reasons set forth above, the claimant's revocation action must be granted in its entirety. Considering that, by effect of the Court of Appeal's decision, claims 1, 4, 5, 6, and 9 of the patent have already been declared null and void, this Court hereby declares the invalidity of the remaining challenged claims 2, 3, 7, 8, 10, and 11. Consequently, the patent is revoked *in parte qua*.

84. No order is made regarding the remaining claims of the patent, as they do not fall within the scope of the present revocation action.

Costs.

85. The costs of the Court and of the claimant shall be borne by the defendant, as the unsuccessful party.

86. The panel notes that during the interim conference, the value of the counterclaim for infringement for the purpose of applying the scale of ceilings for recoverable costs was set at 500,000 euros and confirms this evaluation.

DECISION

The Court,

a) grants the revocation action filed by Emporia UK and Ireland Ltd. against Seoul Viosys on 24 March 2024 and revokes European patent n° EP 3 926 698 B1 to the extent of claims 2, 3, 7, 8, 10 and 11 with effect in the territories of Austria, Belgium, Germany, France, Italy, Luxembourg, the Netherlands, and Sweden;

b) orders that Seoul Viosys shall pay the cost of the proceedings;

c) orders that the Registry shall send a copy of this decision to the European Patent Office and to the national patent office of any Contracting Member States concerned, after the deadline for appeal has passed.

Issued on 30 March 2026.

The presiding judge and judge-rapporteur

Paolo Catallozzi

Paolo Catallozzi

Firmato digitalmente da Paolo Catallozzi
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The legally qualified judge

Tatyana Zhilova

Tatyana Borisova Zhilova

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Alessandra Sani

Alessandra Sani

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Margaux Grondein

Unified Patent Court
Einheitliches Patentgericht
Juridiction unifiée du brevet

Signature numérique de MARGAUX MARIE-ANGE GRONDEIN