

Examiners' Report – Paper C 2025

Purpose and extent of the examiners' report

The purpose of the examiners' report is to enable candidates to prepare for future examinations (Regulation on the European qualifying examination for professional representatives, Article 6 (6)).

The examination of 2025 was held online and split in two parts. Technical aspects of the online exam are not part of this report.

1. Introduction

This year's paper involved discussion of novelty, inventive step and added subject-matter, as well as considerations regarding claims comprising both technical and nontechnical features (Guidelines G-VII, 5.4) and non-disclosed disclaimers (Guidelines H-V 4.2.1). Attacks based on insufficiency of disclosure (Article 100(b) EPC) are not accepted in Part C of the exam (IPREE, Rule 25(5)). Each part of the examination required dealing with the documents at hand within the allotted time.

The examination documents for part 1 contain a client's letter, Annex 1 (A1, the patent to be opposed) and Annexes 2 to 5 (A2 – A5). The client's letter gives information regarding the available parts of A1 and how these parts are related to the priority document. The client's letter also includes information regarding A4 and its priority. Furthermore, the client's letter contains a statement related to specific commercial interests and requests the attorney to cover the most probable fallback positions for claim 3. Only claims 1 – 3 of A1 are available. Independent claim 1 covers an IR radiation thermometer system for determining the core temperature of a patient. Dependent claim 2 relates to a sterilization system, comprising a cold mirror, which is comprised in the thermometer system of claim 1. Dependent claim 3, which was amended during examination, regards a specific polymer cold-mirror, with a specific range for the difference in refractive index between the two polymers and in a preferred option specific polymer combinations.

In part 2 of the examination, the client's letter gives information regarding the further available parts of A1 and how these parts are related to the priority document. The examination documents for part 2 contain A2 – A5 of part 1 and additionally Annex 6 (A6). Claims 4 – 7 of A1 are newly provided in part 2 of the examination. Independent claim 4 defines a method of determining a body condition of a patient. Dependent claim 5 relates to a method of displaying the body condition on a remote device. Dependent claim 6 is directed to receiving the age of the patient, storing it in a non-volatile manner and determining the threshold separating the temperature ranges based on the age input. Independent claim 7 concerns a mode switching IR-thermometer with two

modes. During examination this claim was amended in that the switching between the first and second operating mode does not involve mechanical actuation of a push-button.

2. General comments

All the information necessary to oppose the patent is found in the examination documents, which include Annex 1 and the client's letters. Candidates shall not use any special knowledge they may have of the technical field of the invention (Implementing provisions to the Regulation on the European qualifying examination for professional representatives, Rule 22 (3)).

The examination documents comprise definitions of technical nature related to claim features, aspects of the related technical effects and objective technical problems as well as motivations and hints. Accordingly, marks were awarded for use of this information and argumentation based on it.

In candidate's answers, the use of information requires citation of at least one specific reference in the relevant document (e.g. paragraph, line, claim, figure, as appropriate). If prior art uses different terminology to the feature in a claim, a full reasoning requires an explanation why the meaning is the same, on the basis of the information provided in the Annexes.

For example, in this year's paper the equivalence of the expressions "cover which can be releasably attached to the main body" and "exchangeable ear piece" in the claims of Annex 1 was to be established based on the properties listed in A4\$6 which correspond to those of a releasable cover (earpiece can be exchanged to fit different sizes).

For inventive step attacks the candidate's answers were given marks within the structure of the problem-solution approach (Guidelines G-VII.5), even if an answer did not follow it.

The problem-solution approach requires *identification of the closest prior art* for each inventive step attack. A substantiated argumentation of the choice includes a reason why some prior art is chosen as the most promising starting point to argue lack of inventive step (which is not necessarily the prior art with "the highest number of common technical features").

For example, in this year's paper a possible motivation for choosing A5 as closest prior art against claim 4 is that A5 is concerned with the problem of indicating temperature ranges to the user. It further discloses acoustic or optical indication means and mentions a standard touch sensitive colour display which makes modification of the displayed content easy.

The argumentation against inventive step should clearly identify the *distinguishing features* of the claim compared to the closest prior art. The *technical effect* associated

to this difference is an advantage which has to be identified in the patent to be opposed, and the appropriate basis must be cited.

The *objective technical problem* to be solved has to be established based on the technical effect. However, the objective technical problem must not contain pointers towards the claimed solution, so, typically, the objective technical problem and the technical effect are not identical.

A comprehensive reasoning for lack of inventive step includes a substantiated argumentation *why another item of prior art would be considered*, e.g. by pointing to a specific part of another document that is related to the same purpose or the same objective technical problem.

For example, in this year's paper, the argumentation against inventive step of claim 2 involves the consultation of A2. A substantiated argument why A2 should be consulted requires citing references in A2. The reasoning for lack of inventive step should also include a substantiated argumentation as to "*how and why*" one arrives at the *subject-matter of a claim* when combining the teaching of items of prior art.

A generic statement such as "By combining A3 and A2 one arrives at claim 2." does not qualify as a substantiated reasoning.

In the absence of the attacks set out in the "possible solution", alternative approaches regarding inventive step may be awarded marks according to the strength of argumentation provided, in particular for motivating why and how certain modifications would be made.

Also, if an attack for an antecedent claim has not been awarded marks, the continuation of that attack in a dependent claim was still taken into account depending on its merits.

Marks for attacks on claims 1 – 3 were only awarded if the respective attack was made in part 1 of the examination.

3. Notice of opposition

For the opposition to be admissible it is required that the patent to be opposed as well as the opponent are identified. Payment of the opposition fee has to be indicated. It should be borne in mind that the intended opponent is the company and not the person signing the client's letter. All relevant information, a statement of the extent to which the European patent is opposed, opposition grounds, evidence, facts and arguments have to be in the answers. Text submitted as part of a candidate's answer has to be clearly related to a line of argumentation to be awarded marks (this is usually not the case for feature tables or copied claim text pasted arbitrarily with a few features identified).

3.1. General (effective dates of the claims and prior art) (12 marks)

For part 1 of the exam the information provided in the first letter from the client was to be used to establish the effective dates of claims 1 – 3 as well as the status of A2 to A5 as prior art with respect to these claims. For part 2 of the exam the information provided in the second letter from the client was to be used to establish the effective dates of claims 4 – 7 as well as the status of A2 to A6 as prior art with respect to these claims. Claim 3, amended during examination, contains added subject-matter. As the added subject-matter had the form of an intermediate generalization, this objection could be overcome. The instructions from the client regarding a possible fallback position were expected to prompt objections to the combination of polymers defined in the preferred option in anticipation of a restriction by the patentee. The defined polymer combination was originally disclosed in the description of the application and the priority document.

In part 2, an analysis of the status of A6 was expected. Although the video related to the EARIX 3.2 was published after the effective date of all claims, the comments under the review are evidence that the device itself was available on the market before the priority date. The same holds for A4§3. Thus, A6 is evidence of the characteristics related to the display of body conditions of the EARIX 3.2.

3.2. Claim 1 (23 marks)

Regarding claim 1, a novelty objection using A4 as prior art under Art. 54(3) EPC was possible and expected.

As a second line of attack, it was expected to raise an objection of lack of inventive step using A3 as closest prior art in combination with A5.

Starting from A5 as closest prior art would require modification of the slidable, permanently mounted cover to make it releasably attachable. This is discouraged by the aim of avoiding loss of the cover (A5§9). Additionally, a change of the sensor position would be necessary.

3.3. Claim 2 (11 marks)

For claim 2 a continuation of the inventive step objection against claim 1 was expected. A3 is the only suitable starting point as no other document discloses a sterilization system using a UV light source. A complete line of reasoning required a partial problems approach, using A5 for the missing compensation of environmental effects and argumentation why A2 would be combined with A3 for the features of the cold-mirror.

3.4. Claim 3 (8 marks)

The amendments to claim 3 relating to the difference of refractive indices go beyond the content disclosed in the examples in the description, which only relate to isolated values of refractive index for specific materials. Defining a range based on isolated

values and separated from the specific materials is an unallowable intermediate generalisation. Therefore, an objection under Art. 100(c) EPC was expected against claim 3.

In addition, the letter required consideration of possible fall-back positions of claim 3. Candidates were expected to recognize that the preferred option of claim 3 was suitable to overcome an objection under Art. 100(c) EPC, because the definition of specific materials would effectively limit the defined range to the values of refractive index difference associated with the specific combinations of polycarbonate (PC) with polyethylene (PE) or (polymethyl methacrylate) PMMA, as originally disclosed in A1§27.

Therefore, it was expected to extend the inventive step objection against claim 2 also to the preferred option of claim 3.

3.5. Claim 4 (13 marks)

An objection of lack of inventive step against claim 4 was expected. A5 is considered as the most suitable starting point and was expected to be combined with A6.

A3 is not concerned with indicating temperature ranges. Further it has neither sound output nor an easy option for additional optical indication. Replacement of the numerical-only display is discouraged by the aim of having a robust and small size display allowing for a watertight and shock-resistant handpiece (A3§12).

A6 lacks suppressing of the environmental effects. A6 is an in-ear device (last comment of A6 and A4§3) and the need for an ambient temperature sensor is disclosed only for the forehead measurement mode. Further A6 does not explicitly mention the IR sensor.

An attack under Art. 53(c) against claim 4 was not appropriate, because the method does not comprise the decisive step (iv) of attributing some deviation of a physical parameter to a particular clinical picture, i.e., the deductive medical or veterinary decision phase (diagnosis for curative purposes *stricto sensu*, G-II.4.2.1.3. Diagnostic methods). The recognition of a deviation of a body parameter like temperature from normal values is only a symptom (step (iii)), not a diagnosis, because an elevation of temperature can be caused by a wide variety of different diseases (T1255/06).

3.6. Claim 5 (14 marks)

Claim 5 relates to a “mixed-type invention” comprising technical and non-technical features (body condition is indicated by displaying different colours). A separation of technical and non-technical features according to the COMVIK approach was expected.

Claim 5 has the filing date as its effective date. Therefore, A4 was available under Art. 54(2) EPC for this claim. A4 was considered as closest prior art for an inventive step objection.

Starting from A5 would require argumentation how the metal shielding (A5§6) preventing radio interference with wireless devices is overcome and how a connection to a remote device is realized.

For a complete reasoning, candidates were expected to discuss the compatibility of the indications found in A6 with the display of a remote device, such as smartphone display.

3.7. Claim 6 (9 marks)

An inventive step attack was expected. A5 is the most promising starting point and was expected to be combined with A6.

A6 cannot be considered as closest prior art, because it does not disclose the suppression of environmental effects and additionally does not disclose the permanent storage of information. Instead, the age needs to be entered upon activation (A6 comment from montagne32).

3.8. Claim 7 (10 marks)

Independent claim 7 is directed to a mode switching IR thermometer and comprises an undisclosed disclaimer relating to the mechanical actuation of a push button.

According to the letter A4 discloses all features of claim 7 except for the undisclosed disclaimer. The disclaimer therefore establishes novelty over A4, which is prior art under Art. 54(3) EPC. Such a disclaimer would be allowable (GL H-V, 4.2.1 (i) or G1/16) if A4 was the sole relevant document.

However, the disclaimer additionally establishes novelty over A5, which is prior art under A54(2) EPC. Therefore, the disclaimer is not allowable (Guidelines H-V-4.2.1(iv) or G1/16) and hence an objection under Art. 100(c) EPC was expected. A complete answer required the identification of the relevant features in A5.

Possible solution – Paper C 2025

1. General (for part 1 of the exam)

Opposition is filed in the name of Fever S.E. against EP 3 858 221 B1 (Annex 1 or A1). The opposition fee has been paid.

The patent is opposed on the grounds of Article 100(a) EPC for lack of novelty and lack of inventive step. The patent is also opposed on the grounds of Article 100(c) EPC. The patent is opposed in its entirety (claims 1 – 3 of part 1 of the exam).

Reference is made to A1 and the further adjoined annexes, labelled A2 to A5.

1.1. Effective Dates

A1 claims priority based on the application IT20200017018 of 15 January 2020.

Claims 1, 2 were part of the priority document and of the application as filed. Hence, the effective date is 15.01.2020.

Claim 3 defines a range for the refractive index difference and specific polymer combinations as preferred option. The feature relating to the difference of refractive indices goes beyond the content disclosed and contravenes Art. 100(c) (see below). However, the specific examples of polymer combinations are disclosed (A1§27) and were disclosed in the priority document. The combinations of specific materials defined in claim 3 fall in the defined refractive index range. Hence, the combination of PC with PE or PMMA defined in the preferred option of claim 3 has an effective date of 15.01.2020.

1.2. Prior art

Annexes A2, A3 and A5 were published before the priority date and the filing date and are therefore prior art under Art. 54(2) EPC.

Annex A4 is a European application which validly claims the priority of 08.07.2019. Thus, it was effectively filed before the priority date of the application, but published thereafter on 07.01.2021. Hence it is prior art under Art. 54(3) EPC for all claims validly claiming priority.

2. Art. 100c

Claim 3 was introduced during examination.

The application discloses in A1§27 the combination of polycarbonate (PC) with polyethylene (PE) or (polymethyl methacrylate) PMMA.

From the values disclosed in A1§27 it also follows that the difference in refractive index of PC and PE is 0.086 and difference in refractive index of PC and PMMA is 0.096.

The original application discloses refractive indices only in combination with specific materials. The disclosure of the isolated values for the refractive index cannot be separated from these materials, and thus no range is disclosed at all. The specific materials defined in the preferred option do not limit the claim.

As a consequence, the definition of a range “equal to or greater than 0.086” for the difference of refractive indices is an unallowable intermediate generalisation, Guidelines H-V, 3.2.1, T526/92.

The subject matter of claim 3 extends beyond the content of the patent application as originally filed (Art. 100(c) EPC).

3. Claim 1 – Art.100a Lack of novelty (A4), Art. 54(3)

A4 discloses an infrared radiation thermometer system (A4§6 or A4§8), suitable for determining the core temperature of a patient (A4§1/6/8 mention that the radiation from the ear drum is measured, which corresponds to body core temperature, A1§6 or A1 claim 1).

The device of A4 comprises:

- a thermometer main body (probe body 20 or housing 10 or A§6) and a cover (exchangeable earpiece 12; A4§6: "prevents contact") which can be releasably attached to the thermometer main body (A4§6: attached to body; earpiece 12 is releasably attached because it can be exchanged to fit different sizes, A4§6).

The thermometer main body comprises:

- an IR sensor (SN, A4§6, A4§7 or claim 1),
- a probe portion including a light guiding element having two ends (hollow tubular portion 150),
- a processor for calculating a temperature from the sensor signal (controller 500 or A4§9),
- a display for displaying the core temperature (temperature is displayed on the smartphone display, which is part of the system, A4§9 or A4§11),
- wherein the guiding element is shaped to guide the IR radiation collected from the patient to the IR sensor (tubular portion 150 guides the IR radiation to SN, A4§7 or A4§8 or claim 1) which is placed at the end most distant to the patient (Fig. 1, A4§8 or A4§8).

The thermometer system provides at least two different operating modes, the first operating mode being adapted to sense the radiation emitted from the eardrum

(temperature measurement mode being adapted to sense the radiation emitted from the ear drum as a first mode; A4§1 or A4§8) and a second mode (speaker mode, A4§12 or background signal measurement, A4§10).

The thermometer system comprises electronic means for compensating the influence of environmental effects (software module in smartphone app together with the sensor signal readout and background level subtraction is an electronic means to compensate environmental effects, A4§10).

Therefore claim 1 lacks novelty (Art. 54 (1), (3) EPC) in view of A4.

4. Claim 1 – Art.100a Lack of inventive step (A3 + A5)

A3 is the closest prior art as it is the thermometer system with the sensor being most distant to the target body and having a cover which can be releasably attached.

A3 discloses:

An IR radiation thermometer system (IR thermometer, e.g. title of A3), measuring temperature by detecting radiation from the eardrum body; (A3§6: detects infrared rays from the eardrum, this temperature corresponds to body core temperature, A1§6), comprising:

- a thermometer main body (handpiece 101, A3§6)
- a cover which can be releasably attached to the thermometer main body (cover 200 can be coupled to handpiece 101 via a ring-shaped snap joint, A3§6).

The thermometer main body comprises:

- an IR sensor (infrared sensor module 140, A3§9),
- a probe portion (probe portion 130),
- wherein the IR sensor is placed at the end most distant from the patient (infrared sensor module 140 is positioned at the proximal end of recess 145, see A3§9, Fig. 1 or Fig. 2 also show this),
- a processor for calculating a temperature from the sensor signal (control unit 150 or A3§12 or A3§9), and
- a display for displaying the core body temperature; (numerical-only display 180 or A3§12).

The thermometer system provides at least two different operating modes, the first operating mode being adapted to sense the radiation emitted from the eardrum (A3§6: infrared rays detected from the eardrum; a second mode: sanitation mode (A3§13) or forehead measuring mode (A3§16)).

The cover is releasably attachable to the thermometer main body (A3§6: coupled by a ring-snap joint, see also Fig. 2).

The probe portion includes a light guiding element (the metallized recess effectively reflects light towards sensor module 140 is thus guiding light, A3§9).

Therefore claim 1 differs from A3 in that:

- the thermometer system comprising electronic means for compensating for the influence of environmental effects

The technical effect of the distinguishing feature is to compensate changing environmental conditions during forehead temperature measurements, see A1§8. Therefore, the objective technical problem starting from A3 is how to enable a forehead measurement with usable reliability.

The necessity for taking into account changing environmental conditions during forehead temperature measurements is common general knowledge according to A1§8. The skilled person would hence provide an ambient temperature sensor as implemented for this purpose in A5§7.

Thus, claim 1 lacks inventive step (Art. 56 EPC) in view of A3+A5.

5. Claim 2 – Art.100a Lack of inventive step (A3+A5+A2)

A3 is the closest prior art, because it is the only document disclosing a sterilization system and uses UV light to achieve this purpose.

A3 discloses an IR thermometer system with the features already discussed in the context of claim 1, and additionally

- a sterilization system comprising a UV light source (A3§7/14/15/claim 1: sanitation unit 230 for emitting UV light),
- and a UV reflecting coating on the inside of the cover (A3§7/14/15: reflective coating 220 on the inside of the cover (see also Fig. 2).

The first distinguishing feature is the same as in claim 1:

- means for suppressing the influence of environmental effects

The second distinguishing features:

- wherein the coating comprises a cold-mirror portion to enable passage of IR light during forehead temperature measurement.

The second distinguishing feature has the effect of enabling a passage of IR light while reflecting UV light, (A1§26) or prevent leakage of UV light to the environment and at the same time transmitting IR). Thus, the second objective technical problem is to allow the use of the same cover, without modification, for forehead measurement and sterilization.

The technical effects of ensuring measurement precision vs. enabling use of the same cover are different. They do not achieve a combined technical effect which is different from, e.g. greater than, the sum of the technical effects of the individual features. Therefore, the two differences are not synergistically linked such that the partial problem approach applies (Guidelines G-VII 5.2, 6, 7).

For the solution of the second objective technical problem the skilled person would consider A2 because it relates to a broad range of applications, such as surgical lighting or measuring instruments, and it discloses a solution to separate UV light from IR light (A2§2).

A2 discloses a cold mirror for this purpose (claim 1 or A2§4/7/8).

The cold mirror of A2 can be produced as a thin foil which can be laminated to a large variety of substrates, A2§5. Windows in the housings of measuring instruments are formed (A2§2 and A2§5). These windows with the cold mirror are thus suitable for the measuring instrument of A3 and the skilled person would replace the polymeric plug of A3 by a such a window.

Therefore, the subject matter of claim 2 lacks inventive step (Art. 56 EPC) in view of the combination of A3+A5+A2.

6. Claim 3 (preferred option) – Art.100a Lack of inventive step (A3+A5+A2)

In the event that the patent proprietor restricts claim 3 to the preferred materials, claim 3 lacks an inventive step.

The closest prior art is A3 for the same reasons as in claim 2.

In addition to the second distinguishing feature of claim 2, claim 3 is further distinguished from A3 in that the first polymer is PC and the second polymer is either PE or PMMA.

However, A2, claim 2 discloses four individual combinations of the first and second polymer, one of them using PC as first polymer and either PMMA or PE as second polymer. This corresponds to the claimed feature. Only PC needs to be selected in A2, the materials for the second polymer are the same in A1, claim 3 and A2, claim 2.

Striving to solve the second objective technical problem identified in claim 2, the skilled person would have to choose appropriate materials for the cold mirror coating and would select the materials disclosed in A2 and thus also meet the condition defined in claim 3 for the difference in refractive index between these materials.

Therefore, the subject matter of claim 3 in the preferred option relating to the specific materials lacks inventive step (Art. 56 EPC) in view of the combination of A3+A5+A2.

7. General (for part 2 of the exam)

7.1 Effective Dates

Claims 4 and 6 were part of the priority document and of the application as filed.
Hence, the effective date is 15.01.2020.

The subject-matter of claim 5, including A1§30 on which it is based was not comprised in the priority document. Thus, the effective date for claim 5 is the date of filing, 15.01.2021.

Claim 7 adds subject-matter, contrary to Art. 100(c) EPC (see below).

7.2 Prior art

The status of A2, A3, A5 is the same as in part 1. They are prior art under Art. 54(2) EPC for all claims.

A4 is a European application filed on 07. 07.2020, validly claims priority of 08.07.2019 and was published on 07.01.2021. It is thus prior art under Art. 54(3) for claims 4 and 6, and prior art under Art. 54(2) EPC for claim 5.

Annex A6 is a screenshot of a video published on the internet, taken on 17.03.2025. The upload date 28.10.2021 is after the effective date. Thus, the video itself is not prior art. However, A6 describes the product EARIX 3.2 ear thermometer. According to the comment by Harry764 the device was bought "4 years ago". The comment was posted "3 years ago". Thus, the product was sold 7 years before the date of taking the screenshots, well before the effective date of all claims.

This is corroborated by A4§3, which states that EARIX 3.2 was commercially available. As A4 was filed before the priority date of the patent, EARIX 3.2 must have been on the market by that date.

Thus, the product EARIX 3.2 became available to the public by sale before the priority date of A1 and is prior art under Art. 54(2) EPC. Its characteristics are evidenced by A6 to which reference will be made in the following.

8. Claim 4 – Art.100a Lack of inventive step (A5+A6)

A5 is the closest prior art, because deals with the problem of indicating temperature ranges to the user. It comprises suppression of environmental effects and acoustic or optical indication means.

A5 discloses:

A method of determining a body condition of a patient (body temperature measuring A5§1/5/7, indication of critical level A5§14)

- by obtaining an IR sensor signal (IR sensor signal, A5§6)

- using a thermometer system having a thermometer main body (housing 12, A5§5 or A5§6) and an IR sensor (IR sensor 16, A5§6 or A5§10)
- using a processor (control circuit 26, A5§5/6/7/10/11) to perform the following steps:
- compensating in the IR signal for the influence of environmental effects and calculating a temperature value for a patient from the sensor signal (A5§7/10: the control circuit determines the body temperature from the IR radiation sensor signal and the ambient sensor signal)
- displaying the temperature value (display 64, A5§5 or A5§12) and
- indicating the corresponding body condition using indicator means provided in the thermometer system (A5§14: integrated speaker sounds an alarm tone).

A5 does not disclose the feature:

- assigning the measured temperature value to one of three distinct temperature ranges, wherein the first temperature range corresponds to a normal body condition, the third temperature range corresponds to an alarming body condition requiring medical attention and the second temperature range is between the first and second temperature range and corresponds to an elevated temperature condition

The distinguishing feature has the technical effect of indicating the severeness of fever (see A1§28). Starting from A5 the objective technical problem is how to allow the user to easier recognize critical conditions of the patient or to indicate whether medical advice is required (A1§11).

In view of the objective technical problem the skilled person would find A6, which relates to an ear thermometer and discloses the allocation of temperature value to different ranges (A6, paragraph on first page (DE: l. 9-15; EN: l. 9-12; FR: l. 8-16).

A6 emphasizes the ease of use of the device (A6, page 1, last pg.: "a great way to tell if your kid needs treatment"/"self-explanatory"/"suitable for all users").

A5§14 discloses the availability of different sound signals, such that different sounds can be mapped to the different ranges. A skilled person would encounter no technical hindrance when integrating the function of A6 into A5.

Furthermore, it is noted that A5§12 discloses a graphic colour display and A5§5 mentions that the processor 26 is "a programmable multi-purpose control circuit". Therefore, in an alternative approach the device of A5 can readily be programmed to display what is shown in A6.

As a result, claim 4 lacks inventive step (Art. 56 EPC) in view of A5+A6.

9. Claim 5 – Art.100a Lack of inventive step (A4+A6)

The subject matter of the claim comprises technical features and non-technical features; the "mixed type invention" approach applies (Guidelines G-II, G-VII, 5.4 or T641/00 (COMVIK) or G1/19).

The technical features are the features of claim 4 and the display remote to the thermometer body. The feature of displaying different colours instead of e.g. letter codes is a non-technical presentation of information (GL G-II, 3.7). It provides no further technical effect over other indications of the body condition, but only presents the same information in a different way.

A4, which is prior art under Art. 54(2) EPC for claim 5, is the closest prior art, because it is the only document disclosing the display of the temperature on a remote device.

A4 discloses:

A method of determining a body condition of a patient (A4§9/10/11: body temperature measuring and monitoring of the status of patient) by

- obtaining an IR sensor signal (A4§8) using a thermometer main body (Fig. 1, housing 10, A4§6, or A4§9), comprising an IR sensor (sensor SN, A4§6),
- using a processor (controller 500, A4§9/10) to perform the following steps:
- compensating in the IR signal for the influence of environmental effects (A4§10: software module in smartphone app together with the sensor signal readout and background level subtraction is an electronic means to compensate environmental effects).
- calculating a temperature value of a patient (A4§9) and wherein
- the measured temperature is displayed (A4§9 or A4§11: "displayed")
- on a device remote from the thermometer body (A4§9 or A4§11: mobile device such as a smartphone).

The technical method steps distinguishing claim 5 from A4 are:

- assigning the measured temperature value to one of three distinct temperature ranges, wherein the first temperature range corresponds to a normal body condition, the third temperature range corresponds to an alarming body condition requiring medical attention and the second temperature range is between the first and second temperature range and corresponds to an elevated temperature body condition,
- and a determined body condition corresponding to the allocated temperatures is indicated.

The technical effect of the distinguishing features is the indication of the severity of fever (see A1§28). Starting from A4 the objective technical problem is how to allow the

user to recognize critical conditions of the patient or to indicate whether medical advice is required, under the constraint that different colours are used (GL G-VII, 5.4.2).

The skilled person would consider A6, which relates to an ear thermometer having the same purpose of giving indication for separate groups of patients.

A6 discloses the allocation of temperature values to different ranges corresponding to different levels of severity of fever (A6, paragraph on first page or Fig. 2). A6 emphasizes the ease of use of the device (A6, page 1, last pg.: "a great way to tell if your kid needs treatment"/"self-explanatory"/"suitable for all users").

A skilled person would integrate the temperature ranges disclosed in A6 into A4. A smartphone display mentioned in A4 is suitable to display all kinds of indications, so no structural modifications of A4 are required.

Therefore claim 5 lacks inventive step (Art. 56 EPC) in view of A4+A6.

10. Claim 6 – Art.100a Lack of inventive step (A5+A6)

A5 is the closest prior art. In addition to the reasons given for claim 4, it allows input corresponding to the age of the user to be received and is the only document disclosing permanent storage.

Further to the features identified with respect to claim 4, A5 discloses:

- receiving and storing in a non-volatile manner an input corresponding to the age of the patient (A5§13: input the age and store it in a non-volatile storage in the control circuit).

In addition to the distinguishing features of claim 4, claim 6 differs from A5 in:

- calculating the thresholds separating the first, second and third range based on age input.

The technical effect of the distinguishing features is to take into account the patient's age when setting specific temperature ranges (see A1§11/29). Starting from A5 the objective technical problem is to provide a more reliable use of the thermometer system.

A6 discloses the additional distinguishing feature (A6, paragraph on first page, DE: l. 9-15; EN: l. 9-12; FR: l. 8-16).

The system of A5 allows to receive input of names and has a standard display. There is no technical hindrance to adjust the temperature ranges in accordance with age, and indicate more than two different temperature ranges using different sound signals. The control circuit 26 is programmable and for multi-purpose use, A5§5.

Therefore claim 6 lacks inventive step (Art. 56 EPC) in view of A5+A6.

11. Claim 7 – Art. 100 (c) (undisclosed disclaimer not falling under the exceptions)

The feature of claim 7:

- (a) “the switching between two different operating modes of the system does not involve a mechanical actuation of a push button”

has been added during examination. The original application neither mentions the added negative feature, nor discloses the use of a mechanical switch in an embodiment. Instead, a proximity sensor is used to switch between the operating modes (A1§14).

Therefore, feature (a) is an undisclosed disclaimer in the sense of GL H-V 4.2.1.

Such a disclaimer would be allowable (GL H-V, 4.2.1 (i) or G1/16), if A4 was the sole relevant document.

However, A5 discloses the features:

Mode switching IR thermometer for determining the core temperature of a living body (A5§3) comprising:

- a thermometer main body (12), a cover (cap 22, Fig. 1 or A5§8) an IR sensor (16), a probe portion (14) and a processor (26) for calculating a temperature from the sensor signal.

The thermometer also provides at least two different operating modes (A5§11: in-ear mode, forehead mode). In the first operating mode the radiation emitted from the ear drum is sensed (A5§7/8). In the second mode, the forehead-mode, sound is output (A5§14: sound in all measurement modes, hence also in the second mode).

But A5 uses mechanical switching between the operating modes (mode selector switch is pressed down by sliding the cap 22, see also A5§11), this is the mechanical actuation of a push button.

Thus, the undisclosed disclaimer of feature (a) establishes novelty over A5, which is prior art under Art. 54(2) EPC. A5 is also not an accidental anticipation. Therefore, in view of A5 the amendment by feature (a) is not allowable, see GL H-V-4.2.1(iv) or G1/16.

As a consequence, claim 7 extends beyond the content of the patent application as originally filed (Art. 100(c) EPC).