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**Datasheet for the decision  
of 26 June 2013**

**Case Number:** T 1066/09 - 3.5.04

**Application Number:** 01202073.1

**Publication Number:** 1152605

**IPC:** H04N5/445

**Language of the proceedings:** EN

**Title of invention:**

Electronic television program guide schedule system and method  
with data feed access

**Patent Proprietor:**

United Video Properties, Inc.

**Opponents:**

Interessengemeinschaft  
für Rundfunkschutzrechte e.V. (IGR e.V.)  
Koninklijke Philips N.V.  
Velocity 303 Limited

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(a)  
RPBA Art. 13

**Keyword:**

main request - inventive step (no)  
auxiliary request - not admitted

**Decisions cited:**

T 1474/06

**Catchword:**



**Beschwerdekammern  
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Case Number: T 1066/09 - 3.5.04

**D E C I S I O N  
of Technical Board of Appeal 3.5.04  
of 26 June 2013**

**Appellant:** United Video Properties, Inc.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 17 March 2009  
revoking European patent No. 1152605 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman:** F. Edlinger  
**Members:** M. Paci  
C. Vallet

## Summary of Facts and Submissions

- I. This is an appeal by the patent proprietor against the decision of the opposition division revoking European patent No. 1 152 605.
- II. Three oppositions against the patent had been filed by three respective opponents. The oppositions were based on the grounds of Article 100(a), (b) and (c) EPC 1973. Two of these oppositions were subsequently withdrawn during opposition proceedings before the opposition division. Opponent 3 (hereinafter "the opponent") remained as the sole opponent in the appeal proceedings.
- III. The opposition division held that the grounds for opposition under Article 100(b) EPC [1973] and Article 100(c) EPC [1973] did not prejudice the maintenance of the patent as granted, but revoked the patent on the ground that, although the subject-matter of claims 1 and 10 was novel, it did not involve an inventive step in view of E1 in combination with either E2 or E3. These prior-art documents are as follows:  
  
E1: WO 95/01059 A1,  
E2: WO 95/07003 A1, and  
E3: WO 94/13107 A1.
- IV. In the statement of grounds of appeal, the appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted.
- V. The respondent (opponent) requested that the appeal be dismissed.

- VI. In an official communication annexed to the summons to oral proceedings, the board informed the parties that they should be prepared to discuss the construction of the claims in the context of a discussion of the grounds for opposition under Article 100(a) EPC 1973.
- VII. With a letter dated 24 May 2013, the appellant submitted new claims according to first to fourth auxiliary requests. With a further letter dated 28 May 2013, the appellant submitted claims according to new first to fourth auxiliary requests, which replaced the auxiliary requests filed with letter of 24 May 2013, albeit with the caveat that if the requests filed with letter of 28 May 2013 were not admitted, then the requests filed with letter of 24 May 2013 were maintained.
- VIII. Oral proceedings were held on 26 June 2013. Both parties were represented. During the oral proceedings, the appellant withdrew all auxiliary requests except its first auxiliary request filed with letter of 28 May 2013.
- IX. The appellant's final requests are that the decision under appeal be set aside and that the patent be maintained as granted. Should it be necessary to limit the claims the appellant subsidiarily requested that the patent be maintained on the basis of a single auxiliary request comprising the claims of the first auxiliary request as filed with letter of 28 May 2013.
- X. The respondent's final request is that the appeal be dismissed.

XI. At the end of the oral proceedings the chairman announced the board's decision.

XII. Claim 1 according to the appellant's **main request** (the patent as granted) reads as follows:

"A method of displaying program schedule information and data feed information from a data feed, the method comprising:

receiving television programs for a plurality of television channels;

tuning to a selected one of the television channels;

receiving and storing television program schedule information;

in response to user control commands, controlling a video display generator to display said stored program schedule information;

receiving said data feed information from a data feed;

selectively choosing said data feed information from said data feed; and

combining and simultaneously displaying, on a television receiver, a portion of the stored program schedule information with said chosen data feed information."

Claims 2 to 20 according to the main request are of no relevance to the present decision.

XIII. Claim 1 according to the appellant's **auxiliary request** reads as follows (the amended text portions, relative to claim 1 of the main request, are either underlined (added text) or struck through (deleted text)):

"A method of displaying program schedule information and data feed information from a data feed, the method comprising:

receiving television programs for a plurality of television channels;  
tuning to a selected one of the television channels;  
receiving and storing television program schedule information;  
in response to user control commands, controlling a video display generator to display said stored program schedule information;  
~~receiving said data feed information from a data feed~~ comprising data feed information;  
accessing selectively choosing said data feed, on demand by a user, to selectively choose information from said data feed information therefrom; and  
combining and simultaneously displaying, on a television receiver, a portion of the stored program schedule information with said chosen data feed information."

Claims 2 to 20 according to the auxiliary request are of no relevance to the present decision.

XIV. The opposition division's reasoning in respect of the ground for opposition of lack of inventive step (for claim 1 of the patent as granted) can be summarised as follows:

E1, the closest prior art, discloses a method having all the features of the method of claim 1, except the step of "selectively choosing said data feed information from said data feed", which the opposition division understands to mean that the data feed

information is extracted from the received signal and then displayed, without prior storage.

The method of claim 1 is thus novel over E1.

However, it is an obvious alternative to the method of E1 for the following reasons:

Figure 10 of E1 shows additional information (called "Tid Bits") relating to an image currently displayed on screen and overlaid on that image. There was an obvious advantage in displaying the data after receiving it because the Tid Bits relate to the image currently displayed. It would thus be obvious to the skilled person to display the Tid Bits at the same time as the image to which they relate, in particular where the image does not remain on screen for long. In order to do so, the received Tid Bits would have to be displayed without prior storage, which posed no technical difficulty at the priority date because it was already known to display closed captions in this way, as evidenced by E2 and E3.

XV. The appellant (patent proprietor) essentially argued as follows:

*Main request - inventive step*

The term "data feed" in claim 1 is a term of the art which has the meaning of data streamed or transmitted. In the present context, a "data feed" is a real-time receipt and direct display of information. Such a data feed enables the transmission and display of live information, such as the score of a match currently being played. Although the transmission is live, the data feed information itself need not be live, but



could instead merely be additional information relating to the image currently displayed. As acknowledged by the opposition division, the data feed information is displayed as soon as it is received, i.e. without prior storage. The method of claim 1 thus combines and simultaneously displays two different types of data: television program schedule information, which is received and stored, and data feed information, which is displayed when it is received, without prior storage. There is a clear distinction between these two types of data.

In the method of E1, all the information displayed on screen, including the "Tid Bits" shown in figure 10, is stored data. There is no data feed information from a data feed. The method of claim 1 therefore differs from that of E1 in the following steps:

- receiving said data feed information from a data feed;
- selectively choosing said data feed information from said data feed; and
- combining and simultaneously displaying, on a television receiver, a portion of the stored program schedule information with said chosen data feed information.

The objective technical problem to be solved when starting from E1 is to improve the information content of the electronic program guide (EPG). This problem is solved by combining and simultaneously displaying static information (stored television program schedule information) and dynamic information (received data feed information).

In E1, all information, including the Tid Bits, is stored. It is thus static information. It would require

a conceptual leap to go from displaying static only information to displaying a combination of static and dynamic information. The dynamic information feed advantageously provides the ability to display live information about a current event.

E2 and E3 refer to closed captioning technology. There is no teaching or suggestion in either E2 or E3 that such technology should be selected and included with a device such as that of E1 in an expectation of solving the above objective technical problem. Moreover, incorporating closed caption technology with E1 would merely provide the receipt of caption information and its direct display. There would still be no combination of such information with stored television program schedule information. Furthermore, there would be no provision for selectively choosing certain data feed information as opposed to simply displaying all data feed information (i.e. the closed caption text).

Hence, the subject-matter of claim 1 involves an inventive step in view of E1, E2 and E3.

*Auxiliary request - admissibility*

The claims according to the auxiliary request differ from those of the main request only in that small amendments have been made to claims 1 and 10 in order to emphasise the interactive nature of the claimed method or system. These amendments are legally and technically of no complexity, seek to converge the content of the claims and expand on facts already discussed (see T 1474/06). They can be reasonably dealt with without adjournment of the oral proceedings. Moreover, they were filed approximately one month before the date of the oral proceedings and were

presented in reaction to a shift in the interpretation of claim 1 expressed by the board in the communication accompanying the summons and in the oral proceedings. The appellant presented its complete case in the statement of grounds of appeal, but could not foresee this shift.

For the above reasons, the board should exercise its discretion under Article 13 RPBA to admit these claims into the proceedings.

XVI. The respondent's (opponent's) arguments can be summarised as follows:

*Main request - novelty and inventive step*

The appellant gives the expression "data feed" a meaning which is not in claim 1, nor even clearly defined in the description of the patent specification. A "data feed" is simply a source of input information. The information need not even be live, as confirmed by claim 2, which effectively states that the data feed information could be any information derived from the Internet.

The opposition division held that the data feed information was directly displayed "without prior storage", but did not cite any passage of the patent specification supporting this interpretation. In the respondent's view, there is no clear limitation that the data feed information is displayed without prior storage. Figure 56 of the patent specification discloses examples of data feed information which have no "live" character and thus may very well be stored for some time before being displayed. Moreover, even "live" information from a data feed would have to be at

least buffered, i.e. stored, by the receiver and the video processor before display, even if only for a brief fraction of time. Hence the opposition division's finding that the data feed information is displayed "without prior storage" is incorrect.

E1 discloses a method very similar to that of claim 1. Figure 10 of E1 shows baseball player "John Smith" during a currently viewed baseball game. Overlaid on the image are two different types of information: a title "ST. LOUIS AT SAN FRANCISCO", which is program schedule information, and information on "John Smith", which is referred to as "Tid Bits" in E1. As explained on pages 31 to 33 and 43 with reference to figures 3a and 3b of E1, the program schedule information is transmitted via a digital program listing channel 100, whereas the Tid Bits may be transmitted via the video blanking interval (VBI) of the current channel. As shown in figure 3a of E1, the program schedule information and the Tid Bits thus arrive via different parts of the electronic spectrum (100 and 103, respectively, in figure 3a). On a proper construction of the expression "data feed", the Tid Bits should be regarded as data feed information. This data feed information is selectively chosen by the user by depressing info button 136 on the remote control (see figures 4a to 5b). The program schedule information and the Tid Bits are combined and simultaneously displayed on screen as shown in figure 10.

For the above reasons, the method of claim 1 is not novel in view of E1.

Moreover, even if the expression "data feed" is construed as implying a "live" character of the transmitted information and that the information is

displayed "without prior storage", the method of claim 1 still lacks an inventive step for the following reasons:

Since the Tid Bits relate to the very subject currently being displayed (e.g. player "John Smith"), it is plain that they have a "live" character. In view of this "live" nature, it would be a trivial implementation for the skilled person to read the Tid Bits from the VBI of the program currently being viewed, and to directly display them without prior storage. Extracting text data from a VBI and displaying it was well known at the priority date, for instance for displaying text of spoken words as closed captions, as disclosed in E2 and E3.

Hence the skilled person would have arrived at the method of claim 1 without inventive step.

*Auxiliary request - admissibility*

The appellant's auxiliary request was filed late, almost four years after filing its grounds of appeal and just a few weeks before the appointed date of oral proceedings, with seven other auxiliary requests which were only withdrawn during the oral proceedings. There is no valid justification for this late filing. The board's communication annexed to the summons to oral proceedings did not raise any issue which had not already been discussed. The meaning of the expression "data feed" in claim 1 has been a central issue since at least August 2007 (see points 7.1 and 7.2 of the opposition division's communication dated 14 August 2007). There was nothing new, and certainly no shift in interpretation, in the board's communication which could have justified the filing of said auxiliary

request as a reaction. This auxiliary request should have been filed earlier during the proceedings before the opposition division or, at the very latest, with the statement of grounds of appeal (see T 1314/10). The amendments made to claim 1 of the auxiliary request raise fresh issues under Articles 84 EPC 1973 and 123(2) and (3) EPC and significantly increase the complexity of the subject-matter and do not converge the content of the claims. Moreover, the change in wording of the third "receiving" step would appear at best to be superfluous, in contravention of Rule 80 EPC, and at worst to contravene Articles 123(2) and (3) EPC. It is also unclear (Article 84 EPC 1973) at what point in the method the data feed information is received. Decision T 1474/06, cited by the appellant, does not help the appellant's case, quite the contrary.

For the above reasons, the board should exercise its discretion under Article 13 RPBA not to admit the auxiliary request.

### **Reasons for the Decision**

1. The appeal is admissible.

*Main request - Inventive step (Articles 100(a) and 56 EPC 1973)*

2. Construction of claim 1

The meaning of the expression "data feed" in claim 1 is disputed by the parties.

The board considers that "data feed" is a term of art which generally means a mechanism or process for transferring data, from which information may be

extracted. In the terms of claim 1 the displayed data feed information is received from a data feed, selectively chosen, combined and simultaneously displayed with a portion of the stored program schedule information. This construction is also supported by paragraphs [0027], [0176] to [0179] and [0180] of the description of the patent specification. In the context of claim 1 of the patent, the information received from a data feed may be "live" or "near-live" information (see "up-to-the minute information" in paragraph [0027]), but does not have to be so because it may also merely be non-live additional information on a given subject (as shown, for example, in figure 52).

Therefore, the data feed information is not simply additional information which is stored together with the program schedule information, but information which is combined, after its extraction from a data feed, with a part of the stored program schedule information when it is displayed. Moreover, the board is prepared to accept, in the appellant's favour, that in the method of claim 1 the data feed information is displayed as soon as it is received. This, however, does not imply that the data feed information is displayed "without prior storage" because even "live" information from a data feed must be at least buffered, i.e. stored for a brief fraction of time, by the receiver and the video processor before being displayed. The appellant acknowledged during the oral proceedings that this last point was technically correct.

In view of the above meaning of "data feed information", the board considers that the program schedule information and the data feed information in claim 1 are two different types of information which are technically distinguishable.

3. The closest prior art

There is no dispute between the parties that E1 is the closest prior art and that it discloses a method of displaying program schedule information comprising the steps of:

- receiving television programs for a plurality of television channels;
- tuning to a selected one of the television channels;
- receiving and storing television program schedule information; and
- in response to user control commands, controlling a video display generator to display said stored program schedule information.

The parties, however, disagree on whether the "Tid Bits" shown in figure 10 of E1 may be regarded as data feed information within the meaning of claim 1.

According to the middle paragraph on page 43 of E1, the Tid Bits may be transmitted via the vertical blanking intervals (VBI) of the analog television channel being currently displayed. Concretely, this means that the Tid Bits may be transmitted via part 103 of the electronic spectrum shown in figure 3a (see middle paragraph on page 31).

The program schedule information, on the other hand, is transmitted in separate part 100 of the electronic spectrum shown in figure 3a, and then stored and updated as in a manner that is usual in the art (see also figure 3b and pages 31 to 33).



The board thus considers that it is clearly disclosed in E1 that the Tid Bits and the program schedule information are two different types of information which are technically distinguishable.

However, in order for the Tid Bits of E1 to be regarded as data feed information in the present context, they would have to be combined with stored program schedule information and displayed as soon as they are received (in accordance with the construction of claim 1 under point 2 *supra*).

The board is not convinced that this last feature is directly and unambiguously derivable from the disclosure of E1 for the reasons given below.

Indeed, there is no explicit disclosure in E1 that the Tid Bits are displayed as soon as they are received. The description (see page 41) states that the Tid Bits give additional information relating to the particular subject currently being displayed on the screen, which in the example of figure 10 is baseball player "John Smith", but does not indicate when this additional information is transmitted. In the example of figure 10, the Tid Bits are statistics about John Smith's past results. These statistics are not updated information about a live event such as the score of a match currently being played. Moreover, E1 is silent as to how the display of the Tid Bits about John Smith is synchronised with the display of an image of John Smith appearing on screen. In the board's view, it cannot be derived directly and unambiguously from the disclosure of E1 that the Tid Bits about John Smith must be received at the exact time when John Smith appears on screen and be displayed at that time. This is because other options are also possible. For instance, the

statistics about John Smith could have been created, transmitted to the receiver and stored therein (together with the program schedule information), all in advance of the baseball match, and their display at the appropriate time could have been triggered by a predetermined signal transmitted with the television signal, for example in the VBI.

Thus, in view of the above, the board concludes that E1 does not disclose directly and unambiguously that the Tid Bits are displayed as soon as they are received, and thus that they are "data feed information" received and combined with stored program schedule information.

4. The distinguishing features

The system of claim 1 thus differs from E1 in the steps identified by the appellant, i.e.

- receiving said data feed information from a data feed;
- selectively choosing said data feed information from said data feed; and
- combining and simultaneously displaying, on a television receiver, a portion of the stored program schedule information with said chosen data feed information.

5. The objective technical problem

The appellant stated during the oral proceedings that the objective technical problem to be solved when starting from E1 should be formulated as being to improve the information content of the electronic program guide (EPG). The respondent did not dispute this formulation of the problem. The board has no objection to it, but will concentrate on the technical

aspects which allow for the improvement of the information content.

6. Obviousness

As explained under point 3 *supra*, in the example of figure 10, the Tid Bits about player John Smith must be somehow synchronised with the appearance of John Smith on screen. E1 is silent on how this is achieved. The skilled person trying to improve the information content provided by E1 would thus have to find a way to achieve this synchronisation. The skilled person would be aware that, at least when a baseball match is broadcast live, it is not possible to know in advance when a given player will appear on screen.

Although the skilled person might consider other possible solutions, a straightforward solution to this problem would be that the Tid Bits should be transmitted from the service provider at the exact time when they should be displayed, for instance by being transmitted in the VBI of the frames showing John Smith, with the receiver displaying them as overlays as soon as they are received. These Tid Bits would then be data feed information received from a data feed as claimed in claim 1.

Since the method of E1 already allows the user to selectively choose via info button 136 and down arrow 146 (on the remote control shown in figures 4a and 5a) whether or not to display Tid Bits and, if so, how much of them, the step of the method of claim 1 of "selectively choosing said data feed information from said data feed" would also be obtained.

Finally, in the example of figure 10, both stored program schedule information (text "ST. LOUIS AT SAN FRANCISCO") and Tid Bits (additional information about John Smith) are combined and simultaneously displayed on the same screen.

Hence the method of claim 1 does not involve an inventive step in view of E1.

7. Conclusion on the main request

Accordingly, the patent cannot be maintained on the basis of the appellant's main request.

*Auxiliary request - admissibility*

8. According to Article 12(2) RPBA (OJ EPO 2007, 536), first sentence, the statement of grounds of appeal shall contain a party's complete case.

According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal may be admitted and considered at the board's discretion. The discretion shall be exercised in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. Article 13(3) RPBA further provides that amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.

9. In the present case, the set of claims 1 to 20 according to the appellant's auxiliary request was filed with letter dated 28 May 2013, as the first of

three sets of claims according to its first to third auxiliary requests. The second and third auxiliary requests were later withdrawn by the appellant during the oral proceedings held on 26 June 2013.

10. The appellant submitted that the amended claims according to the auxiliary request should be admitted into the proceedings essentially for the following reasons:

(a) They were filed approximately one month before the date of the oral proceedings and presented in reaction to a shift in the interpretation of claim 1 expressed by the board in the communication accompanying the summons and in the oral proceedings. The appellant presented its complete case in the statement of grounds of appeal, but could not foresee this shift.

(b) The amendments are legally and technically of no complexity, seek to converge the content of the claims, expand on facts already discussed (see T 1474/06) and can be reasonably dealt with without adjournment of the oral proceedings.

11. The board is not convinced by these arguments for the following reasons:

11.1 Re the appellant's arguments under point 10(a) *supra*

The board disagrees with the appellant that there was a shift in the interpretation of claim 1 in the communication accompanying the summons to oral proceedings. Indeed, under point 5 of that communication, the board wrote:

"During the oral proceedings, the grounds for opposition under Article 100(a) EPC 1973 [novelty and

inventive step in view of E1, E2 and E3] will have to be discussed. In the context of these discussions, the parties should be prepared to discuss how the claims should be construed, in particular regarding the meaning of the expressions "data feed", "data feed information" and "selectively choosing" and whether these expressions, in the given context and in view of the overall disclosure in the opposed patent, justify the opposition division's interpretation that "the data feed information is extracted from the received signal and then displayed, without prior storage"; and whether the data feed of the invention, as formulated by the appellant, constitutes "a live or real time data feed" (see page 7, penultimate paragraph, of the statement of grounds of appeal)."

By this statement the board informed the parties that the construction of claim 1, in particular of the expressions "data feed", "data feed information" and "selectively choosing", would be discussed during the oral proceedings, but did not express an opinion as to how it should be construed. Moreover, the appellant should not have been surprised that the meaning of the expression "data feed" in claim 1 would come under discussion because it had been a central issue in the discussion of the ground for opposition under Article 100(a) EPC 1973 since at least August 2007 (see points 7.1 and 7.2 of the opposition division's communication dated 14 August 2007).

Hence there was no shift in the interpretation of claim 1, or anything else, in the board's communication which could have justified the filing of said auxiliary request as a reaction thereto.

During the oral proceedings, i.e. nearly one month after the appellant had filed its auxiliary request, the board referred to an interpretation of claim 1 which was slightly different from that of the opposition division (the "data feed information" is displayed "as soon as it is received", rather than displayed "without prior storage", the latter being technically incorrect, as acknowledged by the appellant, because the data feed information must be at least buffered in the receiver for a brief amount of time: see point 2 *supra*). However, both interpretations convey the same idea that the data feed information is not part of and stored together with the program schedule information, but information which is combined with the schedule information and displayed (very briefly) after its extraction from a data feed. This slight difference of interpretation is inconsequential for the assessment of inventive step in view of E1, and, thus, in the board's view, cannot justify the filing of amended claims. Furthermore, the board finds it odd that the appellant should seek to justify the filing of amended claims as a reaction to an interpretation which the board only made one month later.

In view of the above, the board considers that the appellant has not provided any valid justification as to why the amended claims according the auxiliary request were not filed earlier, for instance in reply to the opposition division's communication dated 14 August 2007 or, at the very latest, with the statement of grounds of appeal.

11.2 Re the appellant's arguments under point 10(b) *supra*

The board is not convinced by these arguments either, because the amendments according to the auxiliary request create a number of fresh issues as explained below.

One amendment to claim 1 is the rephrasing of the third receiving step from "receiving said data feed information from a data feed" to "receiving a data feed comprising data feed information". This rephrasing raises questions as to its purpose. Indeed, either the two wordings have identical scopes, in which case the amendment is purely cosmetic and not occasioned by a ground for opposition as required by Rule 80 EPC, or the two wordings have different scopes, possibly because of the omission of the word "said" in the new wording, in which case a thorough examination in the light of the whole description and drawings must be carried out in order to determine whether the new wording complies with the requirements of Article 123(2) and (3) EPC.

Another amendment to claim 1 is the replacement of the step of "selectively choosing said data feed information from said data feed" by a step of "accessing said data feed, on demand by the user, to selectively choose said data feed information therefrom". This amendment introduces into claim 1 the expressions "accessing said data feed" and "on demand by a user", which were not present in any of the claims of the patent specification, on which the appealed decision was based.

The appellant submitted that a basis for this amendment could be found throughout the description, for example



in paragraphs [0027], [0176] and [0189] of the patent specification (see page 2 of the appellant's letter dated 24 May 2013).

In the board's view, the introduction of these two expressions into claim 1 raises fresh issues under Articles 84 EPC 1973 and 123(2) EPC. For instance, they appear to render unclear which of the user or the system selectively chooses said data feed information. It is also questionable whether there is a clear disclosure in the application as filed for an on-demand access by the user to the data feed, rather than for selectively choosing received data feed information. Moreover, the new wording in claim 1, by stating that the data feed was first received, and then accessed on demand by the user, appears to imply that the receiver has no access to the received data feed until such access is requested by the user. It is questionable whether this is directly and unambiguously disclosed in the application as filed (Article 123(2) EPC).

For the above reasons, the board cannot share the appellant's argument - citing decision T 1474/06 in support thereof - that the amendments were legally and technically of no complexity, converged the content of the claims, expanded on facts already discussed and could be reasonably dealt with without adjournment of the oral proceedings.

In the board's view, decision T 1474/06 does not help the appellant's case for the following reasons:

In decision T 1474/06, the board had to decide whether to admit into the proceedings amended claims according to a first and a second auxiliary request filed by the patent proprietor during the oral proceedings. Claim 1

according to the first auxiliary request included an additional feature, already present in claim 1 as granted as an optional feature. Claim 1 according to the second auxiliary request added another feature taken from dependent claim 9 of the patent as granted.

The board in T 1474/06 decided to admit the first auxiliary request because the additional feature in claim 1 had already been discussed in the context of inventive step and the consideration of this feature raised no issue of clarity or sufficiency of disclosure. However, the board did not admit the second auxiliary request because the additional feature had never been discussed before, did not appear *prima facie* to overcome the objection of lack of inventive step and would have required, if admitted, a new examination to be carried out, possibly on the basis of new prior-art documents.

In the present case, claim 1 according to the auxiliary request introduces features which were not present in any of the claims of the patent as granted and which raise fresh issues under Article 84 EPC 1973 and Articles 123(2) and (3) EPC and Rule 80 EPC.

12. Conclusion on the admissibility of the auxiliary request

For the above reasons, the board exercised its discretion under Article 13 RPBA not to admit the appellant's auxiliary request into the proceedings.

*Conclusion*

13. Since the appellant's main request is not allowable and its auxiliary request was not admitted into the proceedings, the appeal must be dismissed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



M. Canueto Carbajo

F. Edlinger

Decision electronically authenticated