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Datasheet for the decision of 21 March 2013

Case Number: T 0498/10 - 3.2.01

Application Number: 02016633.6

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Language of the proceedings: EN

Title of invention:
Steering apparatus in vehicle and industrial vehicle

Patent Proprietor:
KABUSHIKI KAISHA TOYOTA JIDOSHOKKI

Opponent:
STILL WAGNER GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):
EPC Art. 54(1), 111(1)

Keyword:
"Extended subject-matter (main request, fourth and fifth auxiliary request: yes)"
"Novelty (first, second and third auxiliary request: no)"
"Admission (sixth auxiliary request: yes)"

Decisions cited:
-

Catchword:
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Case Number: T 0498/10 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 21 March 2013

Appellant: (Patent Proprietor)
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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 11 December 2009 revoking European patent No. 1279585 pursuant to Article 101(3)(b) EPC.

Composition of the Board:

Chairman: G. Pricolo
Members: C. Narcisi
T. Karamanli

Summary of Facts and Submissions

I. The European patent No. 1 279 585 was revoked by the decision of the Opposition Division posted on 11 December 2009. Against this decision an appeal was filed by the Patentee on 19 February 2010 and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 21 April 2010.

II. Oral proceedings were held on 21 March 2013. The Appellant (Patentee) requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims according to the main request or one of the first to fifth auxiliary requests, all filed with letter of 16 November 2010, or according to the sixth auxiliary request filed during the oral proceedings of 21 March 2013, at 18:40 hours. The Respondent (Opponent) requested that the appeal be dismissed.

Claim 1 according to the main request (and as granted) reads as follows:

"A steering apparatus for a vehicle, the steering apparatus has a manipulator (17), a steered wheel (16) being steered in a steered range, which is between two predetermined end positions, a first detector (26), wherein the first detector (26) detects operation of the manipulator (17) and outputs a signal representing the detection result, a driving device (36) for generating a driving force to steer the steered wheel (16), a second detector (39), wherein the second detector (39) detects at least one of two states of the steered wheel (16) and outputs a signal representing

the detection result, wherein, in one of the states, the steered wheel (16) is at either of the end positions, and wherein, in the other state, the steered wheel (16) is deviated from either of the end positions, and a controller (22) for controlling the driving device (36), wherein the controller (22) causes the driving device (36) to steer the steered wheel (16) in accordance with the signal from the first detector (26), and wherein, when the steered wheel (16) reaches either one of the end positions, the controller (22) causes the driving device (36) to stop steering motion of the steering wheel (16) based on the signal from the second detector (39) and to hold the steered wheel (16) at the end position, wherein when the steered wheel (16) is deviated from the steered range, the controller (22) causes the driving device (36) to move the steered wheel (16) back to the corresponding end position, characterized in that
two blocks (53a, 53b) are each provided at a body (2) of the vehicle corresponding to a position of a supporting member (38a) supporting the steered wheel (16) for mechanically stopping the steering motion of the steered wheel (16) when the steered wheel (16) is turned beyond either of the end positions by a predetermined angle."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the wording "a supporting member (38a) supporting the steered wheel (16)" is replaced by the wording "a supporting member (38a) supporting the steered wheel (16), said supporting member (38a) having a stopper adapted to contact either of the blocks (53a, 53b)".

Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that the wording "two blocks (53a, 53b) are each provided at a body (2))" is replaced by the wording "two blocks (53a, 53b) are each provided in parts of a body (2)".

Claim of the third auxiliary request differs from claim 1 of the second auxiliary request in that the wording "said supporting member (38a) having a stopper adapted to contact either of the blocks (53a, 533b)" is replaced by the wording "said supporting member (38a) being a gear box (38a) having a stopper adapted to contact either of the blocks (53a, 53b)".

Claim 1 of the fourth auxiliary request differs from claim 1 of the main request by the following amendments:
- the wording "A steering apparatus for a vehicle" is replaced by "A full-electric type steering apparatus for a vehicle";
- the wording "the steering apparatus has a manipulator (17)," is replaced by "the steering apparatus has a manipulator (17), which can be rotated with no maximum turning limits in either right or left directions,";
- the wording "for generating a driving force to steer the steered wheel (16)," is replaced by "for generating a driving force to steer the steered wheel (16), the driving device (36) being a motor,";
- the wording "when the steered wheel (16) reaches either of the end positions," is replaced by "when the steered wheel (16) reaches either of the end positions through the operation of the manipulator (17),";
- the wording "based on the signal from the second detector (39) and" is replaced by "based on the signal

from the second detector (39) and executes a hold control which causes the driving device (36)";
- the wording "when the steered wheel (16) is deviated from the steered range," is replaced by "when the steered wheel (16) is deviated from the steered range during the hold control,";
- the wording "characterized in that" is replaced by "characterized in that when the steered wheel (16) is deviated toward a straight-move position from the end position during the hold control, the controller (22) causes the driving device (36) to move the steered wheel (16) back to the end position,
when the manipulator (17) is operated toward a straight-move position during the hold control, the controller (22) cancels the hold control so that the steered wheel (16) is steered according to the operation of the manipulator (17),".

Claim 1 of the fifth auxiliary request differs from claim 1 of the fourth auxiliary request in that the wording "a supporting member (38a) supporting the steered wheel (16)" is replaced by "a supporting member (38a) supporting the steered wheel (16), said supporting member (38a) having a stopper adapted to contact either of the blocks (53a, 53b)".

Claim 1 of the sixth auxiliary request differs from claim 1 of the fifth auxiliary request by the following amendments:
- the wording "with no maximum turning limits in either right or left directions," is replaced by "with no maximum turning limits in either right or left directions, the manipulator being a steering wheel (17) having a knob (18),";

- the wording "when the steered wheel (16) reaches either one of the end positions through the operation of the manipulator (17)," is replaced by "when the steered wheel (16) reaches either one of the end positions according to the operation of the manipulator (17),";
- the wording "and executes a hold control which causes the driving device (36) to hold" is replaced by "and executes a hold control routine which causes the driving device (36) to hold";
- the wording "when the steered wheel (16) is deviated from the steered range during the hold control," is replaced by "when the steered wheel (16) is deviated from the steered range during execution of the hold control routine as a consequence of an external force applied to the steered wheel even though the steering wheel (17) is not operated,";
- the wording "when the steered wheel (16) is deviated toward a straight-move position from the end position during the hold control," is replaced by "when the steered wheel (16) is deviated toward a straight-move position from the end position during the hold control routine as a consequence of an external force applied to the steered wheel even though the steering wheel (17) is not operated,";
- the wording "the controller causes (22) causes the driving device (36) to move the steered wheel (16) back to the end position," is replaced by "the controller causes (22) causes the driving device (36) to move the steered wheel (16) back to the corresponding end position,";
- the wording "when the manipulator (17) is operated toward a straight-move position during the hold control, the controller (22) cancels the hold control

so that the steered wheel (16) is steered according to the operation of the manipulator (17)," is replaced by "when the manipulator (17) is operated toward a straight-move position during execution of the hold control routine, the controller (22) cancels the hold control routine so that the steered wheel (16) is steered according to the operation of the manipulator (17),".

III. The Appellant's submissions may be summarized as follows:

Claim 1 of the main request fulfils the requirements of Article 123(2) EPC since the features included into the characterizing part of the claim are clearly derivable from the application as filed and equivalently from the published patent application (hereinafter designated as EP-A; see paragraph [0031]). The explicit mention of a stopper is not necessary, for such a stopper is already implicitly included in the claim. Indeed, as it appears from paragraph [0031], any part of the supporting member may act as a stopper for contacting the two blocks.

The subject-matter of claim 1 of the first auxiliary request is new with respect to the evidence provided in support of the public prior use (comprising the following pieces: R1 (invoice), F1 (vehicle data), S1 (parts list 67275), S2 (parts list 38 55 22), Z1 (drawing 424533, sheet 1), Z2 (drawing 424533, sheet 2), Z3 (drawing 424533, sheet 3), Z4 (drawing 460 635), W1 (extracts from workshop manual, pages B2, B6, B14), P1 (brochure EK12, 1998)). Indeed, the steering apparatus according to the public prior use does not

show the characterizing features of claim 1 since the two bolts shown in the drawing Z2 (see reference numbers 660576 and 660577) cannot be regarded as "two blocks ... for mechanically stopping the steering motion of the steered wheel when the steered wheel is turned beyond either of the end positions by a predetermined angle". Workshop Manual W1 confirms (see page B14) that the mentioned bolts are not intended to contact or to stop the steered wheel, even taking into account additional inertial forces driving the steered wheel. Therefore it is obvious that according to the known steering apparatus the control unit controlling the driving device as well as the reduction gear mechanism (see drawings Z1, Z2; reference number 660452), whose high reduction ratio implies an inherent self-locking effect, will provide gradual decrease of the steering speed when the steered wheel approaches the end positions. Thereby the steered wheel is prevented from contacting the two bolts. By contrast hereto the contested patent (hereinafter designated as EP-B) explicitly mentions a possible deviation from the steered range (see EP-B, paragraph [0049], points (1), (7)) on account of the fact that "the steered wheel turns without decelerating ... until it reaches the end positions" or similarly of the fact that it is decelerated only in the immediate vicinity thereof (see EP-B, paragraph [0051], claim 5).

The further feature of claim 1 of the first auxiliary request designated as feature (h) (i.e. "when the steered wheel is deviated from the steered range, the controller causes the driving device to move the steered wheel back to the corresponding end position") in the contested decision is likewise not disclosed by

the known steering apparatus. In effect, manual W1 and the further evidence supporting the prior use do not state what happens when the steered wheel reaches the end positions of the steered range. Notwithstanding the fact that this argument is put forward for the first time during appeal proceedings, nevertheless the Appellant never conceded that all of the features of the preamble of granted claim 1 were known from the prior art. Thus, given that the discussion of this argument does not entail any complex aspects and would not lead to any further delay in the proceedings, this argument should be admitted to the appeal proceedings.

The subject-matter of claim 1 of the second auxiliary request is new over the known steering apparatus since, in addition to the already mentioned features (see above), the feature "two blocks are each provided in parts of a body" is likewise not derivable from the known steering apparatus. In particular, according to the known steering apparatus as disclosed by the public prior use the two bolts shown in the drawing Z2 (see reference numbers 660576 and 660577) are provided on a plate-shaped part (see drawing Z2, reference number 660342) attached to the body and thus not "in parts of a body".

The subject-matter of claim 1 of the third auxiliary request is new over the known steering apparatus given that, in addition to the already mentioned features (see above), the feature "said supporting member being a gear box (38a) having a stopper adapted to contact either of the blocks" is likewise not shown by the known steering apparatus. Indeed, the chain tensioner (see drawing Z2, reference number 460635) is not a

stopper within the meaning of claim 1 and it is not mounted on the gear box.

Claim 1 of the fourth auxiliary request does not offend against Article 123(2) EPC, for the characterizing features of the claim are clearly derivable from EP-A (see above arguments relating to claim 1 of the main request).

Claim 1 of the fifth auxiliary request does not contravene Article 123(2) EPC, given that the feature "the steering apparatus has a manipulator (17), which can be rotated with no maximum turning limits in either right or left directions" does not go beyond the content of the application as filed. In effect, this feature is based on paragraphs [0002] and [0019] of EP-A.

Claim 1 of the sixth auxiliary request is considered as being admissible since it was filed during the oral proceedings in response to the objections raised by the Respondent against claim 1 of the former sixth auxiliary request filed in writing on 16 November 2010. A remittal of the case to the first instance is also requested.

IV. The Respondent's submissions may be summarized as follows:

Claim 1 of the main request does not fulfil the requirements of Article 123(2) EPC since its characterizing features constitute a generalization of the features in paragraph [0031] of EP-A.

Claim 1 of the first auxiliary request is not new over the steering apparatus as known from the evidence supporting the prior use. In the first place, moreover, the Appellant's argument concerning said feature (h) (see point III above) should not be admitted to the appeal proceedings since the Appellant should have presented this argument already before the Opposition Division. Anyway, feature (h) is known from the steering apparatus according to the prior use, for this apparatus comprises a control system for the steered wheel (see manual W1) and this control system ensures that any difference between the preset and the actual value of the steering angle is essentially adjusted to zero and that this adjustment occurs also at the end positions which are part of the controlled steering range. The characterizing features of claim 1 are likewise known since the drawings Z1, Z2 show that the bolts (reference numbers 660576, 660577), mounted on a plate-shaped body member (reference number 660342), represent two blocks contacting the chain tensioner (reference number 460635), which acts as a stopper and is mounted on the gear box housing (reference number 660452). The gear box constitutes a supporting member for the steered wheel. Contact occurs in the event that the steered wheel is steered or deviated beyond the end position.

The subject-matter of claim 1 of the second auxiliary request is not new over the steering apparatus known from the public prior use. In addition to the mentioned features (see above), the further feature "two blocks (53a, 53b) are each provided in parts of a body (2)" is likewise derivable from the drawings Z1, Z2 since the plate-shaped body member (reference number 660342)

evidently constitutes part of the body of the known steering apparatus.

The subject-matter of claim 1 of the third auxiliary request is not new over the steering apparatus according to the public prior use. In addition to the already mentioned features (see above) the drawings Z1, Z2 and Z4 disclose that the chain tensioner (reference number 460635) is mounted by means of two pins (reference numbers 631329078 and 104684) on a sprocket wheel fixedly attached to the gear box housing (reference number 660452), the gear box housing being rotatably mounted with respect to the plate-shaped body (reference number 660342) by means of a bearing fixed on this latter body (see screws with reference number 636016173). The gear box acts as a supporting member for the steered wheel with the chain tensioner fulfilling the stopper's function.

Claim 1 of the fourth auxiliary request contravenes Article 123(2) EPC for the same reasons as stated in relation to claim 1 of the main request.

Claim 1 of the fifth auxiliary request contravenes Article 123(2) EPC since the feature "the steering apparatus has a manipulator (17), which can be rotated with no maximum turning limits in either right or left directions" is derived from paragraph [0019] of EP-A by the unallowable omission of the feature "the steering wheel can be rotated with the knob".

Claim 1 of the sixth auxiliary request includes subject-matter which introduces essential new features and aspects whose discussion require a specific

preparation and this situation comes unexpectedly. Furthermore, given that these matters where not discussed during the opposition proceedings it is requested that the case be remitted to the first instance in order to preserve the parties' right to a second judicial instance.

Reasons for the Decision

1. The appeal is admissible.

2. Claim 1 of the main request does not comply with the requirements of Article 123(2) EPC since the feature "a supporting member (38a) supporting the steered wheel (16) for mechanically stopping the steering motion of the steered wheel (16) when the steered wheel (16) is turned beyond either of the end positions by a predetermined angle" does not include all of the related features disclosed in paragraph [0031] of EP-A, which actually further states that "the supporting member has a stopper (not shown) similar to one shown in Figs. 6A and 6B". This statement certainly does not specify in detail the structure or the shape of the stopper. Nevertheless it makes plain, particularly in view of the explicit reference to figures 6A and 6B, that the stopper is a clearly and unambiguously identifiable part of the supporting member intended for serving the mentioned purpose. Thus, an arbitrarily chosen portion of the supporting member, such as for instance any specific portion of a cylindrically shaped supporting member, or an arbitrarily shaped supporting member (for instance a cylinder, a sphere or a cube) would *a priori* not necessarily satisfy this requirement.

For these reasons omitting that "the supporting member has a stopper" leads to an inadmissible generalization of the subject-matter of the application as filed.

3. As to claim 1 of the first auxiliary request, the Board decided to admit to the appeal proceedings the Appellant's argument according to which said feature (h) was not present in the steering apparatus according to the public prior use (see above, points III and IV). Even though this argument was clearly presented late, nevertheless the Board considered that none of the criteria mentioned in Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal), i.e. complexity of the new subject-matter submitted, current state of the proceedings and need for procedural economy, would provide sufficient reason for the argument to be considered inadmissible. Moreover, the Respondent had already indicated arguments in its notice of opposition that the features of the preamble of granted claim 1, including feature (h), were entirely known from the steering apparatus according to the public prior use. Thus, the Respondent could hardly be seen as unprepared for the discussion of feature (h) in relation to the issue of novelty over the public prior use. For these reasons the Board decided to exercise its discretionary power according to Article 13(1) RPBA such as to admit said argument to the appeal proceedings.

4. The subject-matter of claim 1 of the first auxiliary request is not new over the apparatus as known from the public prior use. The Appellant essentially alleges that, by contrast to the known steering apparatus, in the apparatus of the present invention the control unit operates in such a manner that the turning speed of the

steered wheel is not, or not substantially reduced near the end positions of the steered range (see for instance EP-A, paragraph [0009]), such that as a consequence the steered wheel is stopped only by contacting the blocks 53a, 53b. In the Board's view there is no sound basis in EP-A for the characterizing portion of claim 1 to be construed in this way. Indeed, this interpretation of the characterizing features of claim 1 is clearly contradicted by several further passages in the disclosure of EP-A. For instance, from paragraphs [0008] and [0048] (see particularly point (1), lines 50-52, and point (2)) of EP-A it follows clearly and unambiguously that the steering motion of the steered wheel is controlled such as to avoid any contact between the steered wheel (or its stopper) and said blocks. Therefore the only possible conclusion to be drawn from the above is that said features of the characterizing portion of claim 1 should be construed such that during normal and usual operation contact between the steered wheel and the blocks is avoided and for extreme and rare situations blocks are provided in order to contact and stop the steered wheel (or the stopper) if need be, such as for instance when the steered wheel coasts beyond the end positions (see EP-A, column 7, lines 28-31).

The characterizing features of claim 1, construed as above, are known from the steered apparatus according to the public prior use. Indeed, the manual W1 (page B14, points 16, 17) states that mechanical contact ("mech. Endanschlag") should not occur and that the steered wheel should not contact the mechanical stop ("mech. Anschlag"), account being taken even of inertial forces. This obviously refers to usual or

normal operation. However, it is implicit that the mechanical stop has specifically been provided as a remedy for unusual or exceptional situations and in this case the mechanical stop, as indicated by the designation itself (i.e. "mech. Anschlag"), fulfils without doubt the purpose of stopping the steered wheel. This is necessary in order to prevent any damage to the driving motor and to the further mechanical components of the driving system.

Furthermore, said feature (h) (i.e. "when the steered wheel is deviated from the steered range, the controller causes the driving device to move the steered wheel back to the corresponding end position") is likewise known from the steering apparatus according to the prior use. In particular it is evident from manual W1 (see pages B2 ("Istwert", "Sollwert"), B6, B14) that the steering apparatus comprises a control system which controls the actual value of the steering angle by comparing it with the preset value. The control system adjusts the difference between actual and preset value to essentially zero, as any control system does by its very nature. This clearly applies to the entire steered range of the steered wheel, hence including the end positions.

It is also of note that, in its written submissions, the Appellant contested that feature (g) of claim 1 (see contested decision: "wherein, when the steered wheel (16) reaches either one of the end positions, the controller (22) causes the driving device (36) to stop steering motion of the steering wheel (16) based on the signal from the second detector (39) and to hold the steered wheel (16) at the end position, wherein") was

known from the prior art steering apparatus (see letter dated 16 November 2010, page 3). However this argument was not presented during the oral proceedings and the Board considers that this feature, like feature (h), is anyway known from the aforesaid steering apparatus. In effect, the control system obviously ensures that as long as the preset value is not changed the actual value of the steering angle is set accordingly.

The Appellant's arguments relating to the feature "two blocks ... for mechanically stopping", i.e. that mechanical stops in the specific form of "two blocks" are not known from the mentioned prior art, are likewise not convincing. In particular, as follows from the above discussion and from drawing Z2 (which illustrates in its lower portion the contact position of the two bolts (reference numbers 660576 and 660577) with the chain tensioner (reference number 460635) in the respective end positions of the steered wheel), the two bolts perform the function of stopping or blocking the steered wheel when it is turned beyond the end positions. Thus, due to this specific function the two bolts may undoubtedly be regarded as "two blocks", as furthermore claim 1 does not include any specific structural feature pertaining to the two blocks. The term "block" thus simply expresses the function of the corresponding structural component.

Since the further features of claim 1 are undisputedly known from said prior art steering apparatus the subject-matter of claim 1 of the first auxiliary request is not new according to Article 54(1) EPC 1973.

5. The subject-matter of claim 1 of the second auxiliary request is not new over the steering apparatus according to the public prior use. Indeed, the additional feature "two blocks are each provided in parts of a body" is disclosed by the known steering apparatus, for the aforesaid bolts (reference numbers 660576 and 660577) are mounted in said plate-shaped body (reference number 660342; see drawing Z2) which forms an integral part of the structure and hence of the body of the known steering apparatus. Since the remaining features of claim 1 stayed unchanged (with respect to claim 1 of the first auxiliary request) then it ensues in conjunction with the above given reasons (see point 4) that its subject-matter is not new (Article 54(1) EPC 1973).

6. The subject-matter of claim 1 of the third auxiliary request is not new over the steering apparatus according to the public prior use. The further feature "said supporting member (38a) being a gear box (38a) having a stopper adapted to contact either of the blocks (53a, 53b)", introduced by way of amendment (the remaining features being unchanged with respect to claim 1 of the second auxiliary request), is known from the steering apparatus according to the public prior use. In particular, the drawings Z1, Z2 and Z4 disclose that the chain tensioner (reference number 460635) is mounted by means of two pins (reference numbers 631329078 and 104684) on a sprocket wheel fixedly attached to the gear box housing (reference number 660452). The gear box housing is rotatably mounted with respect to the plate-shaped body (reference number 660342) by means of a bearing fixed on this plate-shaped body (see screws with reference number

636016173). Therefore, the gear box acts as a supporting member for the steered wheel, said supporting member having a chain tensioner fulfilling the stopper's function. For these reasons and in conjunction with the reasons given above (see point 5) the subject-matter of claim 1 lacks novelty.

7. Claim 1 of the fourth auxiliary request contravenes the requirements of Article 123(2) EPC for the same reasons as given in relation to claim 1 of the main request.

8. Claim 1 of the fifth auxiliary request does not comply with the requirements of Article 123(2) EPC. The feature "the steering apparatus has a manipulator (17), which can be rotated with no maximum turning limits in either right or left directions" is not actually derivable in this form from paragraph [0019] of EP-A. The corresponding feature in this paragraph reads as follows: "the steering wheel can be rotated with the knob with no maximum turning limits in either right or left directions". Thus, the claimed feature entails a generalization of the aforesaid feature, given that the feature "a manipulator" has replaced the feature "steering wheel ...with the knob". Thus, the claimed feature goes beyond the content of the application as filed.

9. The present sixth auxiliary request (submitted at 18:40 hours during the oral proceedings) was filed at a late stage of the appeal proceedings. Nevertheless, the Board decided under the given specific circumstances to exercise its discretionary power under Article 13(1) RPCR to admit this request to the appeal proceedings. In particular the Board considered that the Appellant

did not bear the entire responsibility for the late filing of this request, given that the former sixth auxiliary request (filed on 16 November 2010) was submitted already at an early stage of the appeal proceedings, that the Respondent raised objections based on Article 123(2) EPC against this former request only during the oral proceedings, and that the present sixth auxiliary request came in response to these objections of the Respondent, although this does not, per se, necessarily warrant its admission to the appeal proceedings. Moreover, the Board took likewise into account that the Respondent did not put forward any objections during the oral proceedings against the admission of the present sixth auxiliary request. For these reasons the Board decided under the exceptional circumstances of the present case to admit this request to the appeal proceedings.

10. After the admission of the sixth auxiliary request, the issue of novelty of the subject-matter of claim 1 of the sixth auxiliary request was discussed. However, after closer study and consideration of this subject-matter, the Respondent realized and declared to be unprepared to discuss the features introduced by the amendments into claim 1, since new issues unexpectedly emerged from that discussion. The Board agrees that the detailed discussion of novelty, which took place after the admission of the sixth auxiliary request, has indeed revealed various unforeseen aspects and raised unforeseen questions. For this reason and taking particular account of the fact that both parties requested remittal of the case to the first-instance department in order that the substantial amendments to the claims be examined by two instances, the Board

decides, exercising its discretion under Article 111(1) EPC 1973 , to remit the case to the first-instance department for further prosecution (Article 111 (1) EPC 1973).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.

The Registrar: The Chairman:

S. Sánchez Chiquero G. Pricolo