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**Datasheet for the decision
of 21 March 2013**

Case Number: T 1033/10 - 3.2.06

Application Number: 01915675.1

Publication Number: 1267048

IPC: F01N3/28

Language of the proceedings: EN

Title of invention:

Holding and sealing mat material

Patent Proprietor:

IBIDEN CO., LTD.

Opponent:

3M Innovative Properties Company

Relevant legal provisions:

EPC Art. 84, 123(2)

RPBA Art. 13(1)

Keyword:

Main request and first, third and fifth auxiliary requests -
clarity (no)

Final set of requests not admitted - state of the proceedings
and procedural economy

Catchword:

The state of the proceedings and the need for procedural economy taken together imply a requirement on a party to present appropriate requests as soon as possible if such requests are to be admitted and considered. (point 5.5)

If an objection (made by a party and/or by the Board) is not fully understood in a particular case, it is then, at the very least, incumbent on the party having difficulties with understanding an objection to indicate this at the earliest possible stage and make appropriate effort to have the objection clarified. A lack of understanding alone cannot justify postponing amendments to a party's case until a later stage in the proceedings. (point 5.9)



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Case Number: T 1033/10 - 3.2.06

**D E C I S I O N
of Technical Board of Appeal 3.2.06
of 21 March 2013**

Appellant: IBIDEN CO., LTD.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 March 2010
revoking European patent No. 1267048 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman: M. Harrison
Members: G. de Crignis
W. Sekretaruk

Summary of Facts and Submissions

- I. European patent No. 1 267 048 was revoked by the opposition division. The non-allowability of the main request was based upon a lack of a direct and unambiguous disclosure in the application as filed for the subject-matter of claim 1. The first and second auxiliary requests were not admitted into the proceedings.

- II. The appellant (patent proprietor) filed an appeal against this decision, requesting maintenance of the patent in an amended form according to a main request or one of auxiliary requests 1 to 7. Concerning novelty and inventive step, reference was made *inter alia* to:

D1: US-A-5 290 522

- III. With its reply of 14 January 2011 to the appeal grounds, the respondent (opponent) objected to the claims of the requests *inter alia* on the basis of Article 84 EPC (clarity) and Article 123(2) EPC.

- IV. In reply thereto, the appellant filed comments with regard to the admissibility of the main, first, sixth and seventh requests and provided arguments concerning clarity of the terminology "function of a binder" as used to define the organic component.

- V. In a communication annexed to its summons to oral proceedings, the Board mentioned in particular that the requirements of Articles 84 and 123(2) EPC did not appear to be fulfilled by claim 1 of these requests. In particular, clarity as well as disclosure of the wording "function of a binder" was objected to.

VI. With letter of 19 February 2013, the appellant submitted a replacement main request and replacement second and fourth auxiliary requests. Concerning the objections set out in the communication of the Board, the appellant referred to paragraphs [0008], [0014], [0022] and [0034] of the A-publication for the disclosure in the application as originally filed for the organic component having the function of a binder and to the definition of the expression "function of a binder" in paragraph [0008]. In addition, the appellant filed

D5: US-A-5 955 177.

VII. Oral proceedings were held before the Board on 21 March 2013.

The appellant requested that the decision under appeal be set aside and that the European patent be maintained on the basis of the main request of 21 March 2013 or on the basis of one of the auxiliary requests labelled First Auxiliary Request, Third Auxiliary Request, Fifth Auxiliary Request, all dated 21 March 2013, or on the basis of one of the requests labelled First Auxiliary Request 14.40 h, Third Auxiliary Request 14.40 h and Fifth Auxiliary Request 14.40 h, all dated 21 March 2013.

The respondent requested that the appeal be dismissed.

VIII. Claim 1 of the main request reads:

"A holding and sealing mat material (1, 7) for a catalytic converter (5), wherein the holding and sealing mat material (1, 7) comprises an inorganic fiber mat subjected to needle punching in the density

of 50 - 3000 per 100 cm² thereof, wherein, when installed in the catalytic converter, the holding and sealing mat material (1, 7) generates a surface pressure of 5 - 500 kPa when heated to 300 - 1000°C under the filling bulk density of 0.15 - 0.45 g/cm³; characterized in that the holding and sealing material (1, 7) further comprises:

an organic component which is over 0 and not more than 2 weight %, the organic component having the function of a binder, the inorganic fiber mat comprising inorganic fiber containing at least alumina or silica."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that it is directed to a catalytic converter as follows:

"A catalytic converter (5) comprising a catalyst carrier (3), a metallic shell (2) covering the outer face of the catalyst carrier (3), and a holding and sealing mat material (1) disposed between the catalyst carrier (3) and the metallic shell (2), wherein the holding and sealing mat material (1, 7) is for an exhaust gas purification device and comprises an inorganic fiber mat subjected to needle punching in the density of 50 - 3000 per 100 cm² thereof, wherein, when installed in the exhaust gas purification device and disposed between the catalyst carrier and the metallic shell, the holding and sealing mat material (1, 7) generates a surface pressure of 5 - 500 kPa when heated to 300 - 1000°C under the filling bulk density of 0.15 - 0.45 g/cm³; characterized in that the holding and sealing material (1, 7) further comprises:

an organic component which is over 0 and not more than 2 weight %, the organic component having the function of a binder, the inorganic fiber mat comprising inorganic fiber containing at least alumina or silica."

Claim 1 of the third auxiliary request differs from claim 1 of the first auxiliary request in that after the feature concerning the organic component having the function of a binder, the following is added:

"wherein at least some of the organic component is as added into the inorganic fiber mat after the needle punching".

Claim 1 of the fifth auxiliary request differs from claim 1 of the third auxiliary request in that this latter added feature is amended to read:

"wherein 1.5 weight % of the organic component is as added into the inorganic fiber mat after the needle punching".

Claim 1 of the "First auxiliary request 14.40 h" differs from claim 1 of the first auxiliary request in that the feature "the organic component having the function of a binder" is replaced by the feature: "the organic component acts as a binder for the holding and sealing mat material so as to suppress scattering of fibers from the holding and sealing mat material".

Claim 1 of the "Third auxiliary request 14.40 h" differs from claim 1 of the third auxiliary request, and claim 1 of the "Fifth auxiliary request 14.40 h" differs from claim 1 of the fifth auxiliary request, respectively, in the same way as claim 1 of the "First auxiliary request 14.40 h" differs from claim 1 of the first auxiliary request.

IX. The arguments of the appellant may be summarised as follows:

Claim 1 of the main request would be clear to the skilled person. Considering the use of the claimed article, only the properties of the holding and sealing mat material were relevant for achieving improved mounting and cushioning performance, and it was clear that it was the catalytic converter for which the holding and sealing mat material had to be suitable. The holding and sealing mat material was well defined and limited to characteristics suitable for such a converter.

Claim 1 of the first auxiliary request referred to a catalytic converter and thus it was clarified that the characteristics of the mat applied when installed. Such application was disclosed in paragraphs [0001] and [0002] of the A-publication. The feature of "the organic component having the function of a binder" was to be understood such that the organic component not only had this function but also performed it; support for such function of the binder was to be found in paragraphs [0008], [0021] and [0022].

The function of a binder was clear terminology; it identified a specific function different to the function of sizing. Although sizing materials were not excluded the key issue was to provide a finished mat having the inorganic fibres bound by the binding action of the organic component. D5 disclosed that polyvinyl alcohol may be used as a sizing material or, alternatively, as a binder for holding the fibers together.

Claim 1 of the "First auxiliary request 14.40 h" had been amended to clarify that the holding and sealing mat material was not only installed in "the exhaust gas purification device" but also "disposed between the catalyst carrier and the metallic shell", which limited the subject-matter to a catalytic converter comprising such mat material. Moreover, the organic component was limited to the disclosure in paragraph [0008] specifying that it acted as a binder in a defined way.

Only at a late stage of the oral proceedings was it clearly understood by the appellant what the objection concerning the clarity of the terminology "function of a binder" entailed. This wording had always been considered by the appellant in the sense that it referred to the inorganic fiber mat being effectively bound by the organic component. Only after the discussion of this feature during the oral proceedings and having finally understood the respective objection, could this issue be directly addressed, and an honest attempt was made to overcome this objection. An earlier reaction to the objection had not been possible. Therefore, - although filed at a late stage of proceedings - all the requests should be admitted.

X. The arguments of the respondent may be summarised as follows:

The main request should not be allowed into the proceedings. Claim 1 of this request was *prima facie* not clear. The argument of the appellant that the person skilled in the art would understand that only the properties of the holding and sealing mat material were relevant for achieving improved mounting and excellent cushioning performance was entirely irrelevant. Some of the claimed subject-matter

concerned features such as the surface pressure and filling density that involved an interaction between features of the catalytic converter and features or properties of the mat material. The reference in claim 1 to the catalytic converter rendered it not clear with respect to which structural characteristic(s) made the filter suitable therefor. Moreover, it was not even clear whether the amendment referring to the installation in a catalytic converter represented a limitation or not.

Claim 1 of the first auxiliary request met neither the requirements of Article 123 EPC nor those of Article 84 EPC. Although claim 1 was directed to a catalytic converter, it still included the feature "the holding and sealing mat material (1, 7) is for an exhaust gas purification device", and thus there remained doubts concerning which characteristics of the mat material were affected by the amendment. Moreover, the organic component still only had the "function of a binder" without the requirement to effectively bind the inorganic fibres, even though this had been objected to by the respondent and confirmed by the Board in its communication. It was not even clear how to identify such characteristics in the organic component. Concerning the disclosure of the amended feature, there was either a disclosure of an organic binder having specific effects (paragraph [0008]) or of the binder being further limited in its range (paragraph [0022]) (Article 123(2) EPC), but no disclosure for the amended feature in such a general form was present. This argument also applied to claim 1 of the main request and of auxiliary requests 3 and 5. Additionally, there was no disclosure for a catalytic converter including a holding and sealing material suitable generally for an exhaust gas purification device.

The "First auxiliary request 14.40 h" should not be admitted into the proceedings. During the proceedings before the opposition division, the objection concerning the terminology "function of a binder" had already been raised and had led to auxiliary requests including the features concerning suppression of scattering and volume whereas these features had been omitted when filing new requests before the Board. The application as filed did not provide a basis for a function as a binder *per se* but rather as a binder performing binding so as to suppress scattering of fibers and so as to suppress the volume (Article 123(2) EPC), which objection had already been set out in reply to the statement of grounds of appeal. The amendment in claim 1 concerning this feature still did not define the binding action but solely concerned the binding action of suppressing scattering of fibers - although it was not clear to which extent such suppression applied (Article 84 EPC). Thus, this amendment was not disclosed as such, nor did it clarify the claim. To the contrary, it even threw doubt on the enablement of the claimed invention since it was not clear which organic components fell under this scope of the claim and whether there might be the necessity for a series of tests in order to assess whether an organic component did so or not. It also had to be taken into account that the opposition division had already refused similar amendments for *prima facie* lack of novelty.

The lack of clarity, with regard to how to identify an organic component acting as a binder and how to identify the binding action in the mat material, applied to all further requests. The Board should exercise its discretion under Article 13(1) RPBA and

not admit any of these requests which could and should have been filed earlier.

Reasons for the Decision

1. *Procedural aspects in appeal proceedings*
 - 1.1 An appeal offers parties the opportunity to challenge first-instance decisions adversely affecting them.
 - 1.2 In appeal proceedings, the Rules of Procedure of the Boards of Appeal (RPBA) apply. Article 12(2) RPBA specifies that the statement of grounds of appeal must contain the appellant's complete case. Accordingly, the statement of grounds of appeal should set out clearly and concisely why it is requested that the decision under appeal be reversed (or amended) and all facts, arguments and evidence relied on should be specified expressly.
 - 1.3 After filing the grounds of appeal, any amendment to an appellant's case may be admitted and considered at the Board's discretion, which is set out in Article 13(1) RPBA. Where amendments of the claims are made during the opposition and appeal proceedings these are to be fully examined as to their compatibility with the requirements of the EPC (G 9/91 - see reasons 19).
2. *Requests in the proceedings*
 - 2.1 All the appellant's requests filed with the grounds of appeal or following receipt of the communication of the Board (annexed to the summons to oral proceedings), comprised an amended claim 1 containing a combination of features different from the combinations of features

of the various forms of claim 1 present before the opposition division.

2.2 In particular, the features concerning the suppression of scattering of fibers and concerning the suppression of the volume of the holding and sealing mat material which were included in claim 1 of all requests underlying the appealed decision were omitted in claim 1 of the requests filed with the grounds of appeal. All these latter requests included a claim 1 amended to include the feature "the organic component having the function of a binder".

2.3 During the oral proceedings before the Board, newly amended requests were submitted. Claim 1 of the main request and claim 1 of the first, third and fifth auxiliary requests all included the feature "the organic component having the function of a binder", even though this feature had been considered to be open to objection by the Board already in its communication sent as an annex to the summons (item 1.2.2 thereof). The opponent has also objected to the clarity of this feature in reply to the grounds of appeal (item 2.2 thereof).

3. *Main request*

3.1 As set out under item 1.3 above, it lies within the discretion of the Board to admit an amendment to the appellant's case after it has filed its grounds of appeal (Article 13(1) RPBA). Article 13(1) RPBA also states that "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."

- 3.2 Comparing the subject-matter of claim 1 of the main request with the subject-matter of claim 1 as originally filed, this has been altered in that a holding and sealing mat material is claimed for a catalytic converter in terms of properties of the mat material when installed in a catalytic converter, whereas claim 1 as originally filed was directed to a catalytic converter having the holding and sealing mat material disposed between the catalyst carrier and the metallic shell. Additionally, the feature of claim 2 as originally filed has been added ("the inorganic fiber mat comprising inorganic fiber containing at least alumina or silica") as well as a feature taken from the description stating "the organic component having the function of a binder" (see also item 2.3 above).
- 3.3 Concerning the amendment that the holding and sealing mat material itself is claimed when "installed in" a "catalytic converter", the lack of clarity here concerns which features of the mat material allow it to be considered suitable for the installation in a catalytic converter. Claim 1 refers to specific characteristics of the holding and sealing mat material which are the generation of a defined range for the surface pressure when heated to within a defined range of temperature for a specific range of the filling bulk density. Claim 1 as originally filed however refers to identical ranges of such characteristics under the condition that the holding and sealing mat material is disposed between the catalyst carrier and the metallic shell, whereas claim 1 as granted required identical ranges of these characteristics merely "when installed in an exhaust gas purification device".
- 3.4 The amendments defining such mat material as being "for a catalytic converter" and "when installed in the

catalytic converter" are both subject to consideration under Article 123(2) EPC and Article 84 EPC.

- 3.5 One issue to be decided is therefore whether the amendments imply some extra technical characteristics in a clear manner and whether these characteristics - concerning the generation of a defined surface pressure under defined conditions - apply generally when installed in an exhaust gas purification device or whether they only apply when installed in a catalytic converter - based on the premise that such specific application is indeed disclosed.
- 3.6 The appellant considered such amendment as a limitation of the claim, since the ranges for the characteristics were now more precisely defined as those being suitable for such mat material when installed in a catalytic converter and accordingly, clarity of the claim and disclosure of the claimed subject-matter were not objectionable.
- 3.7 Contrary to such view, the Board finds that the intended limitation to the mat material is not clear (Article 84 EPC) because it implies a certain suitability which is not defined nor has it been demonstrated that this is known generally. The amendment implies the presence of some extra technical characteristics linked to the installation within a catalytic converter, in comparison to the characteristics when installed within a more general exhaust gas purification device (i.e. claim 1 as granted). However, the ranges for the surface pressure, temperature and filling bulk density are not altered at all. Thus, it is not clear what this specific suitability of the mat material implies structurally.

3.8 Thus, the subject-matter of claim 1 is not *prima facie* allowable, which would be necessary for fulfilling the need for procedural economy and consequently admitting the request into the proceedings at such a late stage.

3.9 Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit this request. The further objections made against this request do not require further consideration as the request was not admitted already for the reasons *supra*.

4. *First auxiliary request - Third and Fifth auxiliary requests*

4.1 As with the main request, the admittance of the first, third and fifth auxiliary requests also lies within the discretion of the Board under Article 13(1) RPBA since these auxiliary requests were filed for the first time during the oral proceedings before the Board.

4.2 Comparing claim 1 of the first auxiliary request with claim 1 of the main request, the subject-matter has been amended to define a catalytic converter (5) comprising a catalyst carrier (3), a metallic shell (2) covering the outer face of the catalyst carrier (3), and a holding and sealing mat material (1) disposed between the catalyst carrier (3) and the metallic shell (2). Additionally, the holding and sealing mat material is specified "for an exhaust gas purification device", and the characteristics generated by the holding and sealing mat material are defined for "when installed in the exhaust gas purification device and disposed between the catalyst carrier and the metallic shell".

4.3 Also, the terminology "the organic component having the function of a binder" is still present in this request,

even though this feature had already been objected to by the Board and the respondent prior to the oral proceedings with regard to its clarity (Article 84 EPC 1973) and disclosure (Article 123(2) EPC), (see items 1.3 and 2.3 above) and the Chairman of the Board had indicated at the start of the oral proceedings before the Board that the Board maintained its provisional view that this terminology was not clear, also in view of the appellant's further written submission filed before the oral proceedings.

4.4 One issue to be determined when considering whether to admit the first auxiliary request into proceedings is therefore whether the claim is clear as required by Article 84 EPC 1973 such that the request might be considered at least *prima facie* allowable in this regard. The "function of a binder" is claimed for the organic component but the claim remains unspecific with regard to what the function of "binding" implies and what indeed might be bound, if anything, as mentioned in the Board's communication prior to oral proceedings. It is also not clear how an organic component can be identified as having the function of "binding" as for example compared to an organic component having the function of "sizing" or "handle-ability". Nor is it clear to which components of the mat material the function of "binding" might apply in the sense of "what" might be bound.

4.5 An organic component inherently has a variety of properties. No means or ways are defined in the specification as to how to distinguish between different functions of organic components. There are also no means or ways defined which would allow a skilled person to determine whether they perform (in

some way) the function of a binder in the given context.

- 4.6 Accordingly, the definition "having the function of a binder" is not clear and the requirement of clarity in Article 84 EPC 1973 is therefore not met.
- 4.7 The argument of the appellant was that the person skilled in the art would understand that the "binding" function had to be activated in the mat material. However, the claim does not state this, nor is there any information as to how to activate such function. The presence of binding between any particular materials or the activation of the binder are simply not defined.
- 4.8 The appellant's further argument concerned its view that the function of a binder of the organic component would be different from the function of "sizing" of an organic component and thus that the claim is clear. However, no information is present for determining how to distinguish an organic component having for example the "function" of "sizing" from one having the "function" of "binding". The reference (see e.g. in the appellant's letter of 19 February 2013) to D5 (col. 6, l. 42 - 53 and col. 6, l. 58 to col. 7, l. 19) wherein polyvinyl alcohol is disclosed as a sizing material for "coating fibers therewith" and as a binder material for "holding the fibres together" does not clarify the difference. On the contrary, such disclosure seems only to demonstrate that the functions of "sizing" and "binding" both apply for this organic component. Therefore, such argument does not overcome the objection raised.

4.9 Since the clarity requirement of Article 84 EPC 1973 is not met, it is not necessary to consider the further objections put forward by the respondent with regard to claim 1 of the first auxiliary request.

4.10 Claim 1 of the third and fifth auxiliary requests include this feature as well, whereby the same conclusions apply. The appellant also did not argue, in regard to this feature, that the amendments made in the third and fifth auxiliary requests would provide a reason for the Board to alter its conclusion on the matter of Article 84 EPC 1973.

4.11 Thus, the first, third and fifth auxiliary requests are *prima facie* not allowable and accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit these requests into proceedings because this would have been detrimental to the need for procedural economy.

5. *New auxiliary requests "14.40 h"*

5.1 The subject-matter of claim 1 of the "First auxiliary request 14.40 h" differs from claim 1 of the first auxiliary request in that the wording "having the function of a binder" is deleted and is replaced by the feature that the organic component "acts as a binder for the holding and sealing mat material so as to suppress scattering of fibers from the holding and sealing mat material". The same amendment is made in claim 1 of the "Third and Fifth auxiliary requests 14.40 h" respectively.

5.2 Thus, these are the first requests including a claim 1 which take into account the objections to clarity (and disclosure) with regard to the previously defined

- feature of the organic component "having the function of a binder".
- 5.3 When applying the above cited procedural principles according to Article 13(1) RPBA, the discretion to admit such a request has to 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.
- 5.4 The complexity of the amendment is not found to be an issue which by itself would have led the Board not to admit the request in the present case.
- 5.5 In the Board's judgement, the state of the proceedings and the need for procedural economy taken together however imply a requirement on a party to present appropriate requests as soon as possible if such requests are to be admitted and considered.
- 5.6 In the present case, there had been plenty of occasions for the appellant to amend the claims in reply to the clarity objections.
- 5.6.1 First, it should be observed that during the oral proceedings before the department of first instance, an objection to lack of clarity was discussed concerning the wording of claim 1 in relation to the terminology "to suppress scattering of fibres from the holding and sealing mat material" which was linked to the suppression of volume of the mat (see minutes, page 2, last paragraph), and where the term "suppression" was not a clear term since it was not quantified with respect to either scattering of fibers or volume of mat material (see minutes, page 5, paragraphs 10 and 11). Moreover, the further objection was discussed that the

binding function of the organic component lacked clarity since it was not defined how to identify a material as a binder (see minutes, page 3, last paragraph). Additionally (see minutes, page 4, fifth paragraph), the patent proprietor was of the view that holding individual fibres together would not be the same as binding, since binding also had to have the function of suppressing the volume, which view indicates an awareness of the appellant concerning the link between these features.

5.6.2 In its letter of 14 January 2011 in reply to the statement of grounds of appeal, the respondent set out that the originally filed application did not "provide a basis for a function as a binder *per se* but rather as a binder so as to suppress scattering of fibers and further by suppressing the volume to some extent". This paragraph (see item 2.2, page 3/6, fourth paragraph) when read in isolation could perhaps be considered as referring to Article 123(2) EPC alone. However, the function of the binder was also challenged with regard to Article 84 EPC (see item 2.2, page 3/6, third paragraph), in particular with regard to the nature of the organic component and as to how this organic component had to differ from the organic component provided in D1 as a sizing agent (see item 2.2, page 3/6, first and second paragraph and item 2.3, page 4/6). Thus the fact that an objection to lack of clarity was being made was also evident.

5.6.3 In the communication sent as an annex to the summons to oral proceedings before the Board, item 1.2.3 addressed the lack of clarity concerning the feature of the organic component "having the function of a binder" in the following manner:

"Further, it may be a matter of discussion as to whether the claim is clear in view of the added feature. The added feature appears namely to be unspecific in regard to what the function of "binding" implies (and possibly even "what" is bound). It may further be added that such an organic component as already in the claim inherently has a variety of properties which cannot seemingly be separated one from the other (such as sizing, binding, altering handle-ability etc). Hence, a lack of clarity seems to be present (Article 84 EPC)."

The basis for the disclosure of such feature was addressed in item 1.2.2.

- 5.6.4 At the start of the oral proceedings before the Board of Appeal, the Chairman of the Board referred again to a lack of clarity with regard to the feature "organic component having the function of a binder" and pointed to the corresponding paragraphs in the communication of the Board, adding that the Board had not altered its opinion despite the appellant's submissions of 19 February 2013.
- 5.6.5 In spite of all these opportunities to address this issue, the appellant chose only to argue with regard to the objection of lack of clarity and did not file an auxiliary request aimed at overcoming the objections raised in this respect.
- 5.7 Since the respondent had already raised objections against clarity of the terminology concerned, which were then confirmed and specifically pointed out in the Board's communication containing its provisional opinion, with the appellant's written response to the Board's opinion on 19 February 2013 an auxiliary request addressing this issue could have been filed, if

it were the appellant's intention to overcome the objection by way of a request. Admittedly there may be cases where filing a request in response to the Board's opinion may also be found to be an inappropriate amendment to a party's of case, but that issue does not need to be considered here as this did not occur.

- 5.8 Although the appellant argued that it had understood the objection as regards lack of clarity only as a result of the debate during oral proceedings, this does not justify filing a request at that stage of proceedings to deal with the objection, which is precisely what the appellant did by filing the "First, Third and Fifth auxiliary requests 14.40 h".
- 5.9 Whilst it may be credible that an objection (made by a party and/or by the Board) might not be fully understood in a particular case, it is then, at the very least, incumbent on the party having difficulties with understanding an objection to indicate this at the earliest possible stage and make appropriate effort to have the objection clarified. A lack of understanding alone cannot justify postponing an amendment to a party's case until a later stage in the proceedings.
- 5.10 In the present case, an indication of a lack of understanding of the objection cannot be gleaned from the appellant's written response, nor was any difficulty in understanding the objection raised by the appellant at the start of oral proceedings.
- 5.11 Several previous opportunities to file a request amended to overcome the objection to lack of clarity had been waived by the appellant. Requests were instead only submitted which included (in claim 1) the

unchanged feature responsible for the clarity objection.

5.12 Accordingly, the filing of the First, Third and Fifth auxiliary requests 14.40h at this late stage in the proceedings is contrary to the need for procedural economy. Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit these requests.

5.13 Since the requests were already not admitted for the foregoing reason, it is not necessary for the purposes of this decision to consider the further objections of the respondent made against these requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated