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Datasheet for the decision of 15 April 2016

Case Number: T 0020/12 - 3.3.02

Application Number: 98918035.1

Publication Number: 0994728

IPC: A61K48/00, C07H21/00, C12N15/00, C12P21/04, C12P21/06, C12P21/08, C07K16/18

Language of the proceedings: EN

Title of invention:

RECOMBINANT ANTIBODIES SPECIFIC FOR BETA-AMYLOID ENDS, DNA ENCODING AND METHODS OF USE THEREOF

Patent Proprietor:

Intellect Neurosciences, Inc.

Opponent:

Elan Pharma International Limited

Headword:

Antibodies specific for beta-amyloid ends/INTELLECT NEUROSCIENCES

Relevant legal provisions:

EPC Art. 123(2), 123(3)
RPBA Art. 12(4)

Keyword:
Main request, auxiliary requests 2 to 7 - added subject-matter (yes)
Auxiliary request 1 - extension of scope of protection (yes)
Auxiliary request 8 - admission (no) (withdrawn in opposition proceedings)

Decisions cited:
T 0495/10, T 0679/09

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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Case Number: T 0020/12 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 15 April 2016

Appellant: (Patent Proprietor)	Intellect Neurosciences, Inc. 465 West 23rd Street Apt. 12-J New York, NY 10001 (US)
Representative:	D Young & Co LLP 120 Holborn London EC1N 2DY (GB)
Respondent: (Opponent)	Elan Pharma International Limited Monksland Athlone Westmeath (IE)
Representative:	Hallybone, Huw George Carpmaels & Ransford LLP One Southampton Row London WC1B 5HA (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 7 October 2011 revoking European patent No. 0994728 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	U. Oswald
Members:	K. Giebeler
	L. Bühler

Summary of Facts and Submissions

I. European patent No. 0 994 728, based on European patent application No. 98918035.1 and on international application No. PCT/US98/06900 of 9 April 1998 published as WO 98/44955 (hereafter referred to as "the application as filed"), claiming priority of US 60/041,850 of 9 April 1997 and entitled "Recombinant antibodies specific for beta-amyloid ends, DNA encoding and methods for use thereof", was granted with 21 claims.

II. Claim 1 of the application as filed reads:

"A method for preventing or inhibiting progression of Alzheimer's Disease, comprising the step of administering a composition comprising a recombinant DNA molecule, containing a gene encoding a recombinant antibody molecule end-specific for the N-terminus or the C-terminus of an amyloid-β peptide, operably-linked to a promoter which is expressed in the central nervous system, in association with a means for gene delivery, to a patient in need thereof to prevent the accumulation of amyloid-β peptides and the aggregation of peptides which form amyloid deposits in the brain."

III. Claim 1 as granted reads:

"1. A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived."

IV. Notice of opposition was filed against the granted patent on the grounds of insufficiency of disclosure (Article 100(b) EPC) and added subject-matter (Article 100(c) EPC).

V. The opposition division decided that the claims of the main request did not meet the requirements of Article 123(2) EPC and that the claims of auxiliary request 1 contravened Articles 123(2)(3) and 84 EPC, and revoked the patent.

VI. The proprietor (hereafter: appellant) filed an appeal against the opposition division's decision.

With the statement setting out the grounds of appeal, the appellant filed a total of eighteen claim requests, a main request ("MR"; claims as granted) and auxiliary requests 1 to 8 ("AR1 to AR8"), as well as an "amended" main request ("MRa") and "amended" auxiliary requests 1 to 8 ("AR1a to AR8a"). Each of the "amended" requests (MRa, AR1a, etc.) was identical to the respective unamended request (MR, AR1, etc.) except for the deletion of granted claim 21. The appellant indicated that if the board considered that claim 21 as granted met the requirements of the EPC, e.g. Article 123(2) EPC, then it should consider the unamended requests (i.e. MR, AR1, etc.); otherwise, it should consider the "amended" requests (i.e. MRa, AR1a, etc.).

Claim 1 of auxiliary request 1 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40."

Claim 1 of auxiliary request 2 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein said recombinant antibody discriminates between an Aβ peptide and the β-amyloid protein precursor from which it is proteolytically derived, such that the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived."

Claim 1 of auxiliary request 3 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein said recombinant antibody discriminates between an Aβ peptide and the β-amyloid protein precursor from which it is proteolytically derived, such that the term "recombinant antibody discriminates between an Aβ peptide and the β-amyloid protein precursor from which it is proteolytically derived" means that the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived."

Claim 1 of auxiliary request 4 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein the end-specific antibody is an antibody which uniquely recognizes the free N-terminus of a peptide said peptide being the amyloid-β peptide or the free C-terminus of a peptide said peptide being the amyloid-β

peptide Aβ1-40, wherein said recombinant antibody discriminates between an Aβ peptide and the β-amyloid protein precursor from which it is proteolytically derived, such that the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived."

Claim 1 of auxiliary request 5 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein the end-specific antibody is an antibody which uniquely recognizes the free N-terminus of a peptide said peptide being the amyloid-β peptide or the free C-terminus of a peptide said peptide being the amyloid-β peptide Aß1-40, wherein said recombinant antibody discriminates between an Aβ peptide and the β-amyloid protein precursor from which it is proteolytically derived, such that the term "recombinant antibody discriminates between an Aβ peptide and the β-amyloid protein precursor from which it is proteolytically derived" means that the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived."

Claim 1 of auxiliary request 6 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein the end-specific antibody is an antibody which uniquely recognizes the free N-terminus of a peptide said peptide being the amyloid-β peptide or the free C-terminus of a peptide said peptide being the amyloid-β peptide Aß1-40, wherein the antibody does not bind to

the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived."

Claim 1 of auxiliary request 7 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived, the antibody having no reactivity towards the spanning peptide of SEQ ID NO. 7."

Claim 1 of auxiliary request 8 reads:

"A recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, the antibody having no reactivity towards the spanning peptide of SEQ ID NO. 7."

VII. The opponent (hereafter: respondent) filed counter-arguments to the appeal by letter of 25 June 2012.

VIII. On 13 November 2015, the board issued a communication as an annex to the summons to oral proceedings, expressing its preliminary opinion.

IX. By letter of 23 March 2016, the appellant informed the board that it would not be attending the oral proceedings.

X. By fax of 13 April 2016, the respondent informed the board that it would not be attending the oral proceedings either.

XI. Oral proceedings were held on 15 April 2016 in the absence of the duly summoned parties. At the end of the oral proceedings, the board dismissed the appeal.

XII. The following documents are mentioned in this decision:

D4: EP 0 683 234 A1 (published 22 November 1995)
D7: WO 03/074081 A1 (published 12 September 2003)
D8: Translation of Japanese appeal of 16 September 2005
D11: EP 1 200 476 B1 (published 27 May 2009)
D13: Immunology, 6th edition, p. 688 (undated)
D14: Fundamental Immunology, 6th edition (2006) p. 170-171
D19: US 2005/0009150 A1 (published 13 January 2005)
D20: WO 98/20025 A1 (published 14 May 1998)
D21: WO 98/15576 A1 (published 16 April 1998)
D22: US 5 965 614 (published 12 October 1999)
D23: Internet article "Bizability" (2009).

XIII. The appellant's arguments submitted in writing, insofar as they are relevant for the present decision, can be summarised as follows:

Articles 100(c) and 123(2) EPC - main request and auxiliary requests 2 to 7

All claims met the requirements of Article 123(2) EPC. The feature in claim 1 of the main request that "the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived", although not explicitly disclosed, was directly and unambiguously derivable from the application as filed, which stated that the

antibody was "specific" and "selective" for the N-terminus or the C-terminus of an Aβ peptide, that it "uniquely recognized" the free N-terminus or the free C-terminus of the peptide, and that it could "discriminate" between the Aβ peptide and the amyloid-β precursor protein (APP) from which it was proteolytically derived. Furthermore, the example of the application as filed disclosed antibodies which had "no reactivity" with the spanning peptide of SEQ ID NO: 7, which implied that they showed no reactivity with APP. All these expressions or terms used in the application as filed were synonymous and interchangeable with the feature that the antibody "does not bind" to the APP.

The interchangeability of these terms was apparent from the art and in particular from documents D22, D23 and D19, which referred to antibodies that were end-specific for the free N-terminus or the free C-terminus of the Aβ peptide and that did not bind to the APP.

A skilled person would thus understand from the application as filed that an antibody that was end-specific for an Aβ peptide would only bind to its epitope in an Aβ peptide which had a free end, and would not bind to the APP in which these chemical groups were engaged in amide bonds and therefore unavailable for binding to an end-specific antibody.

Article 123(3) EPC - auxiliary request 1

Claim 1 of auxiliary request 1 did not extend the scope of protection conferred because any recombinant antibody which was end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40 would not bind to the APP.

Hence auxiliary request 1 did not contravene Article 123(3) EPC.

XIV. The respondent's arguments submitted in writing, insofar as they are relevant for the present decision, can be summarised as follows:

Articles 100(c) and 123(2) EPC - main request and auxiliary requests 2 to 7

The feature in claim 1 of the main request and of auxiliary requests 2 to 7 that "the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived" was not directly and unambiguously derivable from the application as filed. An antibody could "discriminate" between two antigens by binding to one more strongly than the other; this did not mean that the antibody did not bind to one of the antigens. The same applied to the terms "selectivity" or "selective", which were relative terms. An antibody could be highly selective, partially selective or non-selective. Similarly, reciting that an antibody was "specific" for an antigen meant that the antibody had high specificity for its cognate antigen, but not that the antibody did not bind to another antigen.

The statement in the example of the application as filed that the antibody had "no reactivity" with the spanning peptide of SEQ ID NO: 7 concerned polyclonal antibodies only, not any recombinant antibody as recited in claim 1. Furthermore, an antibody which was end-specific for the free N- or C-terminus of an Aβ peptide and which did not react with or bind to the short 13 amino acid spanning peptide of SEQ ID NO: 7 could still bind to the related epitope when presented

differently in a full length APP. Moreover, the same antibody molecule could harbour two totally independent subsites corresponding to two paratopes of unrelated epitopes; hence an antibody which bound to an epitope at the N- or C-terminus of an Aβ peptide and which lacked reactivity with SEQ ID NO: 7 could still have reactivity with APP via a second distinct epitope present in APP but not in SEQ ID NO: 7.

The term "does not bind" was not only absent from the application as filed, but was moreover selectively combined in claim 1 with APP by stating that the antibody did not bind to APP, without there being a basis for this selection in the application as filed. Whilst the application as filed defined how and to what the antibody would bind, there was no disclosure in the application as filed of what the antibody did not bind to.

Article 123(3) EPC - auxiliary request 1

Claim 1 of auxiliary request 1 contravened Article 123(3) EPC because it did not include the feature of granted claim 1 that "the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived".

Admission - auxiliary request 8

Auxiliary request 8 should not be admitted into the proceedings because it had been filed and then actively withdrawn by the proprietor during opposition proceedings, thereby preventing the opposition division from taking a decision on it.

XV. The parties' requests submitted in writing were as follows:

The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request (claims as granted) or, alternatively, on the basis of any of the auxiliary requests filed with the statement setting out the grounds of appeal.

The respondent requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

Main request - Article 100(c) EPC

2. The subject-matter of a European patent must not extend beyond the content of the application as filed. It is the established case law of the boards of appeal that amendments are permitted only within the limits of what the skilled person would derive directly and unambiguously, using common general knowledge, from the the application as filed.

3. Claim 1 relates to a recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40, wherein the antibody does not bind to the amyloid-β precursor protein (APP) from which said amyloid-β peptide may be proteolytically derived.

The free N-terminus and the free C-terminus of the amyloid-β peptide differ from the termini of the much longer amyloid-β precursor protein (APP) (see paragraph [0002] and Figure 1 of the patent in suit).

4. It is undisputed that the feature that "the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived" is not explicitly disclosed in the application as filed.

The appellant argued that this feature was directly and unambiguously derivable from features that were explicitly disclosed in the application as filed and that were synonymous and thus interchangeable with it.

4.1 The application as filed refers to DNA molecules containing a gene encoding a recombinant antibody molecule which "discriminates between an Aβ peptide and the β-amyloid protein precursor from which it is proteolytically derived" (page 10, lines 8-10).

The board considers that said passage does not provide a basis for the feature in claim 1 that "the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived". An antibody may discriminate between two different antigens by binding to one more strongly than to the other. This does not allow the conclusion that such an antibody does not bind to one of the antigens. Whilst the group of antibodies that discriminate between an Aβ peptide and APP may encompass a subgroup of antibodies which do not bind to APP, the specific reference to this subgroup of antibodies represents new technical information which is not directly and

unambiguously derivable from said passage of the application as filed.

4.2 The application as filed further refers to DNA molecules containing a gene encoding a recombinant antibody molecule which is "end-specific for the N-terminus or the C-terminus of an Aβ peptide" (page 10, lines 5-8) and which "binds specifically to a terminus/ end of an Aβ peptide" (page 10, lines 12-13).

As stated in decision T 189/01 of 15 June 2004, "specificity (...) is an expression of the high affinity of a given antibody for the antigen against which it has been raised". However, the term does not exclude the possibility that an antibody binds to peptides other than that against which it has been raised. Consequently, it cannot be directly and unambiguously derived from said passages on page 10 of the application as filed that the antibody does not bind to the APP.

In this context, the appellant has referred to documents D13 and D14, which are extracts from textbooks. Document D14 was published in 2006, well after the filing date of the patent in suit, and for document D13 the appellant has not provided evidence that it was available to the public before the filing date of the patent in suit. These documents are therefore not relevant with respect to the question of what was directly and unambiguously derivable from the application as filed at the filing date. In any case, the board's understanding of the term "specific" does not contradict the contents of these documents. Document D13 states that the "specificity determines the ability of the antibody to distinguish the immunogen from other antigens", and document D14 states

that the "specificity of an antibody or antiserum is defined by the ability to discriminate between the antigen against which it was made (...) and any other antigen one might test". The ability to distinguish or discriminate between two different antigens does not however imply that the antibody "does not bind" to one of the antigens (see point 4.1 above).

4.3 Similarly, the term "selectivity" referred to in the application as filed (see page 13, lines 9-17; page 14, lines 29-37; page 15, lines 9-12) is a relative term which provides no basis for the feature that the antibody "does not bind" to the APP.

4.4 The application as filed further states that "an end-specific antibody is defined as an antibody which uniquely recognizes the free N-terminus or the free C-terminus of a peptide and which can further discriminate between the peptide and the precursor from which it is proteolytically derived" (page 12, lines 26-33).

The board takes the position that, in the context of said passage of the application as filed, the skilled person would understand the words "uniquely recognizes" as expressing that an end-specific antibody recognises the free N-terminus or the free C-terminus in a unique way, but not that the antibody "does not bind" to the APP.

Said passage refers to two features of the end-specific antibody, namely (i) that it uniquely recognises the free N-terminus or the free C-terminus, and (ii) that it can further discriminate between the peptide and the precursor from which it is proteolytically derived. If feature (i) meant that the antibody only recognised

Aβ peptides with a free N- or C-terminus and did not bind to anything else, then feature (ii) would not provide any additional information on the antibody and would be superfluous. The board considers that such a reading of said passage would not make sense to the skilled person and would moreover be at odds with the remaining teaching of the application as filed.

Consequently, the feature that the antibody does not bind to the APP is not directly and unambiguously derivable from page 12, lines 26-33 of the application as filed.

4.5 Furthermore, the application as filed describes in its "prophetic" example at page 25, line 24 to page 26, line 13, that "high affinity polyclonal antibodies specific for the free N-terminus of Aβ peptides were made where the antibodies were raised using the restricted peptide: H_2N-SEQ ID NO:6-aminohexanoate-C-amide" (page 25, lines 24-29), whereby SEQ ID NO:6 consists of six amino acids. Following immunization of rabbits, a peptide "that spans the 0 to 1 splice site that yields the free N-terminus", acetal-SEQ ID NO:7-Ahx-C-amide, whereby SEQ ID NO:7 consists of 13 amino acids, was "used to preabsorb away all antibodies which do not depend upon the free amine-Asp being present. The antibodies were then purified and collected using the N-terminal peptide. Whereas the crude serum shows substantial activity towards the spanning peptide, once affinity purified, there is no reactivity of the resulting antibody with the spanning peptide, only with the N-terminal peptide" (page 26, lines 2-14).

The appellant submitted that the lack of reactivity of the antibodies with the peptide of SEQ ID NO: 7 meant that the antibodies would not bind to APP.

The board cannot follow the appellant's line of argumentation, because - irrespective of the question whether the terms "has no reactivity" and "does not bind" have the same meaning - an antibody which has no reactivity with the 13 amino acids long peptide of SEQ ID NO: 7 may still bind to the much longer APP.

Therefore, said disclosure on pages 25 and 26 of the application as filed does not provide a basis for the feature that the antibody "does not bind" to the APP.

4.6 It follows that the feature that "the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived" in claim 1 of the main request is not directly and unambiguously derivable from the application as filed.

5. To support its argument that the feature "does not bind" was synonymous with the terms and expressions used in the application as filed, the appellant referred to additional documents, in particular documents D22, D23 and D19, but also documents D4, D7, D8, D11, D20 and D21.

To decide whether or not a claim contains added subject-matter, it is necessary to establish what a skilled person would derive, on the date of filing, from the application as filed. Documents other than the description, claims and drawings of the application as filed may be used insofar as they prove the common general knowledge on the date of filing.

Of the documents referred to by the appellant in the context of the feature "does not bind", document D4 - a European patent application - is the only document

that was published before the filing date of the patent in suit. The document describes an antibody "specifically reactive to a partial peptide on the C-terminal side of a β-amyloid", which antibody "does not recognize" certain other, defined peptides (see page 5, line 31 to page 6, line 46; page 10, lines 25-48). The document neither constitutes common general knowledge, nor does it in any way suggest that "specifically reactive" and "does not recognize" are synonymous.

The remaining documents referred to by the appellant in this context became available to the public only after the filing date of the patent in suit. These documents thus likewise do not prove that, according to the skilled person's common general knowledge at the filing date of the patent in suit, the feature "does not bind" was synonymous with any of the features explicitly disclosed in the application as filed.

6. Consequently, the main request does not meet the requirements of Article 123(2) EPC.

Auxiliary requests 2 to 7 - Article 123(2) EPC

7. Claims 1 of each of auxiliary requests 2 to 7 include the feature that "the antibody does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived."

For the reasons set out in points 2 to 6 above for the main request, this feature is not directly and unambiguously derivable from the application as filed.

Therefore, auxiliary requests 2 to 7 do not meet the requirements of Article 123(2) EPC.

Auxiliary request 1 - Article 123(3) EPC

8. Article 123(3) EPC stipulates that the claims of a patent as granted may not be amended in such a way as to extend the protection conferred. To decide whether or not an amendment of the patent in suit satisfies that requirement, it is necessary to compare the protection conferred by the claims before amendment, i.e. as granted, with that of the claims after amendment.

9. Claim 1 of auxiliary request 1 is directed to "a recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40".

The feature of granted claim 1 that the claimed antibody "does not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived" has been omitted from claim 1 of auxiliary request 1.

10. For the reasons set out in points 4.1 and 4.2 above, the board cannot follow the appellant's argument that any recombinant antibody which is end-specific for the free N-terminus of an amyloid-β peptide or the free C-terminus of an amyloid-β peptide Aβ1-40 would not bind to the amyloid-β precursor protein from which said amyloid-β peptide may be proteolytically derived. Therefore, amended claim 1 does not have the same meaning as granted claim 1.

By no longer excluding antibodies which do not bind to the amyloid-β precursor protein, the scope of claim 1 has thus been extended to encompass antibodies which bind to said precursor protein.

11. It follows that auxiliary request 1 does not comply with Article 123(3) EPC.

Auxiliary request 8 - Admission

12. Claim 1 of auxiliary request 8 is substantially the same as claim 1 of auxiliary request 2 submitted to the opposition division with letter of 29 April 2011; it differs therefrom only slightly in wording by referring to "the antibody having no reactivity" instead of "the antibody has no reactivity". The board regards both claims as identical in terms of their technical features.

According to the minutes of the oral proceedings before the opposition division, the proprietor (appellant) replaced auxiliary requests 1-5 filed with letter of 29 April 2011 by new auxiliary requests 1-5 (see point 7 of the minutes), and later on withdrew auxiliary requests 2-5 (see point 13 of the minutes).

13. Although auxiliary request 8 was presented with the statement of grounds of appeal, the board has the power to hold inadmissible requests which could have been presented in the first instance proceedings (Article 12(4) RPBA). This includes requests which were filed but then withdrawn or abandoned.

One criterion for exercising that discretion is whether the withdrawal of a request prevented the department of first instance from giving a reasoned decision on the critical issues, thereby compelling the board of appeal either to give a first ruling on those issues or to remit the case to the department of first instance (see

point 2.1.2 of decision T 495/10 of 3 July 2012, and point 12 of decision T 679/09 of 13 November 2012).

The withdrawal of said auxiliary request 2 in opposition proceedings had exactly this effect. While the appellant may not have intended to avoid a decision of the opposition division on the allowability of auxiliary request 2, this was the inevitable result of withdrawing it (cf. point 2.1.7 of decision T 495/10).

14. Furthermore, in its communication accompanying the summons to oral proceedings, the board drew the parties' attention to Article 12(4) RPBA and pointed out that auxiliary request 8 was rather similar to auxiliary request 2 filed during the first instance proceedings and then withdrawn before the opposition division could take a decision on it.

Nevertheless, the appellant chose not to attend the oral proceedings before the board and also submitted no written arguments as to why auxiliary request 8 should be admitted into the proceedings before the board.

15. For these reasons, the board, in exercising its discretion under Article 12(4) RPBA, decided not to admit auxiliary request 8 into the proceedings.

"Amended" main request and "amended" auxiliary requests 1 to 8

16. Claim 1 of each of the "amended" claim requests is identical to claim 1 of the corresponding "unamended" claim requests (see section VI above). As set out in points 2 to 11 above, claims 1 of the main request and of auxiliary requests 2-7 do not meet the requirements of Article 123(2) EPC and claim 1 of auxiliary request 1 does not meet the requirements of

Article 123(3) EPC. These findings equally apply to claims 1 of the corresponding "amended" main and auxiliary requests.

Furthermore, the reasons for the board's decision not to admit auxiliary request 8 into the proceedings (see points 12 to 15 above) equally apply to "amended" auxiliary request 8.

17. It follows from the above that none of the claim requests is both admissible and allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

N. Maslin U. Oswald

Decision electronically authenticated