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**Datasheet for the decision  
of 4 December 2014**

**Case Number:** T 1786/12 - 3.2.06

**Application Number:** 03725564.3

**Publication Number:** 1509354

**IPC:** B23C5/22

**Language of the proceedings:** EN

**Title of invention:**

TANGENTIAL CUTTING INSERT AND MILLING CUTTER

**Patent Proprietor:**

Iscar Ltd.

**Opponent:**

Kennametal Inc.

**Headword:**

**Relevant legal provisions:**

EPC 1973 Art. 111(1), 84, 54(1)

EPC Art. 123(2), 54(3)

RPBA Art. 13(1), 12(2)

**Keyword:**

Novelty - main request (no)

Late filed request - Auxiliary request 1 - admitted (no)

Late filed request - Auxiliary request 5 - admitted (yes)

Remittal to the department of first instance -

Auxiliary request 5 (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 1786/12 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 4 December 2014**

**Appellant:** Kennametal Inc.  
(Opponent) PO Box 231  
Latrobe, PA 15650-0231 (US)

**Representative:** Prinz & Partner mbB  
Patent- und Rechtsanwälte  
Rundfunkplatz 2  
DE-80335 München (DE)

**Respondent:** Iscar Ltd.  
(Patent Proprietor) P.O. Box 11  
24959 Tefen (IL)

**Representative:** Vossius & Partner  
Siebertstrasse 4  
81675 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 29 May 2012 rejecting the opposition filed against European patent No. 1509354 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Hannam  
W. Ungler

## Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition to European patent No. 1 509 354. It requested that the decision be set aside and the patent be revoked. In support of its request, the appellant relied *inter alia* upon

D1: WO-A-03/074 218.

II. In its letter of response, the respondent (proprietor) requested that the appeal be dismissed.

III. With letter of 29 January 2014 the appellant presented further arguments in support of its request to revoke the patent.

IV. In a letter dated 1 July 2014 the respondent filed auxiliary requests 1 to 7.

V. The Board issued a summons to oral proceedings including a communication containing its provisional opinion, in which it indicated *inter alia* that the interpretation of the feature 'in a side view of either major side surface, the projecting abutment surface lies on a concave surface' would be a topic of discussion.

VI. With letter of 17 November 2014, the respondent filed replacement auxiliary requests numbered 1 to 3, 3A, 4 to 6, 6A, 7 and 7A, of which auxiliary requests 1, 5, 6 and 7 were unchanged from those of 1 July 2014.

VII. Oral proceedings were held before the Board on 4 December 2014, during which the respondent filed a new

auxiliary request 1 replacing auxiliary requests 1 to 3, 3A and 4 previously on file.

The appellant requested that the decision under appeal be set aside and the European patent No. 1 509 354 be revoked. Furthermore, it requested that the case be remitted to the opposition division for further prosecution if the 5th or any lower ranking auxiliary request be admitted into the proceedings.

The respondent requested that the appeal be dismissed and the patent be maintained as granted (main request), or that the patent be maintained in amended form on the basis of auxiliary request 1 filed during the oral proceedings of 4 December 2014, or on the basis of one of the auxiliary requests 5, 6, 6A, 7 and 7A filed with letter dated 17 November 2014.

VIII. Claim 1 of the main request reads as follows (including, for ease of reference, paragraph annotation as used by the opposition division):

"A tangential cutting insert (10,10',10") comprising:  
a) two identical opposing end surfaces (12, 12',12") having 180° rotational symmetry about a first axis A1 passing therethrough,  
b) a peripheral side surface (14) extending between the two opposing end surfaces (12,12',12"), and  
c) a peripheral edge (40) formed at the intersection of each end surface (12,12',12") and the peripheral side surface (14), at least two sections of each peripheral edge constituting cutting edges (52),  
d) the peripheral side surface (14) comprising:  
e) two identical opposing major side surfaces (18,18') having 180° rotational symmetry about a second axis A2 passing therethrough, the second axis A2 being

perpendicular to the first axis A1;

f) two identical opposing minor side surfaces (16,16') having 180° rotational symmetry about a third axis A3 passing therethrough, the third axis A3 being perpendicular to the first axis A1 and the second axis A2;

g) a minor plane P1 defined by the first axis A1 and the second axis A2;

h) a major plane P2 defined by the first axis A1 and the third axis A3;

i) a median plane M being defined by the second axis A2 and the third axis A3;

j) each end surface (12,12',12") having four corners;

k) each end surface (12, 12',12") being provided with at least one projecting abutment member (28,28', 28"A,28"C) having a projecting abutment surface (30,30',30A,30C)

characterised in that

l) said four corners are two lowered corners (26) and two raised corners (24),

m) the lowered corners (26) being closer to the median plane M than the raised corners (24) and in that

n) in a side view of either major side surface (18,18'), the projecting abutment surface (30,30',30A,30C) lies on a concave surface."

Claim 1 of auxiliary request 1 reads:

"A tangential cutting insert (10") comprising:

two identical opposing end surfaces (12") having 180 degrees rotational symmetry about a first axis A1 passing therethrough,

a peripheral side surface (14) extending between the two opposing end surfaces (12"), and

a peripheral edge (40) formed at the intersection of each end surface (12") and the peripheral side

surface (14), at least two sections of each peripheral edge constituting cutting edges (52), the peripheral side surface (14) comprising:  
two identical opposing major side surfaces (18, 18') having 180 degrees rotational symmetry about a second axis A2 passing therethrough, the second axis A2 being perpendicular to the first axis A1;  
two identical opposing minor side surfaces (16, 16') having 180 degrees rotational symmetry about a third axis A3 passing therethrough, the third axis A3 being perpendicular to the first axis A1 and the second axis A2;  
a minor plane P1 defined by the first axis A1 and the second axis A2;  
a major plane P2 defined by the first axis A1 and the third axis A3;  
a median plane M being defined by the second axis A2 and the third axis A3;  
each end surface (12") having four corners;  
each end surface (12") being provided with two projecting abutment members (28"A, 28"C) each having a projecting abutment surface (30A, 30C),  
each minor side surface (16, 16') merging with an adjacent major side surface (18, 18') at a corner side surface (22),  
characterised in that said four corners are two lowered corners (26) and two raised corners (24), the lowered corners (26) being closer to the median plane M than the raised corners (24) and in that in a side view of either major side surface (18, 18'), the two projecting abutment surfaces (30A, 30C) at each end surface (12") lie on a concave surface which is generally v-shaped in form, wherein;  
each corner side surface (22) extends between a given raised corner (24) of one of the two opposing end

surfaces (12, 12', 12") and a given lowered corner (26) of the other of one of the two opposing end surfaces (12, 12', 12"),

wherein;

each cutting edge (52) comprises a major cutting edge (54, 54'), a minor cutting edge (56) and a corner cutting edge (58), therebetween, and each corner cutting edge (58) is associated with a given raised corner (24),

wherein;

major, corner, and minor edges (42, 50, 44) are formed at the intersection of the major, corner and minor side surfaces (18, 18', 22, 16, 16') respectively, with an adjacent end surface (12, 12', 12"), and each major cutting edge (54, 54') extends along substantially the whole length of an associated major edge (42),

and wherein;

the two projecting abutment members (28"A, 28"C) are separated by a central recessed region (28"B)."

Claim 1 of auxiliary request 5 reads:

"A milling cutter (80) comprising:

at least one tangential cutting insert (10, 10', 10") comprising;

two identical opposing end surfaces (12, 12', 12") having 180 degrees rotational symmetry about a first axis A1 passing therethrough,

a peripheral side surface (14) extending between the two opposing end surfaces (12, 12', 12"), and

a peripheral edge (40) formed at the intersection of each end surface (12, 12', 12") and the peripheral side surface (14), at least two sections of each peripheral edge constituting cutting edges (52),

the peripheral side surface (14) comprising:



two identical opposing major side surfaces (18, 18') having 180 degrees rotational symmetry about a second axis A2 passing therethrough, the second axis A2 being perpendicular to the first axis A1;

two identical opposing minor side surfaces (16, 16') having 180 degrees rotational symmetry about a third axis A3 passing therethrough, the third axis A3 being perpendicular to the first axis A1 and the second axis A2;

a minor plane P1 defined by the first axis A1 and the second axis A2;

a major plane P2 defined by the first axis A1 and the third axis A3;

a median plane M being defined by the second axis A2 and the third axis A3;

each end surface (12, 12', 12") having four corners;

each end surface (12, 12', 12") being provided with at least one projecting abutment member (28, 28', 28"A, 28"C) having a projecting abutment surface (30, 30', 30A, 30C),

said four corners are two lowered corners (26) and two raised corners (24), the lowered corners (26) being closer to the median plane M than the raised corners (24) and in that in a side view of either major side surface (18, 18'), the projecting abutment surface (30, 30', 30A, 30C) lies on a concave surface,

a cutter body (82) having at least one insert pocket (84) in which the at least one cutting insert (10, 10', 10") is retained, the at least one insert pocket (84) comprising adjacent side and rear walls (88, 90) generally transverse to a base (92), the rear wall (90) being generally convex; the side wall (88) being provided with an axial location surface (94) that abuts a given minor side surface (16, 16') of the at least one cutting

insert (10, 10', 10") at a given axial abutment region (96); the rear wall (90) being provided with two tangential location surfaces (98, 100), located on either side of a central region (102) of the rear wall (90), a first of the two tangential location surfaces (98) abuts a first tangential abutment surface (104, 104', 30A) located on the at least one cutting insert (10, 10', 10"), a second of the two tangential location surfaces (100) abuts a second tangential abutment surface (106, 106', 30C) located on the at least one cutting insert (10, 10', 10")."

IX. The appellant's arguments may be summarised as follows:

Main request

The word 'either' in the expression 'in a side view of either major side surface' did not clearly mean both major side surfaces nor did it unequivocally mean just one of the two major side surfaces; the expression thus had to be interpreted in its broadest sense when comparing the definition in claim 1 with the disclosure of D1.

Regarding the expression 'lie on a concave surface', this surface was not further defined and so could be any, not necessarily physically existent, concave surface chosen by the reader. Indeed, Fig. 14 of the patent also indicated a virtual concave surface on which the projecting abutment surfaces of that embodiment lay. D1 thus clearly disclosed a projecting abutment surface which could be seen to lie on a virtual surface of concave shape.

Auxiliary request 1

This request should not be admitted under Article 13(1)

RPBA since it could have been filed significantly earlier in the appeal procedure.

Auxiliary request 5

At least for claim 1 of this request, no objections were *prima facie* apparent under Articles 84 and 123 EPC. As regards compliance with the further requirements of the EPC, the case should be remitted to the opposition division for further prosecution, if the Board admitted the request.

- X. The respondent's arguments may be summarised as follows:

Main request

A link existed between features k and n of claim 1 insofar as both features referred to the same projecting abutment surface of the at least one projecting abutment member. The word 'either' in the expression 'in a side view of either major side surface' was to be interpreted as meaning 'both' as was clear when considering the three embodiments of the invention in the description. Furthermore, the word 'either' as further used in col. 4, lines 30 - 32, in col.9, lines 2 - 5 and in claim 23 showed that an interpretation as 'both' was clearly what was meant by the applicant through use of this word throughout this patent.

It was clear from the description of the embodiments and related Figures that the concave surface of claim 1 was defined by the projecting abutment surface(s) such that they clearly could be seen to 'lie on a concave surface'. Conversely, in D1, the only surface including both coplanar surfaces of the frustums was a flat surface which thus could not be regarded as a concave

surface.

Auxiliary request 1

The subject-matter of claim 1 comprised a combination of claims 1 and 14 - 18 as originally filed with the addition of the concave surface being v-shaped in form taken from page 16, lines 15 - 16 of the originally filed description. The invention was thus limited to the third embodiment.

Auxiliary request 5

The subject-matter of claim 1 comprised a simple combination of claims 1 and 23 as originally filed and as granted. A remittal of the case to the department of first instance on the basis of this request should be allowed.

## **Reasons for the Decision**

1. Main request

1.1 Lack of novelty

The subject-matter of claim 1 lacks novelty (Article 54 EPC 1973) over D1.

1.2 D1 discloses all the features of claim 1 as follows, the reference signs in parentheses referring to D1:

A tangential cutting insert (38; see Figs. 4 to 8) comprising:

two identical opposing end surfaces (40) having 180° rotational symmetry about a first axis (R1; page 9, lines 3 - 4) passing therethrough,  
a peripheral side surface (42) extending between the

two opposing end surfaces (40), and  
a peripheral edge (50) formed at the intersection of  
each end surface (40) and the peripheral side surface  
(42), at least two sections (52, 54) of each peripheral  
edge (50) constituting cutting edges (see e.g. claim  
10), the peripheral side surface (42) comprising:  
two identical opposing major side surfaces (46) having  
180° rotational symmetry about a second axis (R2)  
passing therethrough, the second axis (R2) being  
perpendicular to the first axis (R1);  
two identical opposing minor side surfaces (44) having  
180° rotational symmetry about a third axis (R3)  
passing therethrough, the third axis (R3) being  
perpendicular to the first axis (R1) and the second  
axis (R2);  
a minor plane (P1) defined by the first axis (R1) and  
the second axis (R2);  
a major plane (P2) defined by the first axis (R1) and  
the third axis (R3);  
a median plane (M) being defined by the second axis  
(R2) and the third axis (R3);  
each end surface (40) having four corners (58, 60);  
each end surface (40) being provided with at least one  
projecting abutment member (82) having a projecting  
abutment surface (surface of frustum 82 parallel to  
median plane M)

wherein

said four corners are two lowered corners (60) and two  
raised corners (58; see page 10, lines 11 - 13),  
the lowered corners (60) being closer to the median  
plane (M) than the raised corners (58; page 10, lines  
13 - 14)

in a side view of either major side surface (one or the  
other surface 46), the projecting abutment surface lies  
on a concave surface (a virtual surface of concave  
shape on which the planar surface of the frustum 82,

visible in Fig. 6, lies; dependent upon the major side surface viewed, a different frustum 82 is visible, yet still lying on 'a' virtual surface of concave shape).

- 1.3 The respondent's argument that the word 'either' in the expression 'in a side view of either major side surface' was to be interpreted as meaning 'both', is not accepted. The Board maintains that the native speaker interprets the word 'either' in this context as meaning 'one or the other'. This is perhaps best elucidated with the following examples which indicate how the native speaker interprets the word 'either' in the present context.

It is firstly noted that the meaning of the word 'either' is not absolute and is very much dependent on the context in which it is used. On the one hand, it can carry the meaning of 'both', yet in other contexts its intended meaning is 'one of two', and not 'both'. Considering the following two examples, these two alternative meanings are exemplified:

1. Trees were to be found on either side of the road.
2. He was able to sit in either of the two chairs.

In the first example, the reader clearly understands the word 'either' as meaning 'both', whereas in the second example a choice has to be made between one or the other chair, which difference in interpretation may be explained as follows. In the first example, it is clearly possible and expected that trees exist on both sides of the road at the same time, such that the native speaker interprets 'either' as meaning 'both'. In the second example, however, it is not possible for both chairs to be sat in at the same time; 'either' is

thus interpreted as meaning 'either one or the other'.

Applying this to the expression in claim 1 'in a side view of either major side surface', from the context it is apparent that both major side surfaces cannot be viewed at the same time such that, for the native speaker, the interpretation of example two, given above, is appropriate i.e. that the side view being claimed is that of either one or the other major side surface, not a side view of both surfaces.

- 1.4 The respondent's argument that all the embodiments of the invention supported the interpretation of the word 'either' as meaning 'both' is not persuasive. In this respect, it is noted that the embodiments of the invention equally all satisfy the alternative, and herein found applicable, interpretation of the word 'either' in claim 1 as 'one or other'. Thus, if the embodiments of the invention are to be used as evidence of how the patent wishes the word 'either' in claim 1 to be understood, this evidence is not conclusive.
  
- 1.5 The respondent's references to col.4, lines 30-32, col. 9, lines 2-5 and claim 23 of the patent in support of how to interpret the word 'either' in claim 1, were also unconvincing. Both references made by the respondent relate to the same feature of the milling cutter, namely that two tangential location surfaces .... are located on either side of a central region of the rear wall. In these examples, however, the disclosure of the location of two items (tangential location surfaces) 'on either side of' a further item (central region of the rear wall) is to be interpreted as 'one on each side of' (see Fig. 9 depicting the described arrangement of tangential location surfaces in the above paragraphs). These two references thus use

the word 'either' differently from the interpretation as 'both' sought by the respondent for the expression 'of either major side surface' in claim 1, thus failing to support the respondent's view. If indeed, in the above two examples, the word 'either' were to be interpreted as meaning 'both', the result would be a disclosure of two tangential location surfaces located on both sides of a central region of the rear wall i.e. a total of four tangential location surfaces which, particularly with reference to Fig. 9 and the above referenced passage in col.9, lines 2-5, is clearly not the intended disclosure in the patent.

Lastly, the mere fact that a view on to both of the side surfaces in the specific embodiments shown in the Figures would be compatible with the respondent's interpretation does not change the Board's view. The claims are clearly not limited to the specific embodiments. Also, nothing in the description gives an indication that a particular interpretation of the claim's wording was ever intended.

- 1.6 The respondent's argument, that both coplanar frustum surfaces of D1 had to lie on a concave surface in order to anticipate claim 1, is unconvincing based particularly on the findings in points 1.3 to 1.5 above. With the feature 'either major side surface' of claim 1 being interpreted as 'one or the other major side surface', just one of the frustum surfaces in D1 needs to lie on a concave surface in order to anticipate this feature of claim 1.

As regards the feature 'the projecting abutment surface lies on a concave surface', it is noted that the concave surface is not further specified in any way in the patent, let alone in the claim. Further, 'a'



concave surface is claimed, which can be any concave surface on which the projecting abutment surface lies; the surface can even be an imaginary surface (or, in language used by the parties, a virtual surface) insofar as it does not physically exist but can be theoretically envisaged and positioned such that the projecting abutment surface lies on it. Indeed, such an imaginary surface is also the claimed concave surface S on which the projecting abutment surface lies in the third embodiment of the invention depicted in Fig. 14 and described from col. 11, line 9 onwards. This is notably depicted in Fig. 14 as a v-shaped concave surface, but only by virtue of it being drawn through two particular portions of the abutment surfaces which then intersect to form a virtual V.

Thus in D1, "a concave surface", of the many possible real and imaginary concave surfaces, on which the projecting abutment surface (planar surface of the frustum 82) lies may equally be seen as an imaginary concave surface incorporating the uppermost planar surface of the single upwardly projecting frustum 82 visible in Fig. 6.

The respondent's argument that the skilled person would have no reason to select just "any" concave surface in D1 which passed through the abutment surfaces, is not accepted. Whilst it is true that specific parts of the abutment surfaces shown in the embodiment of Figure 14 of the patent have been used to form intersecting imaginary lines resulting in a V-shape in the patent, the claim is by no means limited to such a definition. Indeed even imaginary convex surfaces could easily be ascribed to the surfaces shown in the embodiments in the patent, all depending on where the surfaces start

and stop.

1.7 It thus follows that the subject-matter of claim 1 lacks novelty (Article 54(1) EPC 1973) over D1, which is prior art under Article 54(3) EPC.

2. Auxiliary Request 1

2.1 Non-admittance (Article 13(1) RPBA)

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 and reply must contain the party's complete case. After filing the grounds of appeal or reply, any amendment to a party's case may be admitted and considered at the Board's discretion, which is set out in Article 13(1) RPBA, such discretion being exercised *inter alia* in view of the need for procedural economy. As is established case law of the Boards of Appeal, such procedural economy implies that amended requests should at least be *prima facie* allowable in order to be admitted.

2.2 The respondent filed auxiliary request 1 during oral proceedings. The request thus represented a change to the respondent's complete case as defined in Article 12(2) RPBA) and its admittance is to be considered at the Board's discretion under Article 13(1) RPBA.

2.3 In the present request, the added feature to claim 1 regarding the concave surface 'which is generally v-shaped in form' is taken from an embodiment of the original disclosure. This third embodiment, as disclosed from page 16, line 3 - page 17, line 3 and particularly Fig. 14, discloses a very specific v-

shaped concave surface referenced 'S' in the Figure. As examples of the specificity of this v-shaped concave surface, it appears from Fig. 14 to be symmetrical about the minor plane P1 and to have the angle subtended by the v-shape located also on the minor plane P1. It is thus apparent that the v-shape form of the concave surface is disclosed solely in combination with at least these further features, such that the extraction of solely the v-shape form for inclusion in claim 1 amounts to an inadmissible intermediate generalisation of the original disclosure. The subject-matter of claim 1 thus *prima facie* fails to meet the requirement of Article 123(2) EPC.

2.4 Therefore, 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. Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit this request.

3. Auxiliary request 5

3.1 Admittance under Article 13(1) RPBA

3.1.1 The respondent filed auxiliary request 5 in its substance for the first time in the appeal proceedings on 1 July 2014, a date after that on which its reply to the appellant's grounds was filed. The admittance of the request is thus to be considered at the Board's discretion under Article 13(1) RPBA 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.

- 3.1.2 Claim 1 of this request essentially corresponds to claim 23 as granted but with the features of claim 1 as granted explicitly included within the claim. The present claim 1 thus essentially limits the claimed scope to just part of that of the patent as granted i.e. to a milling cutter comprising a specific cutting insert arranged therein in a particular way. As such, the claim was already present in the patent as granted and does not present the appellant with new subject-matter with which it had yet to be confronted. The request can thus not be regarded to be of such complexity for it not to be admitted.
- 3.1.3 Auxiliary request 5 was filed by the respondent at a late stage of the current proceedings (well over a year after having filed its response to the appellant's grounds of appeal). It is noted, however, that the letter dated 1 July 2014 enclosing this request was filed in response to a letter of the appellant dated 29 January 2014 itself submitting further arguments in support of its request to revoke the patent. The filing of auxiliary request 5 is thus seen as an appropriate response by the respondent to provide a fall-back position should the higher ranking requests be found not to be allowable in the light of the appellant's new arguments.
- 3.1.4 As to an objection under Articles 84 or 123 EPC, none was raised by the appellant against claim 1 of this request. The Board *prima facie* also finds no reason to raise an objection in this regard. The request is thus not seen to adversely affect procedural economy.
- 3.1.5 In view of the above findings, the Board exercised its discretion under Article 13(1) RPBA to admit auxiliary

request 5.

3.2 Remittal according to Article 111(1) EPC 1973

3.2.1 Claim 23 as both originally filed and granted was directed to a milling cutter including the features of the cutting insert of claim 1 by way of the wording 'comprising at least one cutting insert in accordance with claim 1'.

Claim 1 of auxiliary request 5 essentially corresponds to claim 23 as originally filed and granted but with the features of claim 1 as originally filed and granted explicitly included within the claim. The subject-matter of the present claim 1 is thus not simply a further limitation of the insert, but is directed to a milling cutter comprising a cutting insert supported in a particular way.

The Board notes that the presently claimed subject-matter was not examined as such before the opposition division, since it found that the subject-matter of claim 1 before it was novel over the cited art, the subject-matter of claim 23 before it thus implicitly also being novel.

3.2.2 According to Article 111(1) EPC 1973, when deciding on an appeal, the Board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

3.2.3 In the exercise of such discretion, in the present case an important aspect is that the opposition division did not specifically examine the issue of novelty and inventive step for subject-matter equivalent to that in

claim 1 of auxiliary request 5, which differs markedly from claim 1 as granted. This is of particular relevance when considering that the entire basis for the opposition division's decision has been taken away through the Board finding that the subject-matter of granted claim 1 is not novel.

3.2.4 In the present case, if the Board itself carried out the examination as to patentability, the parties would lose the opportunity of having an examination of the claimed subject-matter before two instances. Also, at present, the parties have not yet had the opportunity to develop their arguments with respect to the subject-matter of claim 1 of auxiliary request 5. With remittal having been requested by the appellant, and accepted as appropriate action by the respondent should the present request be admitted, the Board avails itself of its power under Article 111(1) EPC 1973 to refer the case back to the department of first instance for further prosecution.

3.2.5 For the avoidance of doubt, the Board has not decided on the allowability of claim 1 of auxiliary request 5 with respect to any requirement of the EPC, but merely that claim 1 of the request does not seem to be *prima facie* open to objection under Article 123 EPC and Article 84 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:



U. Bultmann

M. Harrison

Decision electronically authenticated