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Case Number: T 1188/14 - 3.3.08

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Title of invention:
Vaccines of bacterial outer membrane vesicles

Applicant:
GlaxoSmithKline Biologicals s.a.

Headword:
Neisseria meningitidis gonorrhoeae outer membrane vesicles/ GLAXOSMITHKLINE BIOLOGICALS

Relevant legal provisions:
EPC Art. 76(1), 83, 84, 113(1), 123(2)
RPBA Art. 12(2), 15(1), 15(3)

Keyword:
Main request - added subject-matter (yes), clarity (no);
Auxiliary requests 1 to 3 - admissibility (no);

Decisions cited:
G 0010/93, T 0190/99

Catchword:

Europäisches Patentamt
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Beschwerdekammern

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Case Number: T 1188/14 - 3.3.08

D E C I S I O N
of Technical Board of Appeal 3.3.08
of 1 March 2019

Appellant: (Applicant)	GlaxoSmithKline Biologicals s.a. rue de l'Institut 89 1330 Rixensart (BE)
Representative:	Dalton, Marcus Jonathan William GlaxoSmithKline Global Patents (CN925.1) 980 Great West Road Brentford, Middlesex TW8 9GS (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 20 December 2013 refusing European patent application No. 06124090.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	B. Stolz
Members:	P. Julià
	J. Geschwind

Summary of Facts and Submissions

I. European patent application no. 06 124 090.9, published as EP 1 792 994 (hereinafter "the patent application"), is a divisional application of the earlier European patent application no. 00 956 369.3, published under the PCT as International patent application WO 01/09350 (hereinafter "the earlier patent application"). The examining division considered the main request and auxiliary request 1 not to fulfil the requirements of Articles 82, 84, 54 and 56 EPC, and auxiliary request 2 not to fulfil those of Articles 82, 84 and 56 EPC. Accordingly, the application was refused.

II. Claim 1 of the main request read as follows:

"1. A genetically-engineered outer membrane vesicle preparation from a modified Gram-negative bacterial strain, which is *Neisseria meningitidis* or *Neisseria gonorrhoeae*, characterized in that said preparation is obtainable by employing the following process:

b) a process of upregulating expression of conserved protective OMP antigens within the outer membrane vesicle preparation comprising the steps of identifying such antigen, engineering a bacterial strain so as to introduce a stronger promoter sequence upstream of a gene encoding said antigen such that said gene is expressed at a level higher than in the non-modified outer membrane vesicle, and making outer membrane vesicles from said strain; or

i) a process of upregulating expression of conserved protective OMP antigens within the outer membrane vesicle preparation comprising the steps of identifying such antigen, engineering a bacterial strain so as to

introduce into the strain one or more further copies of a gene encoding said antigen controlled by a heterologous, stronger promoter sequence, and making outer membrane vesicles from said strain

wherein expression of the OMP antigens is at least 10% higher than that of the non-modified outer membrane vesicle."

The examining division considered, *inter alia*, the term "conserved" and the feature "genetically-engineered outer membrane vesicle preparation" to lack clarity (Article 84 EPC).

III. An appeal was lodged by the applicant (appellant). In the statement setting out the grounds of appeal, the appellant maintained the main request before the examining division and filed new auxiliary requests 1 to 3 to replace former auxiliary requests 1 and 2. Oral proceedings were requested as an auxiliary measure.

IV. The appellant was summoned to oral proceedings. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the appellant was informed of the board's provisional opinion on some of the issues of the case. In particular, the board stated that: i) the main request contravened Articles 76(1) and 123(2) EPC and did not fulfil the requirements of Articles 83, 84 and 54 EPC; ii) auxiliary requests 1 to 3 were likely not to be admitted into the appeal proceedings (Article 12(4) RPBA); iii) none of auxiliary requests 1 to 3 overcame all the objections raised against the main request; iv) the objections raised against the main request applied equally to auxiliary request 1; v) auxiliary requests 2 and 3 might overcome

the objection raised for lack of novelty but not any of the other objections raised against the main request; and vi) amendments introduced into auxiliary request 3 gave rise to new objections under Articles 76(1), 123(2) and 84 EPC.

V. Under cover of a letter dated 22 February 2019, the appellant, without making any substantive submissions, informed the board of its intention not to attend the oral proceedings and requested a decision on the basis of the file.

VI. Oral proceedings were held on 1 March 2019 in the absence of the appellant.

VII. Claim 1 of auxiliary request 1 reads as claim 1 of the main request, except for the preamble which reads as follows:

"1. An outer membrane vesicle preparation from a genetically-engineered Gram-negative bacterial strain, which is *Neisseria meningitidis* or *Neisseria gonorrhoeae*, characterized in that said preparation is obtainable by employing the following process: ... [as in claim 1 of the main request]."

VIII. Claim 1 of auxiliary request 2 reads as claim 1 of the main request, except for the amendment introduced after part (i) of claim 1:

"1. ... [as in claim 1 of the main request] ... wherein one or more genes are upregulated from a list consisting of: NspA, Hsf-like, Hap, OMP85, PilQ, PldA, TbpA, FhaB, HasR, lipo02, Tbp2(lipo28), and MltA(lipo30), and wherein ...[as in claim 1 of the main request]."

IX. Claim 1 of auxiliary request 3 reads as follows:

"1. A genetically-engineered outer membrane vesicle preparation from a modified Gram-negative bacterial strain, which is *Neisseria meningitidis* or *Neisseria gonorrhoeae*, characterized in that said preparation is obtainable by employing the following process:

a) upregulating expression of one or more of NspA, Hsf-like, Hap, OMP85, PilQ, PldA, TbpA, FhaB, HasR, lipo02, Tbp2 (lipo28), and MltA (lipo30) antigens within the outer membrane vesicle preparation, comprising the steps of engineering a bacterial strain so as to:

i) introduce a stronger promoter sequence upstream of a gene encoding said antigen such that said gene is expressed at a level higher than in the non-modified outer membrane vesicle; or

ii) introduce into the strain one or more further copies of a gene encoding said antigen controlled by a heterologous, stronger promoter sequence;

b) downregulating expression in the outer membrane vesicle production strain of PorA; and

c) making outer membrane vesicles from said strain,

wherein expression of the OMP antigens is at least 10% higher than that of the non-modified outer membrane vesicle."

X. The submissions made by the appellant, insofar as relevant to this decision, may be summarised as follows:

Main request
Articles 76(1) and 123(2)EPC

No submissions were made in this respect.

Article 84 EPC

The term "conserved" within the expression "conserved protective OMP antigens" in claim 1 was commonly used in the (vaccine) art and thus, neither ambiguous nor open to interpretation for a skilled person when reading the claims with a mind willing to understand and taking into account the whole content of the patent application. There were several passages in the patent application referring to "conserved" antigens and to prior art concerned with antigen conservation. The skilled person would have understood that the outer membrane vesicle (OMV) preparation referred to in claim 1 was obtained from a genetically-engineered (modified) bacterium. It was in this sense that the feature "genetically-engineered outer membrane vesicle preparation" in the preamble of claim 1 would have been understood by a skilled person reading the claim with a mind willing to understand. No submissions were made in respect of the other objections raised by the board under Article 84 EPC in its communication pursuant to Article 15(1) RPBA.

Admission of auxiliary requests 1 to 3 into the appeal proceedings

No submissions were made in this respect.

XI. The appellant (applicant) requested that the decision under appeal be set aside and a patent be granted on the basis of the main request or, in the alternative, any of auxiliary requests 1 to 3.

Reasons for the Decision

Article 113(1) EPC

1. By its decision not to attend the oral proceedings and not to file substantive arguments in reply to the issues raised in the board's communication pursuant to Article 15(1) RPBA, the appellant has chosen not to make use of the opportunity to comment on the board's provisional opinion, either in writing or at the oral proceedings, although this opinion was at the appellant's disadvantage. According to Article 15(3) RPBA, the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying on its written case.

2. In the light thereof, the present decision is based on the same grounds, arguments and evidence on which the provisional opinion of the board was based.

Extent of the appeal

3. In an appeal from a decision of an examining division in which a European patent application was refused, the board of appeal has the power to examine whether the application or the invention to which it relates meets the requirements of the EPC. The same is true for requirements the examining division did not take into

consideration in the examination proceedings or which it regarded as having been met. If there is reason to believe that such a requirement has not been met, the board shall include this ground in the proceedings (Headnote, decision G 10/93, OJ EPO 1995, 172).

4. In the decision under appeal, the objections raised by the examining division were under Articles 82, 84, 54 and 56 EPC. However, in the communication pursuant to Article 15(1) RPBA, the board informed the appellant that the board had serious doubts whether the appellant's requests contravened Articles 76(1), 123(2) and 83 EPC. Therefore, the board considered expedient to examine these articles and to inform the appellant of its provisional opinion on these articles.

Main request

5. The main request is identical to the main request underlying the decision under appeal and thus, it already forms part of the proceedings.

Articles 76(1) and 123(2) EPC

6. The description and Figures of the patent application are identical to those of the earlier patent application; differences are apparent in the Sequence Listing and the claims of the two documents.

7. According to the established case law of the Boards of Appeal, the content of the patent application must not be considered as a reservoir from which features pertaining to separate embodiments of the patent application can be combined to create new embodiments (cf. "Case Law of the Boards of Appeal of the EPO", 8th edition 2016, II.E.1.4.1, 419). The question of

what may be rendered obvious by the disclosure of the patent application in the light of the common general knowledge is not relevant for the assessment of what is implied by this disclosure (cf. "Case Law", *supra*, II.E.1.2.3.a), 407).

8. Whilst claim 1 of the earlier patent application and of the patent application are directed to the preparation of genetically-engineered outer membrane vesicles (OMV) from Gram-negative bacterial strains in general, claim 1 of the main request has been limited to OMV preparations from the specific *Neisseria meningitidis* and *N. gonorrhoeae* strains. As a consequence thereof, the dependent claims of the main request and all combinations thereof relate directly to both *N. meningitidis* and *N. gonorrhoeae*. In particular, the combination of claim 1 with claims 3, 17 and 18 of the main request results in OMV preparations from *N. meningitidis* or *N. gonorrhoeae* strains, wherein the expression of one or more genes of a specific group of genes ("galE, siaA, siaB, siaC, siaD, ctrA, ctrB, ctrC, and ctrD") is reduced or switched off by process h) (claim 3), the expression of one or more genes of another specific group of genes ("NspA, Hsf-like, Hap, OMP85, PilQ, PldA, TbpA, FhaB, HasR, lipo02, Tbp2 (lipo28), and MltA (lipo30)") is up-regulated by process b) and/or i) (claim 17), and the expression of one or more genes of yet another specific group of genes ("PorA, PilC, TbpB, LbpA, LbpB, Opa, and Opc") is down-regulated (claim 18). This combination corresponds to a combination of dependent claims 14 to 16 and 20 of the earlier patent application and claims 18 to 21 of the patent application. However, claim 14 of the earlier patent application and claim 18 of the patent application are directed only to *N. meningitidis* strains but not to *N. gonorrhoeae*.

9. The board is aware of the parts of the earlier patent application and the patent application describing "*Neisserial bleb preparations*" in general, such as page 31, lines 1 to 22 of the earlier patent application, and page 14, paragraphs [0092] to [0097] of the patent application. However, none of these passages supports, directly and unambiguously, the particular combination of the specific processes with the specific group(s) of genes for obtaining the genetically-engineered OMV preparations from *N. gonorrhoeae* strains. Although *N. meningitidis* and *N. gonorrhoeae* are closely related species, they have very relevant differences in their portal of entry/ pathogenesis (respiratory/genital-urinary), genetic and morphological properties, secretomes, growth requirements, etc., including the presence/absence of a polysaccharide capsule (*N. meningitidis*/*N. gonorrhoeae*, respectively) and of several (membrane) proteins, such as PorA, Opc, etc. present in *N. meningitidis* but not in *N. gonorrhoeae* strains.

10. Therefore, in line with the case law referred to above, the board considers that the combination of claim 1 of the main request, in particular when concerned with a *N. gonorrhoeae* strain, with dependent claims, such as claims 3, 17 and 18, results in subject-matter that is not directly and unambiguously disclosed in the patent application or the earlier patent application. Claim 1 of the main request and thus, the main request, contravenes Articles 76(1) and 123(2) EPC.

Article 84 EPC

11. The decision of the examining division on Article 84 EPC concerned two features present in

claim 1, namely i) the feature "conserved protective OMP antigens", in particular the term "conserved"; and ii) the feature "genetically-engineered outer membrane vesicle preparation". The term "conserved" was considered to be ambiguous, open to interpretation (across several strains, pathogen species, etc.) and not to define a clear boundary between conserved and non-conserved outer membrane proteins (OMP) or antigens. The second feature was held unclear because a vesicle was considered to be devoid of any genetic material (cf. pages 2 to 4, point 2 of the decision under appeal).

12. The board agrees with the appellant on the relevance of the case law that requires to rule out illogical or technically meaningless interpretations of an otherwise technically meaningful feature of a claim (cf. "Case Law", *supra*, II.A.6.1, 287; for instance decision T 190/99 of 6 March 2001). However, this case law does not allow to disregard all logical and technically meaningful interpretations of a feature and to select the one which suits the applicant/appellant. This case law does not apply to a feature which has, in the context of the claim, several logical and technically meaningful interpretations and thereby, renders the scope of the claim ambiguous and open to interpretation.

13. As regards the first feature objected to by the examining division, the board considers that the presence of two *Neisseria* species (*N. meningitidis* and *N. gonorrhoeae*) in the preamble of claim 1 renders the term "conserved" ambiguous, because this term may refer either to a protective OMP antigen conserved in (between) both, *N. meningitidis* and *N. gonorrhoeae* (but not in other *Neisseria* species) or to an antigen

conserved only in *N. meningitidis* strains (several strains, serogroups, etc. how many?) or in *N. gonorrhoeae* strains. According to the first interpretation, claim 20 - directed to a vaccine comprising the OMP preparations of claim 1 and a pharmaceutically acceptable excipient - relates to a vaccine for use against both species. According to the second interpretation, claim 20 relates to a vaccine that may be used against either *N. meningitidis* or *N. gonorrhoeae*, but not against both species.

14. As regards the second feature objected to by the examining division, appellant's interpretation requires to link this feature, namely "the genetically-engineered outer membrane vesicle preparation", with the reference to a "modified Gram-negative bacterial strain" present also in the preamble of claim 1. Claim 1 is a product-by-process claim wherein the claimed OMV preparation is defined by the steps characterizing the method(s) of preparation. These steps are cited in process b) and i) of claim 1 with reference to "engineering a bacterial strain" and a "non-modified outer membrane vesicle". In view thereof, the board considers that the terms "engineering" and "modified" are not coherently/consistently used in the preamble and in the characterizing part of claim 1; if at all, they are used as if they were completely interchangeable. This incoherency/inconsistency renders the scope of the claim ambiguous.

15. Apart from the objections raised by the examining division, the board, in its communication pursuant to Article 15(1) RPBA, raised also the following objections under both Articles 84 and 83 EPC (cf. "Case Law", *supra*, II.C.7, 356):

15.1 Claim 1 is a product-by-process claim, wherein the claimed product (OMV preparation) is defined by the features resulting from performing the method(s) cited in the claim. For allowing this type of claims, the case law establishes certain conditions to be fulfilled, namely that the claimed product must be patentable and that it cannot be described in any other way (cf. "Case Law", *supra*, II.A.7.2 and II.A.7.3, 296 and 298, respectively). In the present case, the claimed OMV preparation is characterized by a sole and essential feature, namely an "expression of the OMP antigens [that] is at least 10% higher than that of the non-modified outer membrane vesicle". It is thus questionable whether the conditions referred to by the case law are fulfilled in the present case.

15.2 According to claim 1, process b) and i) require to up-regulate the expression of the conserved protective OMP antigens within the OMV preparation, when in fact the actual up-regulation of the expression of the genes encoding the OMP antigens and the translation of the expressed mRNAs to the corresponding encoded OMP antigens take place within the bacterial strain. It is only afterwards that the OMP antigens are incorporated into the outer membrane and the OMVs released. In this sense, the wording of claim 1 is ambiguous because it is not clearly and unambiguously derivable whether the feature "wherein expression of the OMP antigens is at least 10% higher" refers to the expression of the genes encoding the OMP antigens by the stronger promoter (within the modified bacterial strain) and/or to the amount of the OMP antigens within the claimed OMV preparation.

15.3 According to the appellant, the presence of a stronger promoter and of an up-regulated expression of the genes

encoding the conserved protective OMP antigens equates directly with a higher level of translation and production of the corresponding encoded OMP antigens and, therefore, with a higher level/amount of these OMP antigens in the OMV preparation. In other words, the (up-regulated) expression of the genes encoding the conserved protective OMP antigens directly correlates with the increased amount of the conserved protective OMP antigens in the OMV preparation. However, there is no evidence in the patent application that this is actually the case, let alone for each and every conserved protective OMP antigen, in particular for heterologous OMP antigens and for all levels of up-regulation/increased expression of these genes. Whilst high levels of up-regulated expression may alter some cellular (transcription, translation, export, etc.) machinery/mechanisms with important (saturation/ inhibition) effects within the genetically-engineered/ modified *Neisseria* strain and in the structure/ composition of the OMV preparation, low levels of up-regulated expression will be hardly distinguishable from the usually stochastic (promoter) gene expression and, accordingly, not reflected in the composition of the OMV preparation.

15.4 Although the molecular and cellular mechanisms of blebbing or bleb production are not fully characterized, it is widely accepted that membrane blebs are released constitutively from *Neisseria* bacteria and that said release is influenced by several factors, including culture growth phase and conditions (higher yield when harvested from late logarithmic/ early stationary phase culture, external/internal stressful conditions, etc.). Bleb production is a dynamic process that results in a morphologically (lobed, spherical, elongated or tubular, etc.) diverse

collection of membrane vesicles of a wide-range of dimensions and distinct differences in their proteomic composition and concentration.

If the feature in claim 1 referred to above requires a 10% higher amount of conserved protective OMP antigens in the claimed OMV preparation, a comparison must be performed between OMV preparations derived from genetically-engineered/modified *Neisseria* strains and from non-modified *Neisseria* strains. Both strains have to be cultured, and the OMVs isolated, under identical conditions. However, in view of the high diversity of bleb morphology, structure and protein profile, an (absolute) quantitative comparison of a specific OMP protein remains a challenge, the more so when the discriminating value is as low as only 10%, a value which may be comprised within the normal (average) variability of OMV preparations.

16. As regards other dependent claims, the board raised also the following objections in its communication pursuant to Article 15(1) RPBA:

16.1 Claim 3 refers to process h) which relies either on a reduction or on the switching off of the expression of one or more genes ("galE, siaA, siaB, siaC, siaD, ctrA, ctrB, ctrC, and ctrD"). Whilst switching off the expression of a gene is absolute, this is not the case for a reduction which is only relative. Contrary to the up-regulation referred to in claim 1, there is no indication in claim 3 as regards the level of reduction. Thus, in analogy to claim 1, this reduction can be understood to be as low as 10% or even lower. Therefore, the deficiencies referred to above for claim 1 apply also to claim 3. Moreover, there is no indication in claim 3 of any method steps required for

reducing/switching off the expression of the listed genes within the genetically modified *Neisseria* strain.

16.2 Claim 17 refers to processes b) and/or i) of claim 1 and to one or more genes of a list of specific (up-regulated) genes ("NspA, Hsf-like, Hap, OMP85, PilQ, PldA, TbpA, FhaB, HasR, lipo02, Tbp2 (lipo28), and MltA (lipo30)") which are thus assumed to encode the conserved protective OMP antigens referred to in claim 1. Claim 18 refers to one or more genes of a list of specific (down-regulated) genes ("PorA, PilC, TbpB, LbpA, LbpB, Opa, and Opc") but it does not refer to any process for carrying out said down-regulation. Moreover, the genes cited in claim 18 differ from those cited in claim 3 and thus it cannot be assumed that the nature/properties of the genes cited in claim 18 are the same as those of the genes cited in claim 3 and/or that the process for down-regulating the genes cited in claim 18 is process h) cited in claim 3. Indeed, the process for down-regulating any of the genes mentioned in claim 18 appears to be process a) (cf. page 10, paragraphs [0056] to [0061]; and page 14, paragraph [0093] of the patent application). In the absence of a reference to process a) and to the properties of the listed genes, the wording of claim 18 is ambiguous since, although being written in terms similar to those of preceding claim 17, the subject-matter of claim 18 relates to new subject-matter (process/genes) not mentioned in any of the preceding claims.

16.3 According to the case law, a claim must define or indicate all essential features, i.e. all features which are necessary for solving the technical problem (cf. "Case Law", *supra*, II.A.3.2, 272). On page 11, paragraph [0066] of the patent application, the

toxicity of bleb vaccines is mentioned as one of the largest problems. LPS-mediated toxicity and the relevance of the primary LPS component, i.e. the lipid A portion, in said toxicity is known in the art and acknowledged in this paragraph. The description refers to several processes, such as process d), for genetically engineering/modifying the *Neisseria* strain (by reducing or switching off one or more genes and altering the toxicity of lipid A) in order to obtain non-toxic bleb preparations. In the board's view, non-toxicity is an essential feature of OMV preparations that are intended to be used as vaccines, medicaments and/or in the preparation of these products. However, this feature is not mentioned in any of claims 20 to 22, 24, 26 and 27, all of them directed to such subject-matter. It is also questionable whether a vaccine/medicament comprising conserved protective OMP antigens (merely 10% higher than in non-modified OMVs) derived from OMV preparations comprising toxic components may provide any advantage/improvement over known vaccines/medicaments comprising OMP antigens and non-toxic components.

16.4 In this context, the question arises whether claim 18 defines also essential features for the preparation of OMVs to be used as vaccines/medicaments. The presence of immuno-dominant OMP antigens - such as those cited in claim 18 - in OMV preparations with low levels of conserved protective (but not immuno-dominant) OMP antigens may prevent any of the advantages/improvements indicated in the patent application (see page 33, Example 19 of the patent application).

17. In view of the above considerations, the board sees no reason to deviate from the findings of the examining division as regards Article 84 EPC. Thus, the main

request does not fulfil the requirements of Article 84 EPC.

Admission of auxiliary requests 1 to 3

18. According to the established case law, the function of an appeal is to give a judicial decision upon the correctness of a separate earlier decision taken by an examining or opposition division. Appeal proceedings are not an opportunity to re-run or re-open the proceedings before any of these divisions. The admission of new requests into the appeal proceedings is at the board's discretion (Articles 12(4) and 13(1) RPBA; see "Case Law", *supra*, IV.E.1, 1065 and IV.E.4, 1127).

19. Auxiliary requests 1 to 3, filed by the appellant with the statement of grounds of appeal, are new in the proceedings. In the statement setting out its grounds of appeal, the appellant did not provide any reason to explain why these new auxiliary requests have been filed only at the stage of appeal proceedings and why they could not have been filed during the examination procedure. Nor did the appellant provide an explanation in its reply to the board's communication pursuant to Article 15(1) RPBA or at the oral proceedings before the board, which the appellant did not attend.

20. Objections under Articles 82, 84, 54 and 56 EPC were already mentioned in the extended European search report (on 11 September 2007). These objections were maintained by the examining division in a first communication pursuant to Article 94(3) EPC issued on 30 September 2009. In response thereto, the applicant/ appellant filed an amended set of claims and introduced *inter alia* the features "conserved" and "... at least

10% higher ..." (with letter of 9 April 2010). The examining division addressed the new claims and features in a second communication under Article 94(3) EPC (issued on 29 July 2011) and maintained all the objections raised against previous claim requests. In reply thereto, the applicant/ appellant filed (with letter of 25 May 2012) an amended claim request which is the main request underlying the decision under appeal. In the "Summons to attend oral proceedings pursuant to Rule 115(1) EPC" (issued on 16 September 2013), the examining division addressed again the same features and maintained the objections raised under Articles 82, 84, 54 and 56 EPC. In reply thereto, the applicant/appellant filed (with letter of 21 October 2013) auxiliary requests 1 and 2 underlying the decision under appeal and announced its intention not to attend the oral proceedings. Oral proceedings before the examining division were held on 21 November 2013 in the absence of the applicant/ appellant.

21. In view of the course of events in the examination procedure, the board considers that the applicant/ appellant had ample opportunities to file auxiliary requests comprising the amendments now proposed in new auxiliary requests 1 to 3 at an earlier stage during the examination procedure. In its communication pursuant to Article 15(1) RPBA, the board informed the appellant that, in the exercise of its discretion under Article 12(4) RPBA, it intended not to admit these auxiliary requests into the proceedings. The more so, since none of them was considered to overcome all the objections raised against the main request, in particular those raised under Articles 76(1), 123(2) and 84 EPC (cf. points 36 to 40 of the board's communication pursuant to Article 15(1) RPBA).

22. Thus, the board, in the exercise of its discretion under Article 12(4) RPBA, does not admit the new auxiliary requests 1 to 3 into the appeal proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Malécot-Grob B. Stolz

Decision electronically authenticated