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**Datasheet for the decision
of 28 June 2019**

Case Number: T 0776/15 - 3.2.07

Application Number: 09171919.5

Publication Number: 2177482

IPC: C03B33/033, C03B33/07

Language of the proceedings: EN

Title of invention:

Method for cutting laminated glass sheets

Patent Proprietor:

BIESSE S.p.A.

Opponent:

HEGLA GmbH & Co. KG

Headword:

Relevant legal provisions:

EPC Art. 100(a), 54, 123(2)

RPBA Art. 12(4), 13(1), 13(3), 15(6)

Keyword:

Late filed argument - change of subject-matter - admitted (no)

Novelty - main request (no)

Amendments (auxiliary requests 1 and 6) - allowable (no)

Late-filed auxiliary requests 2 to 5, 7 to 10, 12, 13 -
admitted (no)

Decisions cited:

Catchword:



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Case Number: T 0776/15 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 28 June 2019

Appellant: BIESSE S.p.A.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 February 2015 concerning maintenance of the
European Patent No. 2177482 in amended form.**

Composition of the Board:

Chairman I. Beckedorf
Members: K. Poalas
V. Bevilacqua

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining European patent No. 2 177 482 in amended form.
- II. Opposition had been filed against the patent as a whole based on Articles 100(a) EPC (lack of novelty and inventive step) and 100(b) EPC (insufficient disclosure).
- III. The opposition division found that the subject-matter of the independent claim 1 of the then second auxiliary request filed during the oral proceedings meets the requirements of the EPC.
- IV. The Board issued a communication pursuant to Article 15(1) RPBA with its preliminary opinion on the appeal case. According to the Board's review of the decision under appeal and its assessment of the parties' written submissions during the appeal proceedings, the appeal was likely to be dismissed.
- V. Oral proceedings before the Board took place on 28 June 2019.

The patent proprietor finally requested

that the decision under appeal be set aside and that the patent be maintained as granted (main request),
or, in the alternative,

that the patent be maintained in amended form on the basis of one of the sets of claims filed as auxiliary requests 1 to 10 with letter dated 18 April 2019 and as auxiliary requests 12 and 13 during the oral proceedings.

The opponent requested

that the appeal be dismissed.

For further details from the oral proceedings, in particular the matters discussed with the parties and the parties' statements on procedural matters, reference is made to the minutes thereof.

The decision was given at the end of the oral proceedings.

VI. The following document is referred to in the present decision:

A1 : Originally filed application EP09171919.5.

VII. The independent claim 1 according to the **main request**, i.e. according to the patent as granted, reads as follows (with the numbering a) to g) added by the Board):

Claim 1

"a) A method for cutting a laminated glass sheet (2) along predetermined lines, the sheet including an upper glass sheet (3), a lower glass sheet (4) and an intermediate film (5) of synthetic plastics material, said method including the following steps:
b) - making incisions in both glass sheets (3, 4) along

a predetermined cutting line (T), the incisions being effected by the passage of respective disc cutters (16, 18) across the glass sheets (3, 4), the cutters (16, 18) being moved simultaneously in a first direction along the cutting line (T);

c) - moving a pressure roller (17) across the upper glass sheet (3) in the opposite direction from the previous movement and so as to cause the lower glass sheet (4) to break off;

d) - raising a first portion (21) of the laminated sheet (2) which is on one side of the cutting line (T) by means of the upwardly displacement of support means (23, 24) which cooperate with the lower glass sheet (4);

e) - exerting a predetermined pressure downwardly against a second portion (20) of the laminated sheet (2) which is on the opposite side of the cutting line (T) from the first portion (21) by means of a pressure element (12) brought into cooperation with the upper sheet (3) of the second portion (20) so as to cause the upper sheet (3) to break off; and

f) - cutting the intermediate film (5) by localised heating (22) thereof along the cutting line (T) characterized in that

g) before said raising step of the first portion (21) of the laminated glass sheet (2), the lower surface of said first portion (21) is engaged by suction cup holding means (23)".

The independent claim 1 according to the **first auxiliary request** reads as follows (with the numbering a) to g) added by the Board and amendments over claim 1 of the main request highlighted in bold):

"a) A method for cutting a laminated glass sheet (2) along predetermined lines, the sheet including an upper

glass sheet (3), a lower glass sheet (4) and an intermediate film (5) of synthetic plastics material, said method including the following steps:

b) - making incisions in both glass sheets (3, 4) along a predetermined cutting line (T), the incisions being effected by the passage of respective disc cutters (16, 18) across the glass sheets (3, 4), the cutters (16, 18) being moved simultaneously in a first direction along the cutting line (T);

c) - moving a pressure roller (17) across the upper glass sheet (3) in the opposite direction from the previous movement and so as to cause the lower glass sheet (4) to break off;

d) - raising a first portion (21) of the laminated sheet (2) which is on one side of the cutting line (T) by means of the upwardly displacement of support means (23, 24) which cooperate with the lower glass sheet (4) **only at said first portion (21);**

e) - exerting a predetermined pressure downwardly **only** against a second portion (20) of the laminated sheet (2) which is on the opposite side of the cutting line (T) from the first portion (21) by means of a pressure element (12) brought into cooperation with the upper sheet (3) of the second portion (20) **to push said second portion (20) against a support table (8)** so as to cause the upper sheet (3) to break off; and

f) - cutting the intermediate film (5) by localised heating (22) thereof along the cutting line (T) characterized in that

g) before said raising step of the first portion (21) of the laminated glass sheet (2), the lower surface of said first portion (21) is engaged by suction cup holding means (23)".

The independent claim 1 according to the **sixth auxiliary request** reads as follows (with the numbering

a) to g) added by the Board and amendments over claim 1 of the main request are highlighted bold):

"a) A method for cutting a laminated glass sheet (2) along predetermined lines, the sheet including an upper glass sheet (3), a lower glass sheet (4) and an intermediate film (5) of synthetic plastics material, said method including the following steps:

b) - making incisions in both glass sheets (3, 4) along a predetermined cutting line (T), the incisions being effected by the passage of respective disc cutters (16, 18) across the glass sheets (3, 4), the cutters (16, 18) being moved simultaneously in a first direction along the cutting line (T);

c) - moving a pressure roller (17) across the upper glass sheet (3) in the opposite direction from the previous movement and so as to cause the lower glass sheet (4) to break off;

d) - raising a first portion (21) of the laminated sheet (2) which is on one side of the cutting line (T) by means of the upwardly displacement of support means (23, 24) which cooperate with the lower glass sheet (4) **only at said first portion (21);**

e) - exerting a predetermined pressure downwardly **only** against a second portion (20) of the laminated sheet (2) which is on the opposite side of the cutting line (T) from the first portion (21) by means of a pressure element (12) brought into cooperation with the upper sheet (3) of the second portion (20) **to push said second portion (20) against a support table (8)** so as to cause the upper sheet (3) to break off; and

f) - cutting the intermediate film (5) by localised heating (22) thereof along the cutting line (T) characterized in that

g) before said raising step of the first portion (21) of the laminated glass sheet (2), the lower surface of

said first portion (21) **only** is engaged by suction cup holding means (23)".

The independent claims 1 of **auxiliary requests 2 to 5** are based on claim 1 of the first auxiliary request (filed together with the statement setting out the grounds of appeal as first auxiliary request) and disclose further features derived from the description. The independent claims 1 of **auxiliary requests 7 to 10** are based on claim 1 of the sixth auxiliary request (filed together with the statement setting out the grounds of appeal as second auxiliary request) and disclose further features derived from the description.

The independent claims 1 of the **auxiliary requests 12 and 13** correspond to claims 1 of the first and the sixth auxiliary requests with the feature "to push said second portion (20) against a support table (8)" being deleted.

VIII. The patent proprietor's essential lines of argument in the appeal proceedings, as far as they are relevant for this decision, can be summarised as follows and are dealt with in detail in the Reasons for the Decision:

The public availability of the Hegla VSG-M glass cutting machine is contested. Feature e) of claim 1 of the patent as granted is not known from the Hegla VSG-M glass cutting machine in use.

The claims 1 of auxiliary requests 1 and 6 meet the requirements of Article 123(2) EPC.

Auxiliary requests 2 to 5, 7 to 10, 12 and 13 should be admitted into the proceedings.

IX. The opponent's essential lines of argument in the appeal proceedings, as far as they are relevant for

this decision, can be summarised as follows and are dealt with in detail in the Reasons for the Decision:

The patent proprietor should not be allowed to contest for the first time in the oral proceedings the public availability of the Hegla VSG-M glass cutting machine. Feature e) of claim 1 of the patent as granted is known from the Hegla VSG-M glass cutting machine in use. The claims 1 of auxiliary requests 1 and 6 do not meet the requirements of Article 123(2) EPC. Auxiliary requests 2 to 5, 7 to 10, 12 and 13 should not be admitted into the proceedings.

Reasons for the Decision

1. *Admissibility of the patent proprietor's denial of the public availability of the public prior use*
- 1.1 The Board notes that the public availability of the Hegla VSG-M glass cutting machine, which the opposition division considered novelty destroying for the subject-matter of claim 1 of the patent as granted (main request), had neither been contested by the patent proprietor during the opposition proceedings nor in the present appeal proceedings until the oral proceedings before the Board.
- 1.2 The patent proprietor justified this denial merely by a re-reading of the documents present in the file in preparation of the oral proceedings before the Board. No substantiation of the denial of the public prior use according to B10 in terms of specific counter-arguments and counter-facts or by indicating particular circumstances that put in doubt the opponent's case were provided by the patent proprietor.
- 1.3 The respondent requested that the appellant's blank denial not be taken into consideration in the appeal proceedings and pointed out that due to the documents B1 (order confirmation "Auftragsbestätigung"), B2 (acceptance protocol "Abnahmeprotokoll") B3 (invoice "Rechnung") the public availability of the Hegla VSG-M glass cutting machine was proven.
- 1.4 The Board notes that, from the aim of opposition-appeal proceedings to obtain judicial review of the administrative opposition decision, it can be directly inferred that the parties have only limited scope to

amend the subject of the dispute in appeal proceedings; and this principle is reflected in Article 12(4) RPBA. The appeal proceedings are not about bringing an entirely fresh case.

- 1.5 Hence, if the patent proprietor had wished to question the public availability, upon which the opponent relied by submitting detailed arguments, supporting documents (B1 to B10) and an offer of witness evidence already with the reasoned notice of opposition, and which was discussed in detail throughout the opposition proceedings up to the decision under appeal, the patent proprietor could and should have contested it in those proceedings. Since the patent proprietor did not submit any credible justification for having failed to present the denial during the proceedings leading to the decision under appeal, the Board, already for this reason, exercises its discretion to hold inadmissible the late denial of an uncontested fact.
- 1.6 Furthermore, according to Article 13(1) RPBA any amendment to an appellant's case after it has filed its grounds of appeal may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject matter submitted, the current state of the proceedings and the need for procedural economy.
- 1.7 In the present case the Board considers that the appellant's blank denial of the public availability of the Hegla VSG-M glass cutting machine cannot question the opponent's corresponding specific evidences B1, B2 and B3, said later being filed with the letter of opposition and their evidencing status being remained unquestioned until the oral proceedings before the Board. Raising this issue at the latest stage of the

appeal proceedings, namely during the oral proceedings, the patent proprietor intends to kick off a totally new discussion on a complicate issue which has not been discussed until that point during the whole opposition-appeal proceedings. This goes obviously against the need for procedural economy.

1.8 For the above-mentioned reasons the Board exercises its discretion not to admit said amendment of the patent proprietor's case into the proceedings.

2. *Claim 1 of the main request - novelty, Articles 100(a) and 54 EPC*

2.1 The patent proprietor disputes that feature e) of claim 1 is known from the prior art Hegla VSG-M glass cutting machine in use.

2.2 The Board shares in this respect the opponent's view that through the provision of a pair of hold-down devices ("Niederhalter") on opposite sides of the cutting line, one of said hold-down devices ("Niederhalter") is to be considered as a pressure element (i.e. one hold-down device, "Niederhalter") exerting a predetermined **pressure downwardly** against a second portion of the laminated sheet which is on the opposite side of the cutting line from the first portion, said pressure element being thereby brought into cooperation with the upper sheet of the second portion so as to cause the upper sheet to break off (see B6, B7-3, B7-5, B9 and B8).

2.3 The patent proprietor argues that it is not directly and unambiguously derivable from said prior use that the hold-down device ("Niederhalter") exerts a predetermined **pressure downwardly** against a second

portion of the laminated sheet which is on the opposite side of the cutting line from the first portion, when said pressure element is brought into cooperation with the upper sheet of the second portion so as to cause the upper sheet to break off, since said hold-down device ("Niederhalter") is a stop member only supporting the breakage action.

- 2.4 The Board disagrees. Claim 1 does not require any active action or movement for the pressure element. It only requires the exertion of a predetermined **pressure** downwardly. When the glass in the prior art Hegla VSG-M glass cutting machine in use is raised by means of the upwardly displacement of support means which cooperate with the lower glass sheet according to feature d) of claim 1, the glass comes into contact with the lowered hold-down device ("Niederhalter") and said hold-down device exerts a predetermined **pressure** downwardly against the glass, so that, in cooperation with the upwardly displacing support means cause the upper sheet to break off.
- 2.5 Given that the patent proprietor did not questioned the presence of the other features of claim 1 beside feature e) in the prior art Hegla VSG-M glass cutting machine in use the Board considers that all the method steps of claim 1 are anticipated from the prior art Hegla VSG-M glass cutting machine in use.
- 2.6 The patent proprietor argues further, that claim 1 is an "or" claim covering either a symmetrical or a non-symmetrical laminated glass sheet cutting method. Since the prior art Hegla VSG-M glass cutting machine in use concerns a symmetrical laminated glass sheet cutting method only, the other, non-symmetrical cutting method covered by the wording of claim 1 is not anticipated by

the prior art Hegla VSG-M glass cutting machine in use.

2.7 The Board disagrees again. Once all method steps claimed in a method claim are known from a prior art, then obviously said prior art is novelty destroying for the claimed method, independently of whether said known method has further characteristics not mentioned in said claim, i.e. whether it is a symmetrical or a non-symmetrical method. In the present case, due to its broad wording claim 1 does not exclusively refer to a non-symmetrical glass cutting method, as argued by the patent proprietor, and the Hegla VSG-M glass cutting machine in use is novelty destroying for the subject-matter of claim 1.

2.8 The Board considers further the patent proprietor's allegation that in claim 1 **only** a non-symmetrical cutting method is claimed, as being incorrect. As argued above, the broad wording of claim 1 allows a broad interpretation of the subject-matter of claim 1, which covers also a symmetrical glass cutting method as known from the prior use of the Hegla VSG-M glass cutting machine.

2.9 For the above-mentioned reasons the subject-matter of claim 1 is not novel (Articles 52(1) and 54(2) EPC) over the prior use of the Hegla VSG-M glass cutting machine.

3. *Claims 1 of auxiliary requests 1 and 6 - unallowable amendments, Article 123(2) EPC*

3.1 According to the amendments in feature e) of claims 1 of the auxiliary requests 1 and 6, only the second portion 20 of the laminated glass sheet is pushed against a support table 8, whereby said support table

is not further specified and may take any form or position.

- 3.2 The patent proprietor argues that the basis for the introduction of the support table into claims 1 of the auxiliary requests 1 and 6 is to be found in paragraph 31 of A1, said paragraph disclosing no further limitations as far as it concerns said support table.
- 3.3 The Board, following the corresponding opponent's arguments, considers that in all figures of the present application the same machine for implementing the method according to the present invention is depicted, see paragraph 11 of A1. Paragraph 31 of A1 is therefore not a standing alone paragraph but it is a paragraph referring to the same machine depicted not only in figures 7 and 7A but also in the preceding paragraphs. Therefore, reference is made in paragraph 31 to **the** support table 8. Support table 8 is for the first time mentioned in A1 in paragraph 13 and in the expression "**two** support tables 7 and 8". In the same paragraph 13 further restrictions for **the** supports tables 7 and 8 are imposed (arranged adjacent and coplanar with each other, defining thereby a plane for supporting the laminated sheet 2 to be cut). It is further defined in said paragraph 13 the positioning of the cutting heads 9, 10 with respect to said support tables as depicted also in the corresponding figures. Accordingly, **the** support table 8 mentioned in paragraph 31 is the one mentioned also in paragraph 13 and depicted in the figures with all the corresponding restrictions mentioned above. The introduction of the support table 8 into claim 1 of auxiliary requests 1 and 6 without any reference to the above-mentioned restrictions results therefore in an unallowable intermediate

generalisation.

3.4 The patent proprietor argues further in this respect that it is unreasonable for a patent proprietor to have to incorporate all structural features of a machine into the corresponding method claim.

3.5 The Board notes firstly that when structural features are introduced into a method claim, as it is the case here, then the structural features **needed for performing the claimed method** have to be introduced into the claim. In the present case these features are mentioned in paragraphs 13 and 31 of A1 and are depicted in the corresponding figures. These features have not been taken over into claims 1 of the auxiliary requests 1 and 6, contrary to the requirements of Article 123(2) EPC.

3.6 For the above-mentioned reasons, the claims 1 of the auxiliary requests 1 and 6 do not meet the requirements of Article 123(2) EPC.

4. *Admittance into the proceedings of auxiliary requests 2 to 5 and 7 to 10*

4.1 Taken as a whole, the Rules of Procedure of the Boards of Appeal make it clear that appeal proceedings are primarily written in nature, with Article 12(2) RPBA requiring that the parties' complete case be submitted at the outset. The purpose of this provision is to ensure fair proceedings for all concerned and to enable the board to start working on the case on the basis of both parties' complete submissions. In *inter partes* proceedings, both rights and obligations should be divided equally among the parties so that the board can perform its independent judicial function (see Case Law

of the Boards of Appeal, 8th edition 2016, IV.E.4.2.4). Therefore, if auxiliary requests are submitted, reasons have to be given to explain by what means and how they overcome the objections raised in the appeal proceedings.

4.2 Furthermore, according to Article 13(1) RPBA, it is in the Board's discretion to admit and consider any amendment to a party's case after it has filed its grounds of appeal or reply. The discretion shall be exercised in view of *inter alia* the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. Moreover, according to Article 13(3) RPBA amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party cannot reasonably be expected to deal without adjournment of the oral proceedings.

4.3 In the present case, in its reply to the statement setting out the grounds of appeal, the opponent raised objections based on Articles 123(2), 83, 84, 52 and 56 EPC against auxiliary requests 1 and 6 (then auxiliary requests 1 and 2). Also the Board questioned during the written proceedings (see its communication dated 19 March 2019) the fulfillment of the requirements of Article 123(2) EPC by auxiliary requests 1 and 6.

4.4 With its letter dated 18 April 2019 the patent proprietor filed for the first time in the present proceedings auxiliary requests 2 to 5 and 7 to 10. The independent claims 1 of the auxiliary requests 2 to 5 are based on claim 1 of the first auxiliary request (filed together with the statement setting out the grounds of appeal as first auxiliary request) and

disclose further **features derived from the description**. The independent claims 1 of auxiliary requests 7 to 10 are based on claim 1 of the sixth auxiliary request (filed together with the statement setting out the grounds of appeal as second auxiliary request) and disclose further **features derived from the description**.

- 4.5 In said letter dated 18 April 2019, **not a single argument to substantiate** why the filed auxiliary requests were meant to overcome the objections raised in the opponent's reply to the statement setting out the grounds of appeal and in the Board's communication was submitted by the patent proprietor. The patent proprietor only pointed out therein where basis was to be found in the originally filed application for the additional features introduced into claims 1 of said auxiliary requests.
- 4.6 The patent proprietor argued during the oral proceedings that auxiliary requests 2 to 5 and 7 to 10 should be admitted into the proceedings, since the filing of said requests was its reaction to the findings in the Board's communication.
- 4.7 The Board cannot follow the above-mentioned patent proprietor's arguments for the following reasons.
- 4.8 As stated under point 4.3 above, the patent proprietor was aware of the plurality of objections raised against the present auxiliary requests 1 and 6. Knowing said substantiated objections to the claimed subject-matter raised by the opponent already by the outset of the appeal proceedings, namely by the reply to the appeal, the patent proprietor should have provided the reasons as to why the auxiliary requests 2 to 5 and 7 to 10 provided patentable subject-matter, in case the Board

followed the position of the opponent.

- 4.9 The patent proprietor did not present any argument against said objections during the written appeal proceedings.
- 4.10 The Board notes in this respect that its preliminary opinion expressed in its communication cannot be used to justify the admittance of these requests, since it only took up some of opponent's submissions and did not introduce any new issues.
- 4.11 The patent proprietor argued further that the Board introduced new facts and arguments under point 3.4 of its communication referring to the positioning of the cutting heads with respect to the support tables. This patent proprietor's allegation is incorrect, since the last complete paragraph on page 41 of the opponent's reply to the statement setting out the grounds of appeal refers explicitly to said positioning of the two cutting heads with respect to the support tables.
- 4.12 In the present case, the auxiliary requests 2 to 5 and 7 to 10, said requests not being self-explanatory, had not been accompanied by any reasons, so it was not immediately apparent to the Board how they could overcome the objections raised in the course of the proceedings. Such requests are normally considered by the Board as being submitted only on the date of their substantiation.
- 4.13 In the present case a substantiation was not even presented by the patent proprietor during the oral proceedings.

- 4.14 Such unsubstantiated, very late filed requests are contrary to procedural economy, do not take account of the state of the proceedings and cannot be reasonably dealt with by the Board without adjournment of the proceedings or remittal to the department of first instance, contrary to the requirements of Articles 13(1) and 13(3) RPBA.
- 4.15 Dealing with this requests at a very late stage of the appeal proceedings would go against the need for procedural economy, namely the need to conclude proceedings swiftly and so create legal certainty, which plays an increasingly dominant role as appeal proceedings progress towards their end.
- 4.16 In view of the above, the Board exercised its discretion according to Articles 13(1) and (3) RPBA and did not admit auxiliary request 2 to 5 and 7 to 10 into the proceedings.
5. *Admittance into the proceedings of auxiliary requests 12 and 13*
- 5.1 The independent claims 1 of the auxiliary requests 12 and 13 correspond to claims 1 of the first and the sixth auxiliary requests with the feature "to push said second portion (20) against a support table (8)" being deleted.
- 5.2 Said auxiliary requests have never been the subject of the appeal before the oral proceedings.
- 5.3 Such late filed requests can only be introduced into the proceedings at the discretion of the Board by way of an amendment under Article 13 RPBA.

- 5.4 In the present case, the patent proprietor argued during the oral proceedings that auxiliary requests 12 and 13 should be admitted into the proceedings, since it realised for the first time during the oral proceedings that the introduction of only a part of the machine's structural features into the method claim is not allowable. The filing of said auxiliary requests was a reaction to this new situation and said auxiliary requests did not put undue burden on the Board or on the opponent.
- 5.5 The Board considers that it is contrary to the principle of procedural fairness to file a totally new auxiliary request during oral proceedings before the Board because it was difficult for an opponent to deal with such a request not submitted in good time before the oral proceedings. No exceptional circumstances were put forward excusing the late filing of said requests. The Board had already expressed in its communication its provisional opinion concerning the violation of the requirements of Article 123(2) EPC by auxiliary requests 1 and 6 and the discussion during the oral proceedings had been essentially limited to said issue (see point 3 above), without any new issues coming up which could have left the patent proprietor facing a new situation. The patent proprietor therefore could have filed said auxiliary requests, properly supported by arguments, sufficiently in advance for the Board and the opponent to prepare themselves for the oral proceedings.
- 5.6 The subjective perception of the patent proprietor's representative, namely that it realised for the first time during the oral proceedings that the introduction of only a part of the machine's structural features into the method claim was not allowable, cannot be

considered by the Board as "exceptional circumstances" excusing the late filing of said auxiliary requests.

5.7 The above-mentioned patent proprietor's view that the filing of said auxiliary requests does not put undue burden on the opponent or on the Board, also cannot be followed by the Board. The independent claims 1 of auxiliary requests 12 and 13 consist of a combination of features that had never been claimed in the proceedings before the Board. The filing of this combination at this late stage of the proceedings does not take account of the state of the proceedings and of the fact that its effect on the oral proceedings is not limited to a potential surprise or to an undue burden put on the other party or the Board but that in presence of an until then not argued case the oral proceedings would need to be adjourned rather than be closed with a final decision, contrary to Article 15(6) RPBA.

5.8 In view of the above situation, the Board exercises its discretion according to Articles 13(1) and (3) RPBA and does not admit auxiliary requests 12 and 13 into the proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated