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**Datasheet for the decision  
of 17 March 2021**

**Case Number:** T 0106/16 - 3.5.04

**Application Number:** 08837155.4

**Publication Number:** 2201774

**IPC:** H04N7/24, H04N13/02, H04W4/18

**Language of the proceedings:** EN

**Title of invention:**

APPARATUS AND METHOD FOR PROVIDING STEREOSCOPIC THREE-  
DIMENSIONAL IMAGE/VIDEO CONTENTS ON TERMINAL BASED ON  
LIGHTWEIGHT APPLICATION SCENE REPRESENTATION

**Applicant:**

Samsung Electronics Co., Ltd.

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2)  
RPBA Art. 12(4)  
RPBA 2020 Art. 13(2)

**Keyword:**

Main request - added subject-matter (yes)

First auxiliary request - admittance under Article 13(2) RPBA 2020 (no)

Second to fifth auxiliary request - admittance under Article 12(4) RPBA 2007 (no)

Sixth auxiliary request - admittance under Article 13(2) RPBA 2020 (no)

**Decisions cited:**

T 0509/07, T 2214/15

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 0106/16 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 17 March 2021**

**Appellant:** Samsung Electronics Co., Ltd.  
(Applicant) 129, Samsung-ro  
Yeongtong-gu  
Suwon-si, Gyeonggi-do, 443-742 (KR)

**Representative:** Grünecker Patent- und Rechtsanwälte  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 4 August 2015  
refusing European patent application  
No. 08837155.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairwoman** B. Willems  
**Members:** B. Le Guen  
G. Decker

## Summary of Facts and Submissions

- I. The appeal is against the decision to refuse European patent application No. 08 837 155.4, published as international application WO 2009/048309 A2. The application was accorded 13 October 2008 as filing date. It claims priority from application KR 10-2007-0103295 (hereinafter: "the previous application"), which was accorded 13 October 2007 as filing date.
- II. The documents cited in the decision under appeal included the following:
- D1        *"Study Text of ISO/IEC 23000-8/CD Portable Video Player"*, 81st MPEG Meeting, Lausanne, ISO/IEC JTC1/SC29/WG11, document N9292, 13 July 2007, XP030015786
- D2        Next Generation Broadcasting Standard Forum Korea, *"Proposal for technical specification of Stereoscopic MAF"*, 81st MPEG Meeting, Lausanne, ISO/IEC JTC1/SC29/WG11, document M14664, 27 June 2007, XP030043284
- D3        Next Generation Broadcasting Standard Forum Korea, *"Revised requirement for Stereoscopic MAF"*, 81st MPEG Meeting, Lausanne, ISO/IEC JTC1/SC29/WG11, document M14663, 27 June 2007, XP030043283
- III. The decision under appeal was based on the following grounds:

- Claims 1 to 4 of each of the requests then on file contained subject-matter which extended beyond the content of the application as filed (Article 123(2) EPC).
- The subject-matter of claim 4 of the main request then on file lacked inventive step (Article 56 EPC) over the combined disclosures of documents D1 and D3.
- The subject-matter of claims 1 to 4 of each of the requests then on file lacked inventive step (Article 56 EPC) over the combination of the disclosures of documents D2 and D3 and the common general knowledge of the person skilled in the art.

IV. The applicant (hereinafter: "appellant") filed notice of appeal.

With the statement of grounds of appeal, the appellant submitted claims according to a main request and first to fifth auxiliary requests.

It stated that the claims of the first auxiliary request (second, third, fourth, fifth auxiliary request) corresponded to the claims of the main request (first, second, third, fourth auxiliary request, respectively) forming the basis for the decision under appeal.

It requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims according to the main request or, alternatively, the claims of one of the first to fifth

auxiliary requests, all requests filed with the statement of grounds of appeal.

It submitted reasons why the claims of the main request met the requirements of Articles 56 and 123(2) EPC.

- V. On 12 May 2020, a summons to oral proceedings was issued. In a communication pursuant to Article 15(1) RPBA 2020 (OJ EPO 2019, A63) dated 25 June 2020 (hereinafter: "the board's communication"), the board expressed doubts about the validity of the claimed priority and invited the appellant to file a translation of the previous application. It also expressed doubts as to whether the first to fifth auxiliary requests filed with the statement of grounds of appeal should be taken into account by the board under Article 12(4) RPBA 2007 (OJ EPO 2007, pages 536 to 547).

The board also introduced the following document into the appeal proceedings under Article 114(1) EPC:

D5        "*LASer in IPTV*", 85th MPEG Meeting, Hannover, ISO/IEC JTC1/SC29/WG11, document M15614, 28 July 2008, XP030044211

It issued the following preliminary opinion:

- The subject-matter of claims 1 to 4 of the main request contained subject-matter which extended beyond the content of the application as filed (Article 123(2) EPC).
- The subject-matter of claim 4 of the first auxiliary request lacked inventive step (Article 56 EPC) over the combined disclosures of documents D1

and D3 and the common general knowledge of the person skilled in the art.

- The subject-matter of claims 1 to 4 of the second to fifth auxiliary requests lacked inventive step (Article 56 EPC) over the combined disclosures of documents D2 and D3 and the common general knowledge of the person skilled in the art.
- If the claimed priority was not valid, then document D5 would form part of the state of the art under Article 54(2) EPC. The subject-matter of claim 1 of the first auxiliary request would then lack inventive step (Article 56 EPC) over the disclosure of document D5 combined with the common general knowledge of the person skilled in the art.
- If the claimed priority was not valid, the subject-matter of claim 1 of the main request and that of claim 1 of the second to fifth auxiliary requests would lack inventive step (Article 56 EPC) over the combined disclosures of documents D5 and D2 and the common general knowledge of the person skilled in the art.

VI. With a letter of reply dated 30 October 2020, the appellant filed a translation of the previous application.

VII. With a letter of reply dated 11 February 2021, the appellant filed amended claims according to an amended first auxiliary request and a new sixth auxiliary request. The appellant provided arguments as to why (i) the main request and the sixth auxiliary request met the requirements of Article 123(2) EPC, (ii) the amended first auxiliary request was admissible, and,

(iii) if the claimed priority was not valid and document D5 formed part of the state of the art, the subject-matter of claim 1 of the amended first auxiliary request (or the sixth auxiliary request, respectively) would still involve an inventive step.

VIII. The oral proceedings before the board were held on 17 March 2021. The legally qualified member participated remotely via videoconference, as indicated to the appellant in a communication of the board dated 4 March 2021.

IX. At the oral proceedings, the appellant stated that the amended first auxiliary request filed with its letter of reply dated 11 February 2021 (hereinafter: "first auxiliary request") replaced the first auxiliary request submitted with the statement of grounds of appeal (hereinafter: "former first auxiliary request").

X. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request filed with the statement of grounds of appeal or, alternatively, the claims of one of the first auxiliary request filed with the letter dated 11 February 2021 or the second to fifth auxiliary requests filed with the statement of grounds of appeal or the sixth auxiliary request also filed with the letter dated 11 February 2021.

At the end of the oral proceedings, the chair announced the board's decision.

XI. Claim 1 of the **main request** reads as follows:



"A method for providing stereoscopic three-dimensional, 3D, image/video content based on Lightweight Application Scene Representation, LAsER, the method comprising:

generating (500) a LAsER content based on a stereoscopic 3D image/video attribute included in a LAsER header, the LAsER content including stereoscopic 3D image/video information, the stereoscopic 3D image/video attribute, and at least one stereoscopic 3D image/video event defining that a state of a terminal processing stereoscopic 3D image/video data is changed, wherein the stereoscopic 3D image/video attribute indicates whether a media object used as a scene component of the LAsER content is stereoscopic 3D image/video;

encoding (505) the generated LAsER content; and

transmitting (510) the encoded LAsER content to the terminal,

wherein, when an attribute value of the stereoscopic 3D image/video attribute is "true", the stereoscopic 3D image/video attribute is used as an instruction to determine if the terminal is capable of processing stereoscopic 3D image/video data by checking, by the LAsER engine of the terminal, terminal information indicating if the terminal is capable of processing stereoscopic 3D image/video data, or whether the terminal is in a state where it can process stereoscopic 3D image/video data."

XII. Claim 1 of the **first auxiliary request** reads as follows (features added to or deleted from claim 1 of the **main request** are underlined or crossed out, respectively):

"A method for providing stereoscopic three-dimensional, 3D, image/video content based on Lightweight Application Scene Representation, LAsER, the method comprising:

generating (500) a LAsER content based on a stereoscopic 3D image/video attribute included in a LAsER header, the LAsER content including stereoscopic 3D image/video information, and the stereoscopic 3D image/video attribute, ~~and at least one stereoscopic 3D image/video event defining that a state of a terminal processing stereoscopic 3D image/video data is changed,~~ wherein the stereoscopic 3D image/video attribute indicates whether a media object used as a scene component of the LAsER content is stereoscopic 3D image/video;

encoding (505) the generated LAsER content; and

transmitting (510) the encoded LAsER content to a ~~the~~ terminal,

wherein, when an attribute value of the stereoscopic 3D image/video attribute is "true", the stereoscopic 3D image/video attribute is used as an instruction to determine if a receiving ~~the~~ terminal is capable of processing stereoscopic 3D image/video data by checking, by the LAsER engine of the receiving terminal, terminal information indicating if the receiving terminal is capable of processing stereoscopic 3D image/video data, or whether the

receiving terminal is in a state where it can process stereoscopic 3D image/video data."

XIII. Claim 1 of the **second auxiliary request** reads as follows (features added to or deleted from claim 1 of the **first auxiliary request** are underlined or crossed out, respectively):

"A method for providing stereoscopic three-dimensional, 3D, image/video content based on Lightweight Application Scene Representation, LAsER, the method comprising:

generating (500) a LAsER content based on a stereoscopic 3D image/video attribute included in a LAsER header and an attribute 'compositionType', the LAsER content including stereoscopic 3D image/video information, ~~and~~ the stereoscopic 3D image/video attribute and the compositionType attribute, wherein the stereoscopic 3D image/video attribute indicates whether a media object used as a scene component of the LAsER content is stereoscopic 3D image/video and the attribute 'compositionType' indicates a stereoscopic 3D image/video composition type that indicates a configuration of the stereoscopic 3D image/video;

encoding (505) the generated LAsER content; and

transmitting (510) the encoded LAsER content to a terminal,

wherein, when an attribute value of the stereoscopic 3D image/video attribute is "true", the stereoscopic 3D image/video attribute is used as an instruction to determine if a receiving terminal is capable of processing stereoscopic 3D image/video data by

checking, by the LAsER engine of the receiving terminal, terminal information indicating if the receiving terminal is capable of processing stereoscopic 3D image/video data, or whether the receiving terminal is in a state where it can process stereoscopic 3D image/video data."

XIV. Claim 1 of the **third auxiliary request** reads as follows (features added to or deleted from claim 1 of the **second auxiliary request** are underlined or crossed out, respectively):

"A method for providing stereoscopic three-dimensional, 3D, image/video content based on Lightweight Application Scene Representation, LAsER, the method comprising:

generating (500) a LAsER content based on a stereoscopic 3D image/video attribute included in a LAsER header, ~~and~~ an attribute 'compositionType', and an attribute 'priorView', the LAsER content including stereoscopic 3D image/video information, the stereoscopic 3D image/video attribute, ~~and~~ the compositionType attribute, and the attribute 'priorView', wherein the stereoscopic 3D image/video attribute indicates whether a media object used as a scene component of the LAsER content is stereoscopic 3D image/video, ~~and~~ the attribute 'compositionType' indicates a stereoscopic 3D image/video composition type that indicates a configuration of the stereoscopic 3D image/video, and the attribute 'priorView' indicates a basic image/video that should be first represented among left and right images/videos constituting the stereoscopic 3D image/video;

encoding (505) the generated LAsER content; and

transmitting (510) the encoded LASER content to a terminal,

wherein, when an attribute value of the stereoscopic 3D image/video attribute is "true", the stereoscopic 3D image/video attribute is used as an instruction to determine if a receiving terminal is capable of processing stereoscopic 3D image/video data by checking, by the LASER engine of the receiving terminal, terminal information indicating if the receiving terminal is capable of processing stereoscopic 3D image/video data, or whether the receiving terminal is in a state where it can process stereoscopic 3D image/video data."

- XV. Claim 1 of the **fourth auxiliary request** corresponds to claim 1 of the **third auxiliary request** with the following feature appended at the end of the claim:

", wherein a value of the attribute 'priorView' is set as 'LEFT\_view' for a basic image/video for which a left image/video among the left and right images/videos constituting the stereoscopic 3D image/video should be first represented, and a value of the attribute 'priorView' is set as 'Right\_view' for a basic image/video for which a right image/video among the left and right images/videos should be first represented"

- XVI. Claim 1 of the **fifth auxiliary request** corresponds to claim 1 of the **fourth auxiliary request** with the following feature appended at the end of the claim:

", and wherein, when the receiving terminal is not capable of processing stereoscopic 3D image/video data, or the receiving terminal is not in a state where it

can process stereoscopic 3D image/video data, the basic image/video is represented"

XVII. Claim 1 of the **sixth auxiliary request** reads as follows (features added to or deleted from claim 1 of the **main request** are underlined or crossed out, respectively):

"A method for providing stereoscopic three-dimensional, 3D, image/video content based on Lightweight Application Scene Representation, LAsER, the method comprising:

generating (500) a LAsER content based on a stereoscopic 3D image/video attribute included in a LAsER header, the LAsER content including stereoscopic 3D image/video information, and the stereoscopic 3D image/video attribute, ~~and at least one stereoscopic 3D image/video event defining that a state of a terminal processing stereoscopic 3D image/video data is changed,~~ wherein the stereoscopic 3D image/video attribute indicates whether a media object used as a scene component of the LAsER content is stereoscopic 3D image/video;

encoding (505) the generated LAsER content; and

transmitting (510) the encoded LAsER content to athe terminal,

wherein, when an attribute value of the stereoscopic 3D image/video attribute is "true", the stereoscopic 3D image/video attribute is used as an instruction to determine if the terminal is capable of processing stereoscopic 3D image/video data by checking, by the LAsER engine of the terminal, terminal information indicating if the terminal is capable of processing

stereoscopic 3D image/video data, or whether the terminal is in a state where it can process stereoscopic 3D image/video data; and

generating, by a LAsER scene tree manager in the terminal, a stereoscopic 3D image/video event defining that the state of the terminal processing stereoscopic 3D image/video data is changed."

XVIII. The arguments submitted by the appellant, as far as relevant to the present decision, may be summarised as follows:

**(a) Main request**

The step of "*generating (500) a LAsER content ... including ... at least one stereoscopic 3D image/video event defining that a state of a terminal processing stereoscopic 3D image/video data is changed*" in claim 1 of the main request is disclosed in the following passages of the application as filed:

- the paragraph bridging pages 8 and 9 and the first full paragraph on page 9, in particular the expression "*The terminal handles all events of the LAsER content in step 340*" in the latter paragraph
- the second paragraph on page 19, in particular the expression "*Upon detecting the defined event, a LAsER engine can make a change in a scene for the corresponding event or a change in operation of the terminal*"
- the first paragraph on page 20, in particular the expression "*defining a new event for a change in*

*the stereoscopic 3D image/video mode"*, and  
Tables 7A and 7B

- the first full paragraph on page 21, in particular the expression "*a scene using the event defined in Table 7A*"
- the penultimate full paragraph on page 22 relating to Figure 5, in particular the expression "*a transmitter generates LAsER content including the stereoscopic 3D image/video ... event defined in the first and second exemplary embodiments of the present invention*"

**(b) First auxiliary request**

The first auxiliary request should be admitted into the appeal proceedings for the following reasons:

- This request was an amended version of an admissible request. Indeed, the former first auxiliary request had been properly substantiated in the statement of grounds of appeal as it was self-evident that the main arguments presented for the main request applied correspondingly to the former first auxiliary request.
- The first auxiliary request had been a reaction to the objections of lack of inventive step raised in the board's communication having regard to:
  - (i) the combination of the disclosures of documents D1 and D3 with the common general knowledge of the person skilled in the art (objection to the subject-matter of claim 4 of the former first auxiliary request)



- (ii) the disclosure of document D5 combined with the common general knowledge of the person skilled in the art (objection to the subject-matter of claim 1 of the former first auxiliary request)

The appellant further expressed its intention to demonstrate that the claimed priority was valid for the claims of the first auxiliary request, i.e. that document D5 did not form part of the state of the art pursuant to Article 54(2) EPC for these claims.

**(c) Second to fifth auxiliary requests**

The second to fifth auxiliary requests had been properly substantiated in the statement of grounds of appeal as it was self-evident that the main points of argumentation made with respect to the main request applied correspondingly to these requests.

**(d) Sixth auxiliary request**

The sixth auxiliary request had been filed in reaction to the objection under Article 123(2) EPC raised in the board's communication with respect to the main request. An appellant should be given at least one chance to overcome such an objection even if it is raised by a board in reaction to an amendment submitted at the appeal stage.

The sixth auxiliary request *prima facie* did not give rise to new objections because the last feature of claim 1 was disclosed in claim 13 as originally filed.

**Reasons for the Decision**

1. The appeal is admissible.

2. *Background of the invention*

Lightweight Application Scene Representation ("LASeR") is a standard multimedia content format for the representation of multimedia content and interactions with users, using elements such as scene descriptions, video data, audio data, images, fonts, texts, metadata and scripts. The application in suit proposes adding new elements and attributes to the LASeR format to, *inter alia*, (i) support the transmission of stereoscopic 3D content, (ii) guarantee backward compatibility with monoscopic terminals, and (iii) handle a change of support mode of a stereoscopic 3D-capable terminal from "stereoscopic" to "monoscopic" and vice versa.

3. *Main request, added subject-matter (Article 123(2) EPC)*

3.1 The European patent application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).

According to established case law, this means that any amendment can only be made within the limits of what the person skilled in the art would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole disclosure of the description, claims and drawings of the application as filed (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019 ("Case Law"), II.E.1.1).

- 3.2 Claim 1 of the main request comprises a step of  
"generating (500) a LAsER content ... including ... at least one stereoscopic 3D image/video event defining that a state of a terminal processing stereoscopic 3D image/video data is changed".
- 3.3 The board has not been convinced that the passages of the application as filed referred to by the appellant (see point XVIII.(a) above) disclose an event included in a LAsER content "defining that a state of a terminal processing stereoscopic 3D image/video data is changed".

Although the third column of Tables 7A and 7B describes events representing a change of "a state of a terminal processing stereoscopic 3D image/video data", the second paragraph on page 19 (referred to by the appellant) makes it clear that these events are events occurring at the terminal, not "events" included in the LAsER content. The "event" included in the LAsER content mentioned in the passages on pages 9, 21 and 22 referred to by the appellant rather points to the "event attribute" of the element "event listener" specified in Tables 8A and 8B (see "<ev:listener ... event = '...'"). The value of this "event attribute" may be one of the names specified in the first column of Tables 7A and 7B. This value identifies which event occurring at the terminal the "event listener" should be "listening to" in order to decide whether to run a certain script or not. It is not used in the LAsER content as an indication that an event - such as a change of "a state of a terminal processing stereoscopic 3D image/video data" - has occurred at the terminal.

3.4 Thus the main request does not meet the requirements of Article 123(2) EPC.

4. *First auxiliary request, admittance (Article 13(2) RPBA 2020)*

4.1 The first auxiliary request was filed after notification of the summons to oral proceedings. Since this notification was issued after the date on which the RPBA 2020 entered into force (i.e. 1 January 2020, see Article 24(1) RPBA 2020), Article 13(2) RPBA 2020 applies to the question of whether to admit this request (see Article 25(1) and (3) RPBA 2020).

4.2 According to Article 13(2) RPBA 2020, any amendment to a party's appeal case made after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

Article 13(2) RPBA 2020 imposes the most stringent limitations on appeal submissions which are made at an advanced stage of the proceedings (see document CA/3/19, section VI, Explanatory remarks on Article 13(2), first paragraph, second sentence).

4.3 When exercising its discretion under Article 13(2) RPBA 2020, the board may also rely on criteria set out in Article 13(1) RPBA 2020 (Document CA/3/19, section VI, Explanatory remarks on Article 13(2), fourth paragraph).

In the case of an amendment to a patent application, one of the criteria set out in Article 13(1) RPBA 2020 is "*whether the party has demonstrated that any such*

*amendment, prima facie, overcomes the issues raised ... by the Board and does not give rise to new objections".*

- 4.4 The first auxiliary request corresponds to the former first auxiliary request except for the deletion of claims 4, 8, 9 and 13.
- 4.5 The board's communication had questioned whether the former first auxiliary request had been properly substantiated in the statement of grounds of appeal, and thus whether it was admissible under Article 12(4) RPBA 2007. The board had also indicated that, if the claimed priority was not valid, document D5 would form part of the state of the art under Article 54(2) EPC, and the subject-matter of claim 1 of the former first auxiliary request would lack inventive step over the disclosure of document D5 combined with the common general knowledge of the person skilled in the art (see section V above).
- 4.6 The appellant's arguments regarding the admittance of the first auxiliary request (see point XVIII.(b) above) have not convinced the board, for the following reasons:
- 4.6.1 It is established case law that the statement setting out the grounds of appeal must enable the board to understand immediately why the decision under appeal is incorrect and on what facts the appellant bases its arguments, without first having to make investigations of its own (see Case Law, V.A.2.6.3 a)). This requirement applies not only when assessing the admissibility of an appeal as a whole but also when considering whether requests should be taken into account pursuant to Article 12(4) RPBA 2007 (see T 509/07, Reasons, point 2).

Point II.2 of the statement of grounds of appeal merely indicated that the claim set of the former first auxiliary request corresponded to the claim set of the main request that had been discussed during the first-instance oral proceedings. No reference was made to points of argumentation given in point II.1.2 with respect to the main request. The board notes that the feature identified under point 3.2 above, present in the independent claims of the main request, was not present in the independent claims of the former first auxiliary request. Thus it was not immediately apparent from the statement of grounds of appeal to what extent the reasons why the subject-matter of claims 1 to 4 of the main request involved an inventive step applied correspondingly to the subject-matter of claims 1 to 4 of the former first auxiliary request.

Therefore the board arrives at the conclusion that the first auxiliary request is an amendment of a request which was not to be taken into account pursuant to Article 12(4) RPBA 2007.

- 4.6.2 One of the grounds on which the decision under appeal was based was lack of inventive step of the subject-matter of claim 4 in the light of the combined disclosures of documents D1 and D3. The objection raised in the board's communication on the basis of documents D1 and D3 was not a new objection but a confirmation of the examining division's finding. Thus, in the board's view, this objection cannot represent a cogent reason under Article 13(2) RPBA 2020 to admit the first auxiliary request.
- 4.6.3 The board has not been convinced that the appellant's reply dated 11 February 2021 constituted an appropriate

reaction to the board's doubts concerning the validity of the claimed priority. In view of the board's communication it was clear that the allowability of the former first auxiliary request hinged upon the validity of the claimed priority. Thus, to demonstrate that the first auxiliary request *prima facie* overcame the issues raised by the board (Article 13(1) RPBA 2020), the appellant's reply should already have indicated a basis for the claimed subject-matter in the previous application. Awaiting the oral proceedings to do so goes against the established principle that "*parties' submissions are concentrated at as early a stage as possible so that the case is as complete as possible when it comes to processing it*" (see Case Law, V.A.4.4.1).

- 4.7 In view of the above, the board, exercising its discretion under Article 13(2) RPBA 2020, does not admit the first auxiliary request into the appeal proceedings.
5. *Second to fifth auxiliary requests, admittance (Article 12(4) RPBA 2007)*
  - 5.1 The second to fifth auxiliary requests were submitted with the statement of grounds of appeal.
  - 5.2 In the present case, the statement of grounds of appeal was filed before the date on which the RPBA 2020 entered into force. Thus, according to Article 25(2) RPBA 2020, Article 12(4) to (6) RPBA 2020 does not apply to the question of whether to admit these requests. Instead, Article 12(4) RPBA 2007 continues to apply.

5.3 The board's communication questioned whether the second to fifth auxiliary requests submitted with the statement of grounds of appeal were properly substantiated, and thus whether they should be taken into account under Article 12(4) RPBA 2007.

5.4 The appellant used the same line of argument to defend the admittance of these requests as it did to defend the admittance of the former first auxiliary request (see point XVIII.(c) above).

5.5 For the reasons set out under point 4.6.1 above, the board, exercising its discretion under Article 12(4) RPBA 2007, does not admit these requests into the appeal proceedings.

6. *Sixth auxiliary request, admittance (Article 13(2) RPBA 2020)*

6.1 The sixth auxiliary request was filed after notification of the summons to oral proceedings. Thus Article 13(2) RPBA 2020 applies to the question of whether to admit this request.

Reference is made to the legal provisions and principles set out under points 4.1 to 4.3 above.

6.2 The appellant's arguments regarding admittance of the sixth auxiliary request (see point XVIII.(d) above) have not convinced the board.

6.3 The board has doubts that an objection of added subject-matter raised by a board in reaction to amendments submitted at the appeal stage may, in general, constitute cogent reasons for submitting new requests, as an appellant has to be aware that every



amendment will have to be examined for compliance with Article 123(2) EPC (see T 2214/15, Reasons, point 5.4).

However, it is not necessary for the board to further consider this question because it can decide on the issue of admittance of the sixth auxiliary request by taking into account the criteria of Article 13(1) RPBA 2020.

- 6.4 As indicated under point 3.3 of the board's communication, "*[c]laim 13 of the application as filed was dependent on originally filed claim 8 which was dependent on originally filed claim 7. Originally filed claim 7 specified receiving and decoding LASeR content. Thus, generating an event indicating that a state of the terminal had changed was disclosed in the application as filed in the context of receiving and decoding LASeR content, not in the context of encoding and transmitting LASeR content*".
- 6.5 The appellant did not identify any passage in the application as filed suggesting that a LASeR scene tree manager could generate an event in the terminal without first receiving and decoding LASeR content. Hence it is doubtful whether the feature added to the sixth auxiliary request complies with the requirements of Article 123(2) EPC. It follows that the appellant has not demonstrated that the sixth auxiliary request *prima facie* did not give rise to new objections (see Article 13(1) RPBA 2020).
- 6.6 In view of the above two points, the board, exercising its discretion under Article 13(2) RPBA 2020, does not admit the sixth auxiliary request into the appeal proceedings.

7. Since none of the appellant's requests is allowable, the appeal is to be dismissed.

## Order

### For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated