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**Datasheet for the decision
of 16 April 2021**

Case Number: T 1767/16 - 3.5.04

Application Number: 14162888.3

Publication Number: 2757787

IPC: H04N13/00

Language of the proceedings: EN

Title of invention:

Display apparatus and method for applying on screen display
(OSD) thereto

Applicant:

Samsung Electronics Co., Ltd.

Headword:

Relevant legal provisions:

EPC Art. 56

RPBA 2020 Art. 13(1), 13(2)

Keyword:

Inventive step - main request (no) - first and second auxiliary requests (no)

Amendment to appeal case - third and fourth auxiliary requests - amendment overcomes issues raised (no) - fifth auxiliary request - amendment gives rise to new objections (yes)

Decisions cited:

Catchword:



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Case Number: T 1767/16 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 16 April 2021

Appellant: Samsung Electronics Co., Ltd.
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 25 April 2016
refusing European patent application No.
14162888.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair B. Willems
Members: A. Seeger
B. Müller

Summary of Facts and Submissions

- I. The appeal is against the examining division's decision to refuse European patent application No. 14 162 888.3, published as EP 2 757 787 A1.
- II. The prior-art documents cited in the decision under appeal included the following:
- D1: US 2010/0074594 A1
- D2: EP 0 735 784 A2
- D5: US 2010/0021141 A1
- III. The decision under appeal was based on the grounds that the independent claims of the main request and the first and second auxiliary requests did not meet the requirements of Article 84 EPC and their subject-matter did not involve an inventive step (Article 56 EPC).
- IV. The applicant ("appellant") filed notice of appeal. With the statement of grounds of appeal, the appellant maintained the main request and the first and second auxiliary requests on which the decision had been based. The appellant requested that the decision under appeal be set aside and that a European patent be granted on the basis of the claims of the main request, or, alternatively, on the basis of the claims of either the first or the second auxiliary request.
- V. On 15 September 2020, a summons to oral proceedings was issued. In a communication under Article 15(1) of the Rules of Procedure of the Boards of Appeal in the 2020

version (RPBA 2020, OJ EPO 2019, A63), the board expressed the following preliminary opinion:

- (a) the independent claims of the main request and the first and second auxiliary requests did not meet the requirements of Article 84 EPC,
- (b) the independent claims of the main request and the first and second auxiliary requests did not meet the requirements of Article 56 EPC because the claimed subject-matter lacked inventive step over the combined disclosures of documents D1 and D5 and the common general knowledge of the skilled person, and
- (c) the subject-matter of claim 1 of the main request was not obvious when starting from document D2 as the closest prior art for the assessment of inventive step.

- VI. By letter dated 2 February 2021, the appellant requested that the oral proceedings be held by videoconference.
- VII. By letter dated 8 March 2021, the appellant filed amended claims according to a third, a fourth and a fifth auxiliary request together with an amended description.
- VIII. On 16 April 2021, the board held oral proceedings by videoconference.

The appellant's final requests were that the decision under appeal be set aside and a European patent be granted on the basis of the claims of the main request filed with the statement of grounds of appeal or,

alternatively, on the basis of one of the first and second auxiliary requests filed with the statement of grounds of appeal or one of the third, fourth and fifth auxiliary requests filed with the letter dated 8 March 2021.

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

IX. Claim 1 of the main request reads as follows:

"A display apparatus (100) for displaying a 3D image, the display apparatus comprising:

a 3D representation unit (133) which generates a left eye image and a right eye image to be displayed to represent the 3D image;

characterised in that the apparatus further comprises:

a depth adjusting unit (136) which is arranged to receive the 3D image and adjust a depth of the 3D image by adjusting a relative distance between the left eye image and the right eye image to provide a 3D image having an adjusted depth, the adjusted depth being based on a user input received by the display apparatus (100); and

an OSD inserting unit (139) which is arranged to receive the depth-adjusted 3D image from the depth adjusting unit (136) and generate and insert an OSD menu (101) to the depth-adjusted 3D image, so that the depth-adjusted 3D image with the OSD menu (101) inserted therein is displayed on a screen, wherein the OSD menu (101) is used by a user to set a function of the display apparatus (100);

wherein the OSD inserting unit (139) is arranged to insert the OSD menu (101) into the 3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136) and maintains the depth of the OSD menu (101) even when the depth of the 3D image is adjusted by the depth adjusting unit (136)."

- X. Claim 1 of the first auxiliary request is identical to claim 1 of the main request but adds the following feature after the last paragraph:

"and wherein the OSD inserting unit (139) inserts the OSD menu (101) by inserting the OSD menu (101) into the 3D image with a relative distance between the OSD menu (101) in the left eye image and the OSD menu (101) in the right eye image according to a desired specific depth of the OSD menu (101)."

- XI. Claim 1 of the second auxiliary request reads as follows (features added compared with claim 1 of the main request are underlined):

"A display apparatus (100) for displaying a 3D image, the display apparatus comprising:

a 3D representation unit (133) which generates a left eye image and a right eye image to be displayed to represent the 3D image;

characterised in that the apparatus further comprises:

a depth adjusting unit (136) which is arranged to receive the 3D image and adjust a depth of the 3D image by adjusting a relative distance between the left eye image and the right eye image by applying a depth

adjusting value to provide a 3D image having an adjusted depth, the adjusted depth being based on a user's manual input received by the display apparatus (100), the depth adjusting value being determined based on the user's manual input; and

an OSD inserting unit (139) which, when an OSD menu is to be displayed, is arranged to receive the depth-adjusted 3D image from the depth adjusting unit (136) and generate and insert an OSD menu (101) to the depth-adjusted 3D image, so that the depth-adjusted 3D image with the OSD menu (101) inserted therein is displayed on a screen, wherein the OSD menu (101) is used by a user to set a function of the display apparatus (100);

wherein the OSD inserting unit (139) is arranged to insert the OSD menu (101) into the 3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136) and maintains the depth of the OSD menu (101) even when the depth of the 3D image is adjusted by the depth adjusting unit (136)."

XII. Claim 1 of the third auxiliary request reads as follows (features added compared with claim 1 of the main request are underlined and deleted features are ~~struck through~~):

"A display apparatus (100) for displaying a 3D image, the display apparatus comprising:

a 3D representation unit (133) which is arranged to generate a left eye image and a right eye image to be displayed to represent the 3D image;

characterised in that the apparatus further comprises:

a depth adjusting unit (136) which is arranged to receive the 3D image and adjust a depth of the 3D image by adjusting a relative distance between the left eye image and the right eye image to provide a 3D image having an adjusted depth, the adjusted depth being based on a user input received by the display apparatus (100); and

an on-screen display, OSD, inserting unit (139) which is arranged to receive the depth-adjusted 3D image from the depth adjusting unit (136) and generate and insert an OSD menu (101) to the depth-adjusted 3D image, so that the depth-adjusted 3D image with the OSD menu (101) inserted therein is displayed on a screen, wherein the OSD menu (101) is used by a user to set a function of the display apparatus (100);

wherein the OSD inserting unit (139) is arranged to insert the OSD menu (101) into the 3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136) and as such maintains the depth of the OSD menu (101) even when the depth of the 3D image is adjusted by the depth adjusting unit (136)."

XIII. Claim 1 of the fourth auxiliary request reads as follows (features added compared with claim 1 of the main request are underlined and deleted features are ~~struck through~~):

"A display apparatus (100) for displaying a 3D image, the display apparatus comprising:

a 3D representation unit (133) which is arranged to generate a left eye image and a right eye image to be displayed to represent the 3D image;

characterised in that the apparatus further comprises:

a depth adjusting unit (136) which is arranged to receive the 3D image and adjust a depth of the 3D image by adjusting a relative distance between the left eye image and the right eye image to provide a 3D image having an adjusted depth, the adjusted depth being based on a user input received by the display apparatus (100); and

an on-screen display, OSD, inserting unit (139) which is arranged to receive the depth-adjusted 3D image from the depth adjusting unit (136) and generate and insert an OSD menu (101) to the depth-adjusted 3D image, so that the depth-adjusted 3D image with the OSD menu (101) inserted therein is displayed on a screen, wherein the OSD menu (101) is used by a user to set a function of the display apparatus (100);

wherein the OSD inserting unit (139) is arranged to insert the OSD menu (101) into the 3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136), ~~and maintains~~ whereby the depth of the OSD menu (101) is maintained at a specific depth even when the depth of the 3D image is adjusted by the depth adjusting unit (136)."

XIV. Claim 1 of the fifth auxiliary request reads as follows (features added compared with claim 1 of the main request are underlined and deleted features are ~~struck through~~):

"A display apparatus (100) for displaying a 3D image, the display apparatus comprising:

a 3D representation unit (133) which is arranged to generates a left eye image and a right eye image to be displayed to represent the 3D image;

characterised in that the apparatus further comprises:

a depth adjusting unit (136) which is arranged to receive the 3D image and adjust a depth of the 3D image by adjusting a relative distance between the left eye image and the right eye image to provide a 3D image having an adjusted depth, the adjusted depth being based on a user input received by the display apparatus (100); and

an on-screen display, OSD, inserting unit (139) which is arranged to receive the depth-adjusted 3D image from the depth adjusting unit (136) and generate and insert an OSD menu (101) to the depth-adjusted 3D image, so that the depth-adjusted 3D image with the OSD menu (101) inserted therein is displayed on a screen, wherein the OSD menu (101) is used by a user to set a function of the display apparatus (100);

wherein the OSD inserting unit (139) is arranged to insert the OSD menu (101) into the 3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136), ~~and maintains~~ whereby the depth of the OSD menu (101) is maintained at a specific depth by deactivating a depth adjusting function of the depth adjusting unit (136) even when the depth of the 3D image is adjusted by the depth adjusting unit (136)."

XV. The appellant's arguments which are relevant to this decision may be summarised as follows:

Main request

- (a) The feature of claim 1 "and maintains the depth of the OSD menu (101) even when the depth of the 3D image is adjusted by the depth adjusting unit (136)" merely explained the technical effect of the previously specified feature "to insert the OSD menu (101) into the 3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136)" (see letter dated 8 March 2021, points 3.3 and 3.4).
- (b) Document D1 contained two embodiments which differed on account of the operation mode for stereoscopically displaying the video/subtitles of the contents as well as the selectable OSD. The features of the first embodiment (see paragraph [0112] and Figure 13) relating to the use of an OSD menu by a user to set a function of the display apparatus cannot be combined with the features of the second embodiment. This combination would be contrary to document D1, paragraph [0296] (see letter dated 8 March 2021, page 6).
- (c) The technical effect of the distinguishing features was not only to adapt the 3D image to be displayed but also to improve the display of the OSD. Hence, the objective technical problem had to be formulated as that of further adapting the 3D image to be displayed while improving the display of the OSD.
- (d) Paragraph [0181] of document D5 contained a translation error from a Japanese document into English. The original Japanese document and a corresponding translation into English should be

admitted into the proceedings. In fact, paragraph [0181] of D5 disclosed a depth adjustment for a stereoscopic image, not a stereoscopic video. This was also evident from the following parts of document D5:

- paragraph [0016], which disclosed that the depth position of the graphics was changed, not that of a video,
- Figure 5, where the graphics plane 10 and the image plane 8 entered into the plane shift engine but not the video plane 6, and
- paragraph [0398], which disclosed that the user operation changed the level of depth of the image plane 8 and of the data held in the interactive graphics plane 10.

- (e) When combining the disclosures of document D1 and document D5, the composition unit 15 shown in Figure 5 of document D5 had to be incorporated into the device according to document D1; however, the hardware of this composition unit did not support a change in video depth.

Fourth auxiliary request

- (f) The subject-matter of claim 1 contained amendments to further distinguish it from the disclosure of document D2. Hence, the subject-matter of claim 1 met the requirements of Article 56 EPC (see the letter dated 8 March 2021, point 9.3).

Reasons for the Decision

1. The appeal is admissible.

2. Main request - inventive step (Article 56 EPC)

2.1 According to Article 56 EPC, "[a]n invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art". It is established case law that the "problem and solution approach" is an appropriate tool for assessing whether claimed subject-matter fulfils the requirements of Article 56 EPC (see Case Law of the Boards of Appeal of the European Patent Office ("Case Law"), 9th edition 2019, I.D.2).

2.2 The second embodiment of document D1 may be regarded as the closest prior art for the assessment of inventive step.

2.3 This second embodiment of document D1 discloses:

- a display apparatus for displaying a 3D image, the display apparatus comprising a 3D representation unit which generates a left eye image and a right eye image to be displayed to represent the 3D image (see D1, paragraph [0296] in combination with paragraphs [0068] and [0071] as well as Figure 1 and Figure 2),
- an OSD inserting unit which is arranged to generate and insert an OSD menu to the 3D image (see D1, paragraph [0297]: "*a user can select whether the video/subtitles images of the content are to be displayed as 2D or stereoscopic images, while OSDs and the likes are being displayed on a screen*" and Figure 31: "*OSD modification*"), so that the 3D image with the OSD menu inserted therein is displayed on a screen (see D1, paragraph [0298]: "*The generated OSD plane is combined onto the video*

frame through the playlist playback process, and is outputted to the display device" and Figure 31: S92),

- wherein the OSD menu is used by a user to set a function of the display apparatus (see D1, paragraph [0296] in combination with paragraph [0112]: "*The OSD G4 in Fig. 13D shows the screen for setting the brightness of the screen. The OSD G5 in Fig. 13E shows the screen for setting the volume of the sound. The OSD G6 in Fig. 13F shows the screen used for selecting the chapter to be played*" and Figure 13).

2.4 As argued by the appellant, the feature of claim 1 "and maintains the depth of the OSD menu (101) even when the depth of the 3D image is adjusted by the depth adjusting unit (136)" merely explains the technical effect of the previously specified feature "to insert the OSD menu (101) into the 3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136)" (see point XV(a)).

2.5 The subject-matter of claim 1 differs from the disclosure of the second embodiment of document D1 on account of the following distinguishing features:

- (a) a depth adjusting unit which is arranged to receive the 3D image and adjust a depth of the 3D image by adjusting a relative distance between the left eye and the right eye image to provide an adjusted depth, the adjusted depth being based on a user input received by the display apparatus, and

(b) the OSD inserting unit is arranged to insert the OSD menu into the 3D image after the depth of the 3D image was adjusted.

2.6 The appellant argued that features of the first and the second embodiment of document D1 had been impermissibly combined, contrary to paragraph [0296] of document D1. Therefore, there was a further distinguishing feature: "wherein the OSD menu (101) is used by the user to set a function of the display apparatus" (see point XV(b) above).

The board is not convinced by this argument because paragraph [0296] of document D1 reads: "The playback device in accordance with the second embodiment is different from that in accordance with the first embodiment in that an operation mode for stereoscopically displaying the video/subtitles of the contents as well as the OSD is selectable. The other features, such as the data structure on the optical disc, the hardware configuration of the playback device, and the structures of the control unit and the playback unit are the same as those of the first embodiment. Thus the following explanation only describes the features of the second embodiments different from the features of the first embodiment, and the features similar to those of the first embodiment are hereby incorporated by reference" (emphasis added by the board).

Hence, paragraph [0296] of document D1 states that the features of the first and the second embodiment can be combined unless they relate to an operation mode for stereoscopically displaying the video/subtitles of the contents as well as the OSD.

The feature of claim 1 "wherein the OSD menu (101) is used by the user to set a function of the display apparatus" relates to the use of an OSD menu by a user and not to the way the OSD is displayed. It is thus permitted to combine the respective features of the first embodiment, in particular the features disclosed in paragraph [0112] and shown in Figure 13, with the features of the second embodiment.

2.7 The objective technical problem may be considered that of further adapting the 3D image to be displayed.

2.8 The appellant argued that the objective technical problem had to be reformulated as that of further adapting the 3D image to be displayed while improving the display of the OSD (see point XV(c) above).

The board has not been persuaded by this argument for two reasons.

First, according to document D1, paragraph [0312], the OSD is always displayed at a constant depth. Hence, it is not clear how this display of the OSD is improved by the distinguishing features listed under point 2.5.

Second, claim 1 does not specify that the OSD is displayed before the depth of the 3D image is adjusted. Hence, according to claim 1, the OSD display need not be improved because the OSD is only displayed after the depth of the 3D image was adjusted. Therefore, the extension of the technical problem as argued by the appellant cannot be derived from effects directly and causally related to the technical features of claim 1 (see Case Law, I.D.4.1, fourth paragraph).

2.9 Starting from document D1 and faced with the problem formulated in point 2.7 above, the skilled person would have considered document D5 because it related to the same technical field of overlaying stereoscopic graphics over stereoscopic video (see D5, abstract).

2.10 Document D5 states in paragraph [0181]: "*one of the user operations unique to the stereoscopic playback is to receive the depth of stereoscopic video.*"

The appellant submitted that this paragraph contained a translation error and in fact disclosed a user operation to set the depth of a stereoscopic image, not the depth of a stereoscopic video (see point XV(d) above).

In view of the fact that it is common general knowledge that a video can be regarded as a series of images, the question of whether document D5 discloses that the depth of a stereoscopic image or the depth of a stereoscopic video is adjusted is not relevant to the board's assessment of inventive step.

D1, paragraph [0072], also discloses that the depth of an image is adjusted ("*it is possible to adjust the depth to be perceived of the stereoscopic image IMS, by adjusting the direction and the amount of displacement of the left-view image IML in the relationship with the right-view IMR*").

Document D1 only indicates in passing that there is a series of multiple stereoscopic images by mentioning a frame rate in the preceding paragraph, paragraph [0071].

Hence, when faced with problem of further adapting the 3D image, the skilled person would have obtained from document D5, paragraph [0181], the teaching that the image depth adjustment mentioned in D1, paragraph [0072], can be based on a user input received by a display apparatus. Therefore, the skilled person would have arrived at the distinguishing feature (a) (see point 2.5 above).

2.11 In this process, the skilled person had the choice of whether to insert the OSD before or after the depth adjustment. It would have been obvious to the skilled person to apply the teaching of both document D5 and document D1 whereby interactive graphics or OSDs are added as a last step (see D5, paragraph [0167]: "*the composition unit 15 composites video held in the video plane 6, with the background image held in the background plane 11, then composites the subtitles held in the image plane 8, then at last composites the graphics held in the interactive graphics plane 10*" and D1, Figure 15 in combination with paragraph [0324], in which the "Adder" 179 is the last step). Therefore, the skilled person would also have arrived at the distinguishing feature (b) (see point 2.5 above).

2.12 The board is not convinced by the appellant's argument that the composition unit 15 shown in Figure 5 of document D5 has to be incorporated into the device known from document D1 (see point XV(e) above) because the "Adder" 179 in Figure 15 of document D1 already provides the function of combining the video plane and the OSD plane (see D1, paragraphs [0175] and [0291]). Furthermore, according to D1, paragraph [0312], the video depth can change while the depth of the OSD is kept constant.

2.13 Therefore, by combining the disclosures of documents D1 and D5 and using common general knowledge, the skilled person would have arrived at both distinguishing features (a) and (b) set out under point 2.5 above in a straightforward manner.

2.14 In view of the above, claim 1 of the main request does not meet the requirements of Article 56 EPC.

3. First auxiliary request - inventive step
(Article 56 EPC)

3.1 The subject-matter of claim 1 differs from claim 1 of the main request on account of the additional feature "wherein the OSD inserting unit (139) inserts the OSD menu (101) by inserting the OSD menu (101) into the 3D image with a relative distance between the OSD menu (101) in the left eye image and the OSD menu (101) in the right eye image according to a desired specific depth of the OSD menu (101)."

3.2 However, this additional feature is anticipated by document D1, paragraph [0312], which discloses that the OSD plane shift amount and thus the depth of the OSD perceived by the viewer is kept constant.

As specifically set out in the subsequent paragraphs [0313] and [0314] and Figures 32A to 32C of document D1, a perceived depth of the OSD is achieved by inserting the same OSD into a left eye image and a right eye image but with a displacement (see Figure 32B: "D1L - D1R").

3.3 Hence, the subject-matter of claim 1 does not involve an inventive step within the meaning of Article 56 EPC

for the same reasons as set out for claim 1 of the main request.

4. Second auxiliary request - inventive step
(Article 56 EPC)

4.1 The subject-matter of claim 1 differs from claim 1 of the main request by further specifying that a depth of the 3D image is adjusted by applying a "depth adjusting value being determined based on the user's manual input" (emphasis added by the board).

4.2 However, this additional feature is anticipated by the disclosure of document D5, paragraph [0181]: "*The UO detection module 26 receives the user operation on the GUI*".

4.3 Hence, the subject-matter of claim 1 does not involve an inventive step within the meaning of Article 56 EPC for the same reasons as set out for claim 1 of the main request.

5. Third auxiliary request - admittance
(Article 13 RPBA 2020)

5.1 In the case in hand, the appeal was pending on and the summons to oral proceedings was notified after the date on which RPBA 2020 entered into force, i.e. 1 January 2020 (Article 24(1) RPBA 2020). Therefore, in accordance with Article 25(1) and (3) RPBA 2020, Article 13 RPBA 2020 applies to the question of whether to admit the appellant's third auxiliary request, which was filed after notification of the summons to oral proceedings. The third auxiliary request is therefore an amendment within the meaning of both Article 13(1) and (2) RPBA 2020, with paragraph 1 applying to

amendments after the grounds of appeal have been filed and paragraph 2 applying to amendments made at a later stage, i.e. after notification of a summons to oral proceedings.

In this context the board refers to the explanatory remarks on RPBA 2020 that, in pertinent part, read as follows:

Article 13(2) RPBA 2020 implements the third level of the convergent approach applicable in appeal proceedings (see Supplementary publication 2, OJ EPO 2020, explanatory remarks on Article 13(2), first paragraph, first sentence). At the third level of the convergent approach, the board may also rely on criteria applicable at the second level of the convergent approach, i.e. as set out in Article 13(1) RPBA 2020 (see Supplementary publication 2, OJ EPO 2020, explanatory remarks on Article 13(2), fourth paragraph).

Therefore, when exercising its discretion and deciding on the admittance of the third auxiliary request, the board may rely on the criteria set out in Article 13(1) RPBA 2020.

- 5.2 In the event of an amendment to a patent application, Article 13(1) RPBA 2020 prescribes that the board exercises its discretion in view of whether the appellant has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by the board and does not give rise to new objections.
- 5.3 The amendments to claim 1 of the third auxiliary request address the clarity objections raised by the board but not the objection of lack of inventive step.

The appellant has not contested this and thus has not demonstrated that the amendments to claim 1, *prima facie*, overcome all the issues raised by the board.

5.4 Therefore, the board, exercising its discretion relying on the criteria set out in Article 13(1) RPBA 2020, does not admit the third auxiliary request into the proceedings.

6. Fourth auxiliary request - admittance
(Article 13 RPBA 2020)

6.1 The fourth auxiliary request was filed at the same time as the third auxiliary request. Hence, the fourth auxiliary request is an amendment within the meaning of Article 13 RPBA 2020 for the same reasons as set out under point 5.1 above.

6.2 As set out for the third auxiliary request, the board exercises its discretion relying on the criteria set out in Article 13(1) RPBA 2020 (see points 5.1 and 5.2 above).

6.3 The appellant argued that the subject-matter of claim 1 met the requirements of Article 56 EPC because it contained amendments to further distinguish the subject-matter of claim 1 from the disclosure of document D2 (see point XV(f) above).

However, the board did not refer to document D2 in its objection of lack of inventive step (see point V(c) above).

6.4 Claim 1 of the fourth auxiliary request specifies:
"whereby the depth of the OSD menu (101) is maintained

at a specific depth". The corresponding feature of claim 1 according to the main request reads: "and maintains the depth of the OSD menu".

The quoted features in claim 1 of the fourth auxiliary request and in claim 1 of the main request are equivalent.

The appellant has not contested this.

- 6.5 In view of points 6.3 and 6.4 above, the appellant has not demonstrated that the amendments to claim 1, *prima facie*, overcome the objection of lack of inventive step raised by the board.
- 6.6 Therefore, the board, exercising its discretion relying on the criteria set out in Article 13(1) RPBA 2020, does not admit the fourth auxiliary request into the proceedings.
7. Fifth auxiliary request - admittance (Article 13 RPBA 2020)
- 7.1 The fifth auxiliary request was filed at the same time as the third auxiliary request. Hence, the fifth auxiliary request is an amendment within the meaning of Article 13 RPBA 2020 for the same reasons as set out under point 5.1 above.
- 7.2 As set out for the third auxiliary request, the board exercises its discretion relying on the criteria set out in Article 13(1) RPBA 2020 (see points 5.1 and 5.2 above).
- 7.3 Claim 1 specifies: "wherein the OSD inserting unit (139) is arranged to insert the OSD menu (101) into the

3D image after the depth of the 3D image is adjusted by the depth adjusting unit (136), whereby the depth of the OSD menu (101) is maintained at a specific depth by deactivating a depth adjusting function of the depth adjusting unit (136) even when the depth of the 3D image is adjusted by the depth adjusting unit (136)" (features added compared with claim 1 of the main request are underlined).

7.4 Hence, claim 1 contains an immediately recognisable contradiction because it simultaneously specifies that:

(a) the depth adjusting function of the depth adjusting unit is deactivated, and

(b) that the depth of the 3D image is adjusted by the depth adjusting unit.

Due to this contradiction, claim 1, *prima facie*, gives rise to a new clarity objection (Article 84 EPC).

7.5 Therefore, the board, exercising its discretion relying on the criteria set out in Article 13(1) RPBA 2020, does not admit the fifth auxiliary request into the proceedings.

8. Summary

The subject-matter of claim 1 according to the main request and the first and second auxiliary requests does not involve an inventive step within the meaning of Article 56 EPC. The third to fifth auxiliary requests were not admitted into the proceedings. The appeal must therefore 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