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**Datasheet for the decision
of 22 February 2021**

Case Number: T 0716/17 - 3.5.02

Application Number: 06425407.1

Publication Number: 1868284

IPC: H02M3/338, H05B33/08

Language of the proceedings: EN

Title of invention:

Driver arrangement for LED lamps

Patent Proprietors:

OSRAM GmbH
OSRAM S.P.A. - SOCIETA' RIUNITE OSRAM
EDISON CLERICI

Opponent:

Tridonic GmbH & Co KG

Relevant legal provisions:

EPC Art. 56, 84, 111(1), 108
RPBA Art. 12(2), 12(4)
EPC R. 99(2)

Keyword:

Inventive step - main request (no)

Claims - clarity - sixth auxiliary request (no)

Appeal decision - remittal to the department of first instance
(no)

Admissibility of appeal - although inadmissible request in
notice of appeal (yes)

Auxiliary requests - lack of substantiation - admissible (no)

Auxiliary requests - re-ordering - admissible (no)



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Case Number: T 0716/17 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 22 February 2021

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
20 February 2017 concerning maintenance of the
European Patent No. 1868284 in amended form.**

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
 W. Ungler

Summary of Facts and Submissions

- I. The appeals of the patent proprietor and of the opponent lie from the interlocutory decision of the opposition division concerning the maintenance of European patent Nr. 1 868 284 in amended form according to the then third auxiliary request.

- II. The patent proprietors requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the main request, or on the basis of one of the first to twelfth auxiliary requests, all filed with the reply to the opponent's appeal, or on the basis of the new sixth auxiliary request filed with letter dated 8 February 2021. The proprietors declared that the sixth auxiliary request filed with the reply to the opponent's appeal was meant as a request for dismissal of the opponent's appeal and that the new sixth auxiliary request should be dealt with after the request for dismissal of the opponent's appeal. The proprietors further requested remittal of the case to the department of first instance for further prosecution on the basis of the claims of the twelfth auxiliary request.

- III. The opponent requested that the contested decision be set aside and that the patent be revoked in its entirety. Since they maintained this request also in the light of the appeal of the proprietors, the board understands that they also effectively requested that the appeal of the proprietors be dismissed. Further, the opponent requested that the seventh to twelfth

auxiliary requests not be admitted into the proceedings.

- IV. In a communication under Article 15(1) RPBA 2007, the board informed the parties of its preliminary opinion that the proprietors' appeal seemed to be admissible, and that none of the main request and first to fifth auxiliary requests seemed to be allowable. Further, regarding the feature "current peak-on time", the board tended to agree with the opponent that there is a lack of clarity in the sense of Article 84 EPC.
- V. Oral proceedings before the board were held on 22 February 2021 by videoconference using the Zoom platform.

After the discussion of the patentability of the subject-matter according to the main request with respect to the disclosure of document E1 (WO 01/57999 A1) and the common general knowledge of the person skilled in the art, the patent proprietors repeatedly changed the sequence of their auxiliary requests during the oral proceedings before the board. This resulted in the following sequence of auxiliary requests: Sixth auxiliary request, eight auxiliary request, seventh auxiliary request, eleventh auxiliary request, twelfth auxiliary request, fourth auxiliary request, followed by the first to third, fifth, new sixth, ninth and tenth auxiliary requests.

- VI. Claim 1 according to the main request reads as follows:

"1. A driver arrangement including:
- a transformer (26) having a primary winding (24) and a secondary winding (28),

- a first electronic switch (42) to control current flow through said primary winding (24) of said transformer (26), wherein said first electronic switch (42) is a field effect transistor, preferably a MOSFET, wherein said field effect transistor (42) has its source-drain current path connected in series with said primary winding (24) of said transformer (26),
 - a sensing resistor (60) coupled to said primary winding (24) of said transformer (26) to produce a sensing signal indicative of the intensity of current flow through said primary winding (24), wherein said sensing resistor (60) is series connected to the source-drain current path through said field effect transistor (42),
 - a second electronic switch (50) adapted to switch off said first electronic switch (42), wherein said second electronic switch (50) is sensitive to said sensing signal,
- wherein said primary winding (24) of said transformer (26) is fed via a DC bus voltage selectively switched by said first electronic switch (42), and wherein said first electronic switch (42) has a gate terminal (44) fed from said DC bus voltage via a charge circuit (46, 48) that is selectively pinched to ground (G) via said second electronic switch (50),

characterized in that

- said second electronic switch (50) is a bipolar transistor connected with its base (56)/emitter (54) junction sensitive to the voltage drop across said sensing resistor (60),
- said secondary winding (28) of said driver arrangement is connected to a LED light source (L) to feed power thereto, and
- said second electronic switch (50) switches off said first electronic switch (42) as said current flow through said primary winding (24) of said transformer

(26) reaches a given threshold, whereby said first electronic switch (42) is alternatively turned-on and off in alternating turn-on and switch-off phases to feed power to said LED light source (L) via said secondary winding (28)."

VII. Claim 1 according to the sixth auxiliary request comprises *inter alia* the following additional feature:

"and said driver arrangement has a current peak-on time, with a constant value for the on time".

VIII. The wording of the patent proprietors' remaining auxiliary requests is not presented here since none of them was found to be admissible.

IX. The patent proprietors' arguments, as far as they are relevant for this appeal, can be summarised as follows:

The patent proprietors' appeal was admissible. A single possibly inadmissible request did not render an appeal as a whole inadmissible.

The subject-matter of claim 1 according to the main request was not obvious starting from the disclosure of document E1. E1 did not disclose switching off the driver arrangement at a given threshold. Further, all the cited prior art documents related to voltage regulation, which meant that they operated with a regulated threshold. In contrast, the invention concerned a constant threshold value for the current, which resulted in a constant amount of energy which was transferred by the transformer. None of the cited documents disclosed a regulated current source for LED light sources. Consequently, the subject-matter of

claim 1 according to the main request involved an inventive step.

The new sixth auxiliary request merely represented a correction of an obvious error in the existing sixth auxiliary request and the previous sixth auxiliary request had never been withdrawn.

The claimed feature "current peak-on time with a constant value for the on time" should not be analysed in isolation from the context of claim 1. Claim 1 defined that said driver arrangement had two different control functions, the first being a current peak-on time control and the second being a transition mode off time control. This control function also included the auxiliary winding. It further followed from the content of the contested patent, that a constant peak value for the current resulted in a constant switching time. The power transfer merely depended on the off-time whereas the on-time was completely independent of the load characteristics, which also followed from the description of the contested patent.

The eighth auxiliary request was sufficiently substantiated. Corresponding arguments were presented in section 3 of the proprietors' reply to the opponent's grounds of appeal. In particular in section 3.5, it was submitted with respect to the seventh auxiliary request that an exchange of the wording had been carried out. This also applied to the eighth auxiliary request. Consequently, the eighth auxiliary request had been sufficiently substantiated.

The seventh auxiliary request was also sufficiently substantiated, at least with respect to Article 123(2) EPC. On page 6 of the proprietors' reply under item 4.1

it was discussed that the expression that "said driver arrangement had a current peak-on time with a constant value for the on time" was equivalent from a technical point of view to the expression that said driver arrangement operated with a constant value for the on time, as now claimed in claim 1 according to the seventh auxiliary request.

Further in section 3.5 of the proprietors' reply, it was explained why the seventh auxiliary request overcame the objections of lack of clarity against the previous claims. It was sufficient that the seventh auxiliary request was only sufficiently substantiated with respect to Article 123(2) EPC. It was further implicit from the amendment carried out that also the objections of lack of clarity were overcome by claim 1 according to the seventh auxiliary request.

The situation for the eleventh auxiliary request was different since this request had already been presented before the first instance. The proprietors had reserved the right to file former pending requests at a later stage of the appeal proceedings. Moreover, under section 7 of the proprietors' reply, reference was made to arguments already presented in detail in the proprietors' submissions dated 17 October 2016. Thus, the eleventh auxiliary request was sufficiently substantiated.

It was further justified to remit the twelfth auxiliary request to the opposition division because its subject-matter had not been discussed before the opposition division. It formed part of the file and the proprietors had a right to two instances.

The proprietors further requested a formal decision following the preliminary opinion of the board of appeal based on the fourth auxiliary request. However, they did not present any detailed arguments as to why the fourth auxiliary request should be admitted into the proceedings.

Following an indication from the board that a repeated re-ordering of the sequence of requests rendered it difficult for the board to recognise in which direction the patent proprietors were heading, and further that each re-ordering represented an amendment of the case, the proprietors merely requested that the ninth auxiliary request be discussed separately. With respect to the remaining pending first to third, fifth, new sixth, ninth and tenth auxiliary requests, the proprietors did not present any further arguments.

- X. The opponent's arguments, as far as they are relevant for this appeal, can be summarised as follows:

The patent proprietors' appeal was not admissible. According to the notice of appeal of the patent proprietors, they requested that the European patent be maintained as granted. This request was inadmissible since according to the minutes of the oral proceedings before the opposition division, the patent as granted was no longer defended. Consequently, the request of the patent proprietors was inadmissible and as a consequence, the patent proprietors' appeal as a whole was inadmissible.

The only difference of the new main request, which corresponded to the first auxiliary request in first instance, over the disclosure of document E1 was that the load was specified as being an LED light source.

Even if the LED light source were recognised as a feature of the claimed driver arrangement, this difference over document E1 was obvious from document E1 itself. Consequently, the subject-matter of claim 1, according to the main request was obvious. The whole circuit according to claim 1 was already known from E1. Only the application to a LED light source was not explicitly mentioned in E1.

The sixth auxiliary request had been withdrawn with the proprietors' letter dated 8 February 2021. Returning now to the sixth auxiliary request was an attempt to reintroduce this request into the proceedings, which was inadmissible.

The claimed feature of claim 1 according to the sixth auxiliary request, that the driver arrangement had a current peak-on time, with a constant value for the on time, rendered claim 1 unclear. There was a lack of clarity regarding the term "constant value". This expression meant a further limitation on top of the current peak-on time. The on time being constant implied a counter or a clock circuit. However, the subject-matter of claim merely operated based on the current threshold. Since only a peak current control was carried out, the time for which the switch was on was subject to changes in, for example, temperature or load characteristics.

The eighth auxiliary request was not sufficiently substantiated in the proprietors' reply to the opponent's grounds of appeal. The eighth auxiliary request was merely mentioned under section 3.6 of the proprietors' reply. In this section, a different feature, namely that the energy transfer from the secondary winding was also dependent on the voltage

over said LED lighting source, was discussed. However, with respect to the feature current peak-on time, nothing was stated in the proprietors' reply dated 8 November 2017. Consequently, the eighth auxiliary request was not sufficiently substantiated.

The seventh auxiliary request was inadmissible. There existed no link to the seventh auxiliary request in section 4 of the proprietors' reply. Section 4.1 of the proprietors' reply merely related to the tenth auxiliary request. Further, no argument as to why this request overcame any objection could be found in section 4. Section 4 merely stated that the wording which was exchanged in claim 1, was to be regarded as identical to another wording. It was even questionable whether this could be regarded as a substantiation with respect to Article 123(2) EPC, since no reference to the original documents could be found in section 4. Such a reference was however obligatory when trying to argue that subject-matter was originally disclosed.

The eleventh auxiliary request was not sufficiently substantiated. There were no arguments regarding substantiation in the proprietors' reply. Further, the eleventh auxiliary request did not form part of the claims that were filed with the proprietors' grounds of appeal. Nothing in the proprietors' reply dated 8 November 2017 put the opponent or the board in a position to understand why the eleventh auxiliary request might overcome any objections.

Remittal of the twelfth auxiliary request served no purpose, as the twelfth auxiliary request was anyway not to be admitted, because it was not sufficiently substantiated during the appeal proceedings.

The fourth auxiliary request introduced new matter for the first time in the proceedings and was therefore inadmissible.

Reasons for the Decision

1. Admissibility of the appeals

The appeals were filed in due time and form and were at least in part sufficiently substantiated. Thus, both appeals are admissible.

The board does not concur with the opponent that the patent proprietors' appeal is inadmissible, since in the notice of appeal the proprietors had requested that the patent be maintained as granted, although no corresponding request was pending at the end of the proceedings before the opposition division. The mere fact that the notice of appeal contains a possibly inadmissible request does not render the appeal itself inadmissible in the sense of Rule 101(1) EPC in conjunction with Article 108, 3rd sentence EPC and Rule 99(2) EPC.

2. Main request - inventive step

The proprietors' main request corresponds to their first auxiliary request pending before the opposition division. The opposition division had reached the conclusion that the subject-matter according to this

request does not involve an inventive step starting from the disclosure of document E1 (point 13.1 of the contested decision).

The board had already pointed out in its preliminary opinion, that it tended to agree with the opponent (and the opposition division) that the subject-matter according to the main request did not involve an inventive step starting from the disclosure of document E1.

In particular, the proprietors' arguments that in contrast to claim 1 according to the main request, document E1 did not disclose that the second switch switched off the first switch at a given, i.e. constant, threshold and that E1 disclosed a voltage regulation implying a regulated, i.e. variable, threshold, did not convince the board. The board does not see any reason to deviate from the opponent's and the opposition division's position that the only difference between the subject-matter of claim 1 according to the main request is that the secondary winding of the driver arrangement is connected to a LED light source and that this difference is trivial for the person skilled in the art.

The board thus concurs with the opponent that the subject-matter according to claim 1 of the main request does not involve an inventive step in the sense of Article 56 EPC.

3. Sixth auxiliary request - admittance and clarity

3.1 Admittance

The board does not agree with the opponent that the sixth (former third) auxiliary request should not have been admitted into the opposition proceedings.

It is established case law of the boards of appeal that a board of appeal should only overrule the way in which a department of first instance exercised its discretion when deciding on a particular case if it concludes that it did so according to the wrong principles, or without taking into account the right principles, or in an unreasonable way, and thus exceeded the proper limits of its discretion (Case Law of the Boards of Appeal of the European Patent Office, Ninth Edition, IV.C.4.5.2). In the present case, the board could not identify any such wrong principles. It was clear from the discussion of the higher-ranking auxiliary request 2'' that the subject-matter was already held inventive. Merely an inadmissible amendment in claim 1 stood against the allowability of this request (see point 18 of the contested decision).

The board has therefore come to the conclusion, that the decision of the opposition division to admit the sixth (former third) auxiliary request into the proceedings was justified.

The board further agrees with the proprietors that the sixth auxiliary request had never been withdrawn during the appeal proceedings. The passage on page 2 of the proprietors' letter dated 8 February 2021, to which the opponent referred, reads *"Accordingly, I am submitting herewith a new sixth auxiliary requests [sic], wherein*

also Claim 4 was corrected." . The board cannot identify any content in this sentence that would imply a withdrawal of the sixth auxiliary request in favour of the new sixth auxiliary request, as alleged by the opponent.

Therefore, the board concludes that the sixth auxiliary request was not withdrawn and hence remains in the procedure.

3.2 Clarity

Apart from a number of other minor clarity issues in the sixth auxiliary request, it was disputed whether the expression *"a current peak-on time, with a constant value for the on time"* in claim 1 according to the sixth auxiliary request was clear in the sense of Article 84 EPC.

The board is not convinced by the proprietors' argument that from the context of the application as a whole, it was clear that the switch-on time was constant because it was independent of the off-time, which was determined by the load only. However, the requirement of Article 84 EPC refers to the wording of the claims, not to the content of the whole application or patent. Already for this reason, the proprietors' argument is not convincing. Furthermore, also the content of the disputed feature is not clear. As indicated by the opponent, the disputed feature creates a contradiction between the definitions *"current peak-on time"* and *"constant value of the on time"*. The control defined in claim 1 means a current control reacting to a threshold current. The definition of a *"constant value for the on time"* implies a clock or a counter and represents a further limitation on top of the condition of a current

peak-on time. The feature "current peak-on time" however, merely reacts to a current threshold which may be subject to changes due to temperature or load characteristics. Thus, the combination of these two aspects renders the feature as a whole unclear.

The board has therefore arrived at the conclusion that the definition used in claim 1 of this request "a current peak-on time, with a constant value for the on time" is not clear in the sense of Article 84 EPC.

4. Eighth auxiliary request - admittance

With respect to the admittance of the eighth auxiliary request, the board does not concur with the proprietors' arguments that this request overcame the previous objections under Article 84 EPC and that it had been sufficiently substantiated in the section of the reply to the opponent's appeal dealing with Article 84 EPC.

Although the eighth auxiliary request is mentioned in section 3.6 of the proprietors' reply, this section deals with the clarity of a different feature, namely the duration of the off-time, and can thus not be regarded as a response to the opponent's objection. The explanations given in section 3.6 therefore have no impact on the objection under Article 84 EPC discussed with respect to the higher ranking, i.e. the sixth auxiliary request.

The board has therefore decided to exercise its discretion under Article 12(4) RPBA 2007 not to admit the eighth auxiliary request into the proceedings,

since it was not sufficiently substantiated within the meaning of Article 12(2) RPBA 2007.

5. Seventh auxiliary request - admittance

The board is further not convinced by the proprietors' arguments that the seventh auxiliary request was sufficiently substantiated in sections 3.5 and 4.1 of their reply dated 8 November 2017 regarding Articles 84 and 123(2) EPC. In section 3.5 it is merely explained that compared to the wording of claim 1 as maintained, a different wording is used and that the term "dictated" had its common meaning. No specific reference is made to the opponent's objections set out in their statement of grounds of appeal under sections 4a) to g). Section 4.1 of the proprietors' reply on the other hand contains no reference to a passage of the application as originally filed such that it is not possible for the board or the opponent to understand why the proprietors are of the opinion that the objections under Article 123(2) EPC are overcome.

Consequently, the above arguments with respect to the eighth auxiliary request apply *mutatis mutandis* to the seventh auxiliary request.

The board has therefore decided to exercise its discretion under Article 12(4) RPBA 2007 not to admit the seventh auxiliary request into the proceedings, since it was not sufficiently substantiated within the meaning of Article 12(2) RPBA 2007.

6. Eleventh auxiliary request - admittance

Although the eleventh auxiliary request was already filed as fifth auxiliary request before the opposition division, neither the proprietors' grounds of appeal nor their reply to the opponent's grounds of appeal contain a sufficient substantiation for the eleventh auxiliary request. Section 7 of the proprietors' reply merely states: *"Just by way of precaution, the additional auxiliary requests of the first instance proceedings are maintained, in particular the new eleventh auxiliary request corresponds to the previous fifth auxiliary request..."*. However, no argument as to how the eleventh auxiliary request might overcome any objection raised in the contested decision or by the opponent can be found in the proprietors' grounds of appeal or reply.

The board has therefore decided to exercise its discretion under Article 12(4) RPBA 2007 not to admit the eleventh auxiliary request into the proceedings, since it was not sufficiently substantiated within the meaning of Article 12(2) RPBA 2007.

7. Twelfth auxiliary request- remittal and admittance

7.1 Remittal

The proprietors also requested that the twelfth auxiliary request be remitted to the department of first instance. They argued that they were denied their right to two instances if the twelfth auxiliary request was not remitted and that the fact that the subject-matter according to the twelfth auxiliary request, which corresponded to the seventh auxiliary request

before the opposition division, was not treated before the first instance, justified a remittal. The twelfth auxiliary request was part of the file because it had been sufficiently substantiated when it was filed as seventh auxiliary request before the opposition division.

The board disagrees. As a matter of fact, requests have to be substantiated in appeal, Article 12(2) and (4) RPBA 2007. Whether they were sufficiently substantiated before the department of first instance is of no relevance for the question whether a request was sufficiently substantiated in appeal. Therefore, already the proprietors' initial assumption, that the former seventh auxiliary request has always formed part of the appeal proceedings, is not correct. Given the lack of sufficient substantiation during the appeal proceedings, the twelfth auxiliary request never formed part of the appeal proceedings.

Furthermore, no right to two instances can arise from a request that was not sufficiently substantiated.

Moreover, remittal for the sole purpose of deciding on admissibility of a request would serve no purpose, in particular because the rules on admissibility for the first instance differ from those applying to the boards of appeal.

The board has therefore decided not to remit the case on the basis of the twelfth auxiliary request to the department of first instance for further prosecution.

7.2 Admittance

The board is further not convinced by the patent proprietors' argument that the twelfth auxiliary request formed part of the proceedings since it was already pending before the opposition division as then seventh auxiliary request and had been sufficiently substantiated when it was filed.

The fact that a request had been pending before the first instance is not sufficient, because even a former pending request has to be sufficiently substantiated in the sense of Article 12(2) RPBA 2007 in order to form part of the appeal proceedings.

For the twelfth auxiliary request, this requirement is not met. On page 8 of their reply to the opponent's appeal, the patent proprietors merely referred to what they had argued in their letter dated 17 October 2016 before the opposition division. It is settled case law of the boards of appeal that a reference to arguments presented in first instance is not regarded as fulfilling the requirements of Article 108, third sentence EPC (see Case Law of the Boards of Appeal, Ninth edition, 2019, V.A.2.6.4 a)).

Therefore, the twelfth auxiliary request is not sufficiently substantiated in the sense of Article 12(2) RPBA 2007. Consequently, the board has decided to exercise its discretion under Article 12(4) RPBA 2007 not to admit the twelfth auxiliary request into the appeal proceedings.

8. Fourth auxiliary request - admittance

In claim 1 according to the fourth auxiliary request, the following features were added:

"wherein the current on said LED lighting source (L) is constant since to a lower voltage on said LED lighting source (L) there corresponds a lower frequency and thus a lower energy/power transferred to said LED lighting source (L), whereby the on-off frequency at said first electronic switch (42) varies subservient on the operating parameters."

The above-mentioned features added to claim 1 according to the fourth auxiliary request were not presented in the first instance proceedings and no reasons why the introduction of these features is justified have been given by the patent proprietors. The patent proprietors were already informed of the board's tendency to agree with the opponent on the inadmissibility of the fourth auxiliary request in the communication under Article 15(1) RPBA 2007. During the oral proceedings before the board, the patent proprietors provided no arguments with respect to the admissibility of the fourth auxiliary request, but instead requested a formal decision on its admissibility. Thus, no facts or arguments in favour of the admissibility of the fourth auxiliary request have been presented or are apparent from the file.

Consequently, the board has decided to exercise its discretion under Article 12(4) RPBA 2007 not to admit the fourth auxiliary request into the appeal proceedings.

9. First to third, fifth, new sixth, ninth and tenth auxiliary requests - admittance

During the oral proceedings the patent proprietors substantially re-ordered their pending requests several times. This resulted in a repeated change of the subject-matter to be discussed, since the auxiliary requests selected by the patent proprietors related to a variety of different and diverging attempts to find allowable subject-matter.

As a consequence, during the oral proceedings it became more and more difficult for the opponent and the board to follow what the patent proprietors were attempting to achieve. Moreover, treating the auxiliary requests in the changed sequence as finally requested by the patent proprietors would have required re-discussing objections already addressed with respect to higher ranking auxiliary requests.

When wishing to proceed with the ninth auxiliary request, the patent proprietors had already been allowed no less than six re-orderings of the sequence of their auxiliary requests during the oral proceedings.

Further, with respect to the ninth and tenth auxiliary requests, the patent proprietors had already been informed during the oral proceedings of the board's preliminary opinion that these were not considered to be sufficiently substantiated in the sense of Article 12(2) RPBA 2007. As regards the first to third and fifth auxiliary requests, the patent proprietors had been informed in the board's communication under Article 15(1) RPBA 2007 that the subject-matter according to the first auxiliary request did not

involve an inventive step in the sense of Article 56 EPC and that none of the second, third or fifth auxiliary requests was considered to be clear in the sense of Article 84 EPC.

The patent proprietors' reply dated 8 February 2021 merely discussed inventive step regarding the new sixth auxiliary request, not regarding the first auxiliary request. Clarity was only discussed on a very general basis without a discussion of the features objected to as unclear by the opponent. Consequently, no further arguments of the patent proprietors in favour of the first to third, fifth and new sixth auxiliary request were apparent from the file. During the oral proceedings no arguments were presented regarding the admissibility of these auxiliary requests either.

As claim 1 according to the new sixth auxiliary request is identical to claim 1 according to the sixth auxiliary request (request to dismiss the opponent's appeal), the objections discussed with respect to the non-allowable sixth auxiliary request apply *mutatis mutandis* to the new sixth auxiliary request. Thus, there is no justification to admit the new sixth auxiliary request into the proceedings.

Further, as follows from the above discussion, the re-ordering of pending requests carried out by the proprietors amounts to an amendment of the case, which needs to be justified according to Article 13(2) RPBA 2020. However, no special circumstances for such amendments, in the sense of Article 13(2) RPBA 2020, have been justified with cogent reasons by the patent proprietors.

The board has therefore decided to exercise its discretion under Article 13(2) RPBA 2020 not to admit the first to third, fifth, new sixth, ninth and tenth auxiliary requests into the appeal proceedings.

10. Conclusion

All of the patent proprietors' requests are either not admissible or not allowable. Consequently, the board accedes to the opponent's request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated