

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 12 July 2022**

**Case Number:** T 0971/18 - 3.5.04

**Application Number:** 15172704.7

**Publication Number:** 2966620

**IPC:** G06T15/50, G06F3/0481

**Language of the proceedings:** EN

**Title of invention:**

DEVICE AND METHOD TO DISPLAY OBJECT WITH VISUAL EFFECT

**Applicant:**

Samsung Electronics Co., Ltd.

**Headword:**

**Relevant legal provisions:**

EPC Art. 56

RPBA Art. 12(4)

RPBA 2020 Art. 13(2)

**Keyword:**

Main request - inventive step (no)

First to third auxiliary request - admittance under Article  
12(4) RPBA 2007 (no)

Fourth to sixth auxiliary request - admittance under Article  
13(2) RPBA 2020 (no)

**Decisions cited:**

T 1178/08, T 1212/08, T 1108/10, G 0010/93

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0971/18 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 12 July 2022**

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

**Representative:** Arnold & Siedsma  
Bezuidenhoutseweg 57  
2594 AC The Hague (NL)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 8 December 2017  
refusing European patent application No.  
15172704.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairwoman** B. Willems  
**Members:** F. Sanahuja  
G. Decker

## Summary of Facts and Submissions

I. The appeal is against the examining division's decision to refuse European patent application No. 15 172 704.7.

II. The documents cited in the decision under appeal included the following:

D9 M. Rivera, "*Lighting and Texturing in Maya: 3D Computer Monitor Part 2*", DevWebPro, 23 June 2010

III. The application was refused for the following reasons.

(a) The main request and auxiliary requests 1 to 3 were not allowable because claims 1 and 7 of each request contained subject-matter which extended beyond the content of the application as filed (Article 123(2) EPC).

(b) Auxiliary request 4 was not allowable because the subject-matter of claim 1 lacked inventive step over the disclosure of document D9 combined with the common general knowledge of the person skilled in the art (Article 56 EPC).

IV. The applicant ("appellant") filed notice of appeal. With the statement of grounds of appeal, the appellant filed a main request and submitted that this main request corresponded to auxiliary request 4 on which the decision under appeal was based. The appellant also filed amended claims according to first to third auxiliary requests, indicated a basis in the application as filed for the amendments, and provided arguments why the subject-matter of claim 1 of each of

the requests filed with the statement of grounds of appeal was new and involved an inventive step.

The appellant requested 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 or, alternatively, one of the first to third auxiliary requests filed with the statement of grounds of appeal (see statement of grounds of appeal, last page, section "SUMMARY").

- V. A summons to oral proceedings scheduled for 12 July 2022 was issued on 26 October 2021. In a communication under Article 15(1) RPBA 2020 dated 18 February 2022 (the "board's communication"), the board expressed the following preliminary view.
- (a) The subject-matter of claim 1 of the main request lacked inventive step over the disclosure of document D9 combined with the common general knowledge of the person skilled in the art (Article 56 EPC).
  - (b) The board was inclined to exercise its discretionary power under Article 12(4) RPBA 2007 to hold the first, second and third auxiliary requests inadmissible.
  - (c) If the appellant convinced the board to admit any of the auxiliary requests into the appeal proceedings, the following issues would have to be discussed.
    - (i) The subject-matter of claim 1 of the first auxiliary request lacking inventive step (Article 56 EPC).

(ii) The amended features of claim 1 of the second auxiliary request *prima facie* not contributing to inventive step.

(iii) The subject-matter of claim 1 of the third auxiliary request extending beyond the content of the application as filed (Article 123(2) EPC).

VI. With a letter of reply dated 9 June 2022, the appellant submitted amended claims according to a fourth and a fifth auxiliary request and explanatory drawings in support of its opinion that document D9 did not disclose light sources at the edge of the object. It indicated a basis in the application as filed for the amended claims of the fourth and fifth auxiliary requests.

VII. As requested by the appellant, the oral proceedings on 12 July 2022 were held by videoconference pursuant to Article 15a(1) RPBA 2020.

VIII. During the oral proceedings, the appellant submitted amended claims according to a sixth auxiliary request.

IX. The appellant's final requests were 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 filed with the statement of grounds of appeal or, alternatively, on the basis of the claims of one of the first to third auxiliary requests filed with the statement of grounds of appeal or the fourth and fifth auxiliary requests filed by letter dated 9 June 2022 or the sixth auxiliary request filed during the oral proceedings on 12 July 2022.

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

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

A display method comprising:

- displaying, on a screen of a display device, in a virtual environment, an object comprising either one or both of a photo object and a video object, the object having an edge and a bright characteristic, and the virtual environment being a remainder of the a virtual space to be displayed, aside from the object;
- setting a virtual light source on the edge of the object; and
- displaying an illumination effect of light from the virtual light source projected to illuminate a virtual area of the virtual environment around the object based on the virtual light source.

XI. Claim 1 of the **first auxiliary request** corresponds to claim 1 of the **main request** with the following feature added at the end of the claim:

- wherein the virtual area of the virtual environment around the object is directly adjacent to the object.

XII. Claim 1 of the **second auxiliary request** corresponds to claim 1 of the **main request** with the following features added at the end of the claim:

- extracting, from the object, a color of the object at a position of the virtual light source;

- wherein displaying the illuminating effect of light comprises applying the color to the virtual light source.

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

A display method comprising:

- displaying, on a screen of a display device, in a virtual environment, an object comprising either one or both of a photo object and a video object, the object having an edge and a bright characteristic, and the virtual environment being a remainder of the a virtual space to be displayed, aside from the object;

- setting a virtual light sourceses on the edge of the object; and

- displaying an illumination effect of light from the virtual light sourceses projected to illuminate a virtual areases of the virtual environment around the object based on the virtual light sourceses;

- extracting, from the object, a color of the object at positions of the virtual light sources;

- wherein the illuminating comprises applying the colors to the virtual light sources and in an overlapping area among the virtual areas, using a statistical value of color values of each virtual area.

XIV. Claim 1 of the **fourth auxiliary request** reads as follows (features added to or deleted from claim 1 of



the **main request** are underlined or ~~crossed-out~~, respectively):

A display method comprising:

- displaying, on a screen of a display device, in a virtual environment, within an object area or display area, an object comprising either one or both of a photo object and a video object, the object having an edge and a bright characteristic, and the virtual environment being a remainder of the a virtual space to be displayed, aside from the object;
- setting a virtual light source on the edge of the object; and
- displaying an illumination effect of light from the virtual light source projected to illuminate a virtual area of the virtual environment around the object based on the virtual light source.

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

A display method comprising:

- displaying, on a screen of a display device, in a virtual environment, an object comprising either one or both of a photo object and a video object, the object having an edge and a bright characteristic, and the virtual environment being a remainder of the a virtual space to be displayed, aside from the object;
- setting ~~a~~ virtual light sourceses on the edge of the object; and

- displaying an illumination effect of light from the virtual light sources projected to illuminate a virtual area of the virtual environment around the object based on the virtual light sources;

- wherein information of the virtual light sources is automatically set and the information of the virtual light sources includes a position and an intensity attenuation of each of the virtual light sources, and an interval between the virtual light sources.

XVI. 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 display method comprising:

- displaying, on a screen of a display device, in a virtual environment, an object comprising either one or both of a photo object and a video object, ~~the object having an edge and a bright characteristic,~~ and the virtual environment being a remainder of ~~the~~ a virtual space to be displayed, aside from the object, said virtual environment including a virtual reality cinema, a virtual reality gallery or a virtual reality museum, said display device including a head mounted display;

- setting a virtual light source ~~on the edge of~~ to the object;

- extracting, from the object, a color of the object at a position of the virtual light source, and applying the color to the virtual light source, wherein the extracting comprises extracting, from the object as a value of the color, one of an average value, a weighted

average value, and a median value of color values around the position of the virtual light source; and

- displaying an illumination effect of light from the virtual light source projected to illuminate a virtual area of the virtual environment around the object based on the virtual light source.

XVII. The appellant's arguments relevant to the present decision may be summarised as follows.

(a) Main request

- (i) Claim 1 of the main request differed from the disclosure of document D9 in displaying a photo or video object in the display of the computer monitor.
- (ii) D9 did not disclose setting a light source on the edge of the photo or video object.
- (iii) "*D9 fail[ed] to disclose illumination of surrounding virtual areas from light sources at the edge of the photo or video object*" (see statement of grounds of appeal, page 3, first paragraph). The monitor of D9 only had light sources directed at the view perspective; the reflections off the keyboard were from another light source that also cast the oblique shadow of the monitor.
- (iv) "*[S]etting of the light source to the edge of the object ... the virtual light source may be characterized in advance and in dependence of the object, thereby enabling*

*changes of the visual effect due to changes in the manner in which the object is displayed within the object area. This provides a further immersive effect over D9.*" (see letter of reply dated 9 June 2022, section "Comments with respect to D9", last paragraph). Adapting the lights set to the object according to the content of the photo or video object improved immersiveness.

- (v) Casting light on objects in the virtual environment depending on the contents of the photo or video object provided a measurable technical effect. This effect was demonstrated by Figures 18 and 19.
  
- (vi) By defining virtual light sources in relation to the object, these sources might be placed on the object in advance. Subsequently, the virtual light sources might be adapted to the object. Separating these steps reduced processing.

(b) First auxiliary request

The first auxiliary request should be admitted into the appeal proceedings because it had been a reaction to discussions with the examining division during the oral proceedings.

(c) Second and third auxiliary requests

The appellant's current representatives did not personally participate in first-instance proceedings and thus had not been responsible for preparing

requests to be submitted in first-instance proceedings. Hence, the current representatives could not have filed these requests in first-instance proceedings and could not give any reason why these requests had not been filed in first-instance proceedings.

(d) Fourth and fifth auxiliary requests

The fourth and fifth auxiliary requests should be admitted into the appeal proceedings because they had been filed in reaction to the comments in point 4.8.2 of the board's communication. The amendments clarified that the virtual light sources were on the object.

(e) Sixth auxiliary request

The sixth auxiliary request had been filed in reaction to the fact that, during the oral proceedings, the board doubted whether immersiveness could be considered a technical effect. Therefore, the sixth auxiliary request should be admitted into the proceedings.

### **Reasons for the Decision**

1. The appeal is admissible.
2. *The invention*
  - 2.1 The invention relates to a method for realistically displaying a photo or video object on the screen of a display device in a virtual environment. The invention includes illuminating the virtual environment using a virtual light source on the edge of the object.
3. *Main request, inventive step (Article 56 EPC)*

- 3.1 An invention is to 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 (Article 56 EPC).
- 3.2 The examining division identified document D9 as the most relevant state of the art for the assessment of inventive step (see decision under appeal, point 5.3). The appellant did not dispute this.
- 3.3 Document D9 discloses a method for lighting and texturing a scene. The scene of D9 contains a model of a computer monitor (see first figure on page 2). A screenshot of a website is displayed on the screen (see description on pages 7 and 8, *"Take a screenshot of a website of your choosing and save it as an image file", "an entirely unique material specifically tailored to the screen", "this material should have the screenshot as it's [sic] texture map" and "add this material to the screen"*). An area light is created, placed on the bottom edge of the monitor screen, and serves as the monitor's light source (see page 11, last two sentences; see *"area light"* on first figure on page 12).
- 3.4 The board agrees with the examining division's feature analysis of document D9 set out in point 5.3 of the decision under appeal.
- 3.5 For the sake of argument, the board accepts the appellant's view that the objects displayed in D9 are not photo and/or video objects (see point XVII.(a) (i) above).

3.6 However, displaying a photo or video object rather than an image of a screenshot merely relates to an aesthetic effect without any technical contribution.

Therefore, the board concurs with the examining division that the selection of a type of image is motivated by non-technical considerations (see points 5.5 to 5.5.3 of the decision under appeal).

3.7 The board is not convinced by the appellant's argument that D9 does not disclose setting a light source at the edge of the object (see point XVII.(a)(ii) above). The area light placed on the bottom edge of the screen object is a virtual light source, and the bottom edge of the screen object is an edge of the object (see also point 5.3 of the decision under appeal).

3.8 The board disagrees with the appellant that D9 failed to disclose illumination of surrounding virtual areas from light sources at the edge of the photo or video object (see point XVII.(a)(iii) above).

3.8.1 The area light of document D9 (see first figure on page 12) is placed along the bottom edge of the screen of the computer monitor. This light is configured to illuminate the virtual environment and generate shadows (see first paragraph and second figure on page 13). Other lights in the scene include a spot light and a point light.

3.8.2 The appellant disputed the presence of an area light and its illumination effects in the scene and referred to "internal virtual light sources" of the monitor that rendered the monitor visible and which were only directed at a view perspective (see page 2, last

paragraph and page 3, first paragraph of the statement of grounds of appeal).

- 3.8.3 The board cannot identify "internal virtual light sources" in document D9. Rather, according to D9, "*[b]y default all lights are casting on all objects*" (see page 14). Thus, the area light ("areaLight1" in the figures on pages 14 and 15) is casting light, by default, on all objects (including keyboard "keyboard1" and desk "desk"). Document D9 explains that the light sources that cast light on an object may be selected (paragraph bridging pages 13 and 14) and instructs the reader to select the spot light as the only light source for the monitor group and the screen (page 14). This is achieved by deselecting the monitor group and the screen as objects on which the area and point lights cast light (see "monitor" and "screen1" objects, pages 14 and 15). However, the area light "*serv[ing] as the monitor acting as an actual light source*" (page 11, last sentence) still casts light on the desk and the keyboard ("desk" and "keyboard1" objects).
- 3.9 The board is not convinced that adapting the lights to the content of the object enhances immersiveness and that enhanced immersiveness could be seen as a technical effect (see point XVII.(a)(iv) above).
- 3.9.1 The board cannot identify the features that allegedly provide a further immersive effect in the subject-matter of claim 1. The claim specifies the step of setting a virtual light source on the edge of an object but is silent as to characterising the virtual light sources in advance and depending on the object.
- 3.9.2 Even if an "immersive effect" could be attributed to these missing features, this would not be a technical



effect. Setting and adapting the brightness or colour of the virtual light source on the edge of an object depending on the contents of the object mimics real-world illumination.

Enhancing immersiveness of a virtual environment by mimicking realistic illumination aims at a subjective experience of a viewer.

3.9.3 Furthermore, the board is not convinced that claim 1 specifies casting light on objects in the virtual environment depending on the contents of the object (see point XVII.(a)(v) above). In the absence of this dependency, the alleged measurable technical effect is not provided.

3.10 The appellant's argument that processing is reduced (see point XVII.(a)(vi) above) did not persuade the board.

3.10.1 A technical effect may only be achieved if all the features contributing to it are explicitly or implicitly defined in the claim.

In the case in hand, claim 1 does not specify or imply steps directed to features allegedly reducing processing power/time (i.e. placing virtual light sources on an object in advance and subsequently adapting them to the object). It follows that the stated effect based on these features cannot be achieved.

3.10.2 Furthermore, the board is not convinced that subject-matter including steps referred to in point 3.10.1 above would reduce the necessary processing power/time. Indeed, the processing

power/time needed to render a virtual environment remains the same irrespective of whether the lights are placed directly on the object and whether the lights are set in multiple sub-steps (possibly by different operators) or in one step.

3.11 In view of the above, the board concludes that the subject-matter of claim 1 of the main request lacks inventive step.

4. *First, second and third auxiliary requests, admittance (Article 12(4) RPBA 2007)*

4.1 In the current case, the statement of grounds of appeal was filed before the date on which the Rules of Procedure of the Board of Appeal 2020 (RPBA 2020, OJ EPO 2019, A63) entered into force. Thus, in accordance with Article 25(2) RPBA 2020, Article 12(4) to (6) RPBA 2020 does not apply to the question of whether to admit the requests filed with the statement of grounds of appeal. Instead, Article 12(4) RPBA 2007 (OJ EPO 2007, 536) continues to apply.

4.2 Under Article 12(4) RPBA 2007, the board has the power to hold inadmissible requests which could have been presented in the first-instance proceedings.

Since, in fact, almost every claim request could have been presented before the department of first instance, the question is whether the situation was such that the filing of these requests should have taken place at that stage (see Case Law of the Boards of Appeal of the European Patent Office, 9th edition 2019, "Case Law", V.A.4.11.1).

The board exercises its discretion under Article 12(4) RPBA 2007 having regard to the circumstances of the case (see e.g. decision T 1178/08, point 2.3). However, as was held in G 10/93 (OJ EPO 1995, 172, point 4 of the Reasons), "*[p]roceedings before the boards of appeal in ex-parte cases are primarily concerned with examining the contested decision*". Appeal proceedings are not a continuation of examination at first instance or a second, parallel procedure for the substantive examination otherwise to be carried out by the examining division which applicants can freely opt to launch depending on the circumstances (see Case Law, V.A.4.11.4b), in particular the cited decisions T 1108/10 and T 1212/08).

- 4.3 According to the appellant, the first auxiliary request was filed for the first time in appeal. Claim 1 has been amended to specify that "*the virtual environment around the object is directly adjacent to the object*". The appellant indicated Figures 2, 6, 7, 15 and 17 to 21 as basis for this amendment. Hence, claim 1 of the first auxiliary request seems to be amended by adding features taken from the figures.
- 4.3.1 The appellant's arguments regarding the admittance of the first auxiliary request (see point XVII.(b) above) have not convinced the board.

The appellant should have filed a request which is a reaction to an opinion expressed by the examining division during oral proceedings during those oral proceedings. However, the appellant, after filing the then fourth auxiliary request during the oral proceedings, decided not to file any other request (see points 23 and 24 of the minutes). The appellant did not

file any further auxiliary requests addressing the examining division's opinion.

By filing the current first auxiliary request only with its statement of grounds of appeal, the appellant decided to postpone the examination of this request to the appeal proceedings. However, appeal proceedings are primarily concerned with examining the contested decision and are not a continuation of substantive examination.

4.4 According to the appellant the "*[p]revious auxiliary requests 2, 2'* are essentially in the now newly proposed second and third auxiliary requests" (see fourth paragraph on page 2 of the statement of grounds of appeal).

4.4.1 The second auxiliary request inserts, with respect to the main request, the following amended features:

(a) extracting, from the object, a colour of the object at a position of the virtual light source

(b) wherein displaying the illuminating effect of light comprises applying the colour to the virtual light source

4.4.2 In a telephone consultation on 3 November 2017, the examining division informed the appellant that the feature "*setting the virtual light sources along an edge of the object*" in claim 1 of the then main request violated Article 123(2) EPC. According to the examining division, the application as originally filed failed to disclose the selection of light sources located only along an edge of an object (see points 6 and 6.1 of the minutes of the consultation). The objected to feature

was also in claim 1 of each of the then auxiliary requests 1 to 3. The objection was repeated during the oral proceedings before the examining division (see minutes, points 3 to 9).

- 4.4.3 During the oral proceedings, the appellant filed auxiliary request 4 to address the objection under Article 123(2) EPC (see point 10 of the minutes of the oral proceedings). Claim 1 of this request broadly corresponds to claim 1 of the then main request replacing the plurality of virtual light sources with a single light source and further defining the object as a photo or video object.
- 4.4.4 During the oral proceedings, the examining division reasoned that the subject-matter of claim 1 of then auxiliary request 4 was "*not inventive for the same reasons already provided when discussing the previous version of the request*". The appellant neither commented on the examining division's reasoning nor filed any further requests (see points 23 and 24 of the minutes). In particular, the appellant did not file any further auxiliary requests combining the features of claim 1 of the then auxiliary request 2 on the determination of a colour value of a virtual light source with the feature of a single virtual light source of claim 1 of the then auxiliary request 4.
- 4.4.5 Acting in this manner, the appellant effectively prevented the examining division from giving a reasoned decision on such claims, particularly on inventive step. The appellant would thus compel the board either to give a first ruling on this matter or to remit the case to the department of first instance. Neither procedural option is appropriate. These two inappropriate options would never have arisen if the

amended claims in question had been presented in the proceedings before the examining division. The appellant should have allowed the examining division to exhaustively assess and then decide on all the subject-matter for which it intended to seek protection, even if only on a subsidiary basis, if it wished the board to rule on it.

4.5 According to the appellant, the "*[p]revious auxiliary requests 2, 2' are essentially in the now newly proposed second and third auxiliary requests*" (see fourth paragraph on page 2 of the statement of grounds of appeal). The board could not identify a previous auxiliary request 2'. The appellant indicated paragraph [0081] as basis for the amendments made to claim 1 of the third auxiliary request. Hence, claim 1 of the third auxiliary request seems to be amended by adding features taken from the description. The appellant did not indicate any reason for filing these amendments for the first time in appeal proceedings. It seems that the appellant filed the third auxiliary request as a continuation of substantive examination rather than as a reaction to an objection raised in the decision under appeal.

4.6 The board has not been convinced by the appellant's representatives' arguments that they had not been personally responsible for the case in first instance proceedings (see point XVII.(c) above). The appellant cannot rely on Article 12(4) RPBA 2007 not being applicable simply because different representatives take over a case in appeal proceedings. It is in the appellant's sphere of risk if there are changes in its representation.

- 4.7 In view of the above, the board, exercising its discretionary power under Article 12(4) RPBA 2007, holds the first, second and third auxiliary requests inadmissible.
5. *Fourth and fifth auxiliary requests, admittance (Article 13(2) RPBA 2020)*
- 5.1 The claims of the fourth and fifth auxiliary requests were filed by the appellant by letter dated 9 June 2022, i.e. after notification of the summons to oral proceedings.
- 5.2 Under Article 13(2) RPBA 2020, "[a]ny 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".
- 5.3 The board is not convinced that the comments in point 4.8.2 of the board's communication represent "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020 (see point XVII.(d) above).
- 5.3.1 In the statement of grounds of appeal, the appellant referenced "internal virtual light sources" of the monitor in document D9 (see page 2, last paragraph and page 3, first paragraph). In point 4.8.2 of its communication, the board expressed the preliminary view that it could not identify in prior-art document D9 the "internal virtual light sources" referred to by the appellant. Hence, the board merely commented on the appellant's argument.

5.3.2 Addressing the appellant's arguments in a board's communication is primarily intended to give the appellant an opportunity to prepare its counter-arguments in response to it but does not constitute "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020, nor does it invite the filing of new requests.

5.3.3 Thus, the appellant has not justified with cogent reasons why there were exceptional circumstances justifying the late filing of the fourth and fifth auxiliary requests. Therefore, these requests are not admitted into the appeal proceedings under Article 13(2) RPBA 2020.

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

6.1 The claims of the sixth auxiliary request were filed during the oral proceedings, i.e. after notification of the summons to oral proceedings.

6.2 Reference is made to the legal provision set out under point 5.2 above.

6.3 The appellant's arguments regarding the admittance of the sixth auxiliary request (see point XVII.(e) above) have not convinced the board for the following reasons.

6.3.1 In its letter dated 9 June 2022, the appellant stated that "*setting of the light source to the edge of the object ... provides a further immersive effect*" (see letter of reply dated 9 June 2022, section "Comments with respect to D9", last paragraph).



- 6.3.2 In response to this statement, the board invited the appellant, during the oral proceedings, to identify a technical effect in the alleged "immersive effect".
- 6.3.3 A board's reaction to an argument of an appellant cannot be considered "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020. If exceptional circumstances were to be acknowledged in a board's rebuttal of an appellant's argument, the board would never be in a position to disagree with the appellant without opening the door to the filing of new requests.
- 6.4 In view of the above, the board, exercising its discretion under Article 13(2) RPBA 2020, does not admit the sixth auxiliary request into the appeal proceedings.

7. *Conclusion*

- 7.1 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:



U. Bultmann

B. Willems

Decision electronically authenticated