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**Datasheet for the decision
of 14 April 2022**

Case Number: T 1078/18 - 3.3.02

Application Number: 10771723.3

Publication Number: 2494014

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Language of the proceedings: EN

Title of invention:
Lubricating composition

Patent Proprietor:
Shell Internationale Research Maatschappij B.V.

Opponent:
Total Marketing Services

Headword:

Relevant legal provisions:
EPC Art. 54, 54(3), 87(1)
RPBA Art. 12(2), 12(3), 12(4)
RPBA 2020 Art. 13(2)

Keyword:

Novelty

Admittance - unsubstantiated claim request

Decisions cited:

G 0003/97, G 0001/15, T 0016/14

Catchword:



Beschwerdekammern

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Case Number: T 1078/18 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 14 April 2022

Appellant: Total Marketing Services
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on
21 February 2018 rejecting the opposition filed
against European patent No. 2494014 pursuant to
Article 101(2) EPC**

Composition of the Board:

Chairman M. O. Müller
Members: P. O'Sullivan
M. Blasi

Summary of Facts and Submissions

- I. The appeal of the opponent (hereinafter appellant) lies from the decision of the opposition division to reject the opposition against European patent 2 494 014.
- II. Notice of opposition was filed against the patent, invoking Article 100(a) (lack of novelty and inventive step), (b) and (c) EPC.
- III. The following documents *inter alia* were cited in opposition proceedings and invoked by the parties in appeal proceedings:

D1: WO 2011/042552 A1

D2: patent application 09172633.1, priority document of D1

According to the contested decision, the subject-matter of granted claim 1 was novel vis à vis D1. In particular, the disclosure in D2 was not part of D1. Detergent packages 2 and 3 disclosed in the latter could thus be derived not only from detergents OLOA 219C and OLOA 246S, but also from OLOA 249SX.

- IV. Further documents were submitted in appeal proceedings, specifically D13 to D15, D17bis and D21 by the appellant and D16 to D20 by the patent proprietor (hereinafter respondent). None of these documents needed to be addressed in the present decision as they were filed in relation to aspects which were not relevant for reaching this decision.

V. Requests relevant to the present decision

The appellant requested that the contested decision be set aside and that the patent be revoked in its entirety.

The appellant furthermore requested that the set of claims of auxiliary request 1 not be admitted into the proceedings.

The respondent requested that the appeal be dismissed, i.e. that the opposition be rejected and the patent be maintained as granted, or alternatively, that the patent be maintained in amended form on the basis of the set of claims of auxiliary request 1 submitted with the reply to the statement of grounds of appeal.

VI. With a communication pursuant to Article 15(1) RPBA 2020, the board set out its preliminary opinion. Therein, the board expressed the view that granted claim 1 was entitled to the claimed priority date. In relation to novelty vis à vis D1, the board expressed the view that D1 was prior art pursuant to Article 54(3) EPC. The board also noted the calculations submitted by the appellant in relation to the disclosure of example 7 of D1, and observed that the respondent had not addressed those calculations at all in written proceedings. In relation to the admittance of auxiliary request 1, the board noted that no explanations had been provided by the respondent concerning how the amendment in claim 1 would overcome the objections raised by the appellant. Accordingly, the requirement in Article 12(2) RPBA 2007 that the reply contain the party's complete case did not appear to have been met, and the board thus had the discretion not to admit auxiliary request 1 into the proceedings.

VII. As requested, the board summoned to oral proceedings, which were held by videoconference on 14 April 2022 in the presence of both parties.

VIII. Independent claim 1 of the main request (patent as granted) reads as follows:

" A lubricating composition at least comprising:

- a base oil; and*
- a detergent;*

wherein the detergent comprises at least 30 mol%, based on the total amount of detergent, of a sulphonate detergent having a BN (Base Number) of from 0.1 to 80 mg KOH/g;

wherein the detergent comprises from 30 to 70 mol%, based on the total amount of detergent, of a phenate detergent, wherein the phenate detergent is an over-based detergent having a BN of at least 190 mg KOH/g; wherein the lubricating composition comprises at least 8 wt.% of detergent, based on the total weight of the composition; and

wherein the lubricating composition has a TBN (total base number) according to ASTM D 2896 of at least 10 mg KOH/g."

Independent claim 1 of auxiliary request 1 differs from claim 1 of the main request by the addition, at the end of the claim, of the following text:

"and wherein the base oil comprises at least 50 wt.% of a Group II base oil, based on the total amount of base oil".

- IX. The submissions of the appellant, insofar as relevant to the present decision, may be summarised as follows:

Main request - Novelty, Article 54 EPC

The subject-matter of claim 1 lacked novelty vis à vis D1. In this regard, the new submissions presented by the respondent during oral proceedings before the board should not be admitted into the proceedings.

Auxiliary request 1 - Admittance

The set of claims of auxiliary request 1 should not be admitted into the proceedings.

- X. The submissions of the respondent, insofar as relevant to the present decision, may be summarised as follows:

Main request - Novelty, Article 54 EPC

The subject-matter of claim 1 was novel vis à vis D1. In this regard, the new submissions presented during oral proceedings before the board should be admitted into the proceedings.

Auxiliary request 1 - Admittance

The set of claims of auxiliary request 1 should be admitted into the proceedings.

Reasons for the Decision

Main request (patent as granted)

1. Novelty - Article 100(a) and Article 54(3) EPC

Contested claim 1 (*supra*), in summary, is directed to a lubricating composition comprising a base oil and a detergent and requires that

- the detergent comprises at least 30 mol% of a sulphonate detergent having a BN (base number) of 0.1-80 mg KOH/g;
- the detergent comprises from 30-70 mol% of an over-based phenate detergent having a BN of at least 190 mg KOH/g;
- the lubricating composition comprises at least 8 wt.% detergent, based on the total weight of the composition; and
- the lubricating composition has a TBN (total base number) of at least 10 mg KOH/g.

1.1 The appellant submitted the subject-matter of contested claim 1 lacked novelty in view of patent document D1. Interpreted in the light of the evidence provided by document D2, the patent application from which D1 claims priority, example 7 of D1 disclosed a composition as claimed.

1.2 Example 7 of D1 comprises as components of the composition and in addition to a base oil, *inter alia* "detergent package 2" and "detergent package 3". According to the description of D1 (page 9, lines 23-28):

"'Detergent package 2', 'Detergent package 3' and 'Detergent package 4' were blends of phenate-type and sulphonate-type detergents. Detergent packages 2, 3 and 4 components are commercially available from e.g. Chevron Oronite (Windsor, UK) under the trade designations 'OLOA 219C', 'OLOA 249SX' and 'OLOA 246S' respectively."

OLOA 219C is an over-based phenate detergent having a TBN of 250 mg KOH/g, thus falling within the definition of the phenate detergent recited in contested claim 1 (patent, paragraph [0043]). OLOA 246S is a low BN sulphonate detergent having a TBN of 16 mg KOH/g, thus falling within the definition of the sulphonate detergent recited in contested claim 1.

The above passage of D1 does not exclude that detergents 2 and 3 could comprise the further detergent mentioned, namely OLOA 249SX. The appellant therefore turned to D2, the priority document of D1.

D2 discloses (page 9, lines 10-14):

"'Detergent package 2' and 'Detergent package 3' were blends of phenate-type and sulphonate-type detergents. Detergent packages 2 and 3 are commercially available from e.g. Chevron Oronite (Windsor, UK) under the trade designations 'OLOA 219C' and 'OLOA 246S', respectively"

- 1.3 The board notes in agreement with the appellant that, as far as the examples comprising detergent packages 2 and 3 are concerned, D1 and D2 are identical (in terms of their respective table 1, examples 3-8 and comparative examples 2, 3, 4 and 7), and therefore there is no doubt that the detergent packages employed in D1 and D2 are identical. Therefore, from the above

passage in D2, it can be deduced that detergent packages 2 and 3 only comprise OLOA 219C and OLOA 246S (to the exclusion of OLOA 249XS disclosed in D1).

1.4 As submitted by the appellant, the amounts of each detergent in detergent packages 2 and 3 can be calculated from TBN values provided for examples comprising only detergent package 2 (e.g. examples 3, 4 and comparative examples 2 and 7), which in turn allows the calculation of the relative amounts of detergents in detergent package 3. From these values, the total weight percentages of the respective detergents are calculated, as well as the detergent content of the composition, and the TBN value thereof (statement of grounds of appeal, page 11 fourth paragraph - page 12, third paragraph). The appellant's calculation leads to the result that example 7 of D1 discloses a lubricating composition falling within the scope of contested claim 1, namely comprising a base oil and a detergent, specifically, having

- 36.6 mol% OLOA 246S (a sulphonate detergent according to claim 1),
- 63.4 mol% OLOA 219C (a phenate detergent according to claim 1)
- 21.1% detergent, based on the total weight of the composition, and
- and a TBN of 42.64 mg KOH/g

1.5 The respondent argued that the priority document of D1, i.e. D2, could not be used to interpret the disclosure of D1, the implication being that the appellant's calculations based on example 7 of D1 were incorrect, and therefore that said example did not disclose a lubricating composition having the claimed features.

- 1.5.1 That the above information regarding the composition of detergent packages 2 and 3 could in fact be deduced from the passage in D2 cited above was not challenged by the respondent in written appeal proceedings. Rather, the respondent argued that D2 could not be considered in the appeal proceedings on the basis that the priority application had been withdrawn before it was published, and had only been published when the file for D1 was made public. D2 was therefore not prior art and accordingly, could not be used to interpret D1, the disclosure of which should be assessed on its own ("the whole contents approach"). Since D2 could not be read into D1, there was no basis for the appellant's calculation.

- 1.5.2 The respondent's arguments imply that the appellant's novelty objection requires that the disclosure of D2 be considered as part of the disclosure of D1 for the purpose of assessing novelty, i.e. that a lack of novelty arises from a combination of D1 and D2. This also appears to have been the understanding of the opposition division in the contested decision (page 8, final paragraph, second sentence). The board does not agree. D2 merely serves as evidence regarding the composition of detergent packages 2 and 3 already disclosed in D1, and therefore a combination of these documents for the purpose of novelty is not required. Proceedings before the EPO are conducted in accordance with the principle of free evaluation of evidence (e.g. G 3/97, OJ EPO 1999, 245, reasons 5), and in the absence of any convincing arguments, the board sees no reason not to take the evidence provided by D2 into account.

- 1.5.3 The respondent in written proceedings did not challenge the correctness of the appellant's calculations based

on example 7 of D1 as set out above, beyond the argument that D2 could not be used as evidence to interpret D1. The board thus has no reason to doubt said calculations demonstrate that the subject-matter of contested claim 1 lacks novelty over the lubricant composition of example 7 of D1.

1.6 In written appeal proceedings the respondent also submitted that the subject-matter of claim 1 was novel vis à vis D1 because D1 was not entitled to the claimed priority date. It was therefore not state of the art pursuant to Article 54(3) EPC, and thus not relevant to novelty.

1.6.1 The board notes firstly that it is not D1 as a whole, but rather the examples of D1, in particular example 7, which are used by the appellant as the basis for the objection of lack of novelty vis à vis D1 (supra). As noted by the appellant, since the relevant examples of D1 (table 1, examples 3-8 and comparative examples 2, 3, 4 and 7) are also reproduced identically in the priority document D2, there is no reason to doubt that said examples enjoy the claimed priority date.

1.6.2 None of the respondent's arguments to the contrary were found convincing by the board.

1.6.3 First, the respondent argued that during opposition proceedings for European patent 2 486 113 corresponding to D1, the opposition division had found that the "entirety of claim 1 of D1 lacked priority".

This statement is not correct. The decision of the opposition division concerns claim 1 of the granted European patent, while D1 is the publication of the international application from which the patent

originated. The decision is therefore irrelevant to the question of whether claim 1 of D1 is entitled to the claimed priority. Furthermore, as set out above, the relevant question in the present case is whether the examples of D1 enjoy the claimed priority, not the subject-matter of claim 1 thereof.

1.6.4 Second, the respondent submitted that D1 *"does not contain the sort of generic 'OR' claim referred to in G 1/15"*. The board fails to understand this statement, not least because it was unaccompanied by a corresponding explanation. Indeed, a generic "OR" claim in the context of G 1/15 (OJ EPO 2017, A82; order) is merely defined as a claim which encompasses *"alternative subject-matter by virtue of one or more generic expressions or otherwise"*, under which claim 1 of D1 undoubtedly falls. The appellant's statement therefore fails to cast doubt on whether the examples of D1 enjoy the claimed priority, as set out above.

1.7 Thus, the examples of D1 enjoy the claimed priority date of 9 October 2009.

The priority date and the filing date of the contested patent are 26 October 2009 and 26 October 2010, respectively. Since the priority date of D1 is prior to both of these dates, these examples are state of the art pursuant to Article 54(3) EPC irrespective of whether the claimed priority of the present patent (which was challenged by the appellant) is valid.

The subject-matter of claim 1 thus lacks novelty pursuant to Article 54(3) EPC.

- 1.8 New submissions during oral proceedings - Admittance
- 1.8.1 During oral proceedings before the board, the respondent submitted new allegations concerning the appellant's assumptions and calculations leading to the conclusion that example 7 of D1 disclosed the subject-matter of contested claim 1. Specifically, the calculations made by the appellant were incorrect and based on wrong assumptions in relation to the products of D1. The respondent argued that the packages as disclosed in D1 contained at least three different detergent components (OLOA 219C, OLOA 249SX and OLOA 246S). According to the respondent's calculations, there were at least ten possible combinations of the detergents listed in D1 which could lead to the calculated BN value of 258 obtained by the appellant for detergent package 2, only one of which led to the conclusion that detergent package 2 contained exclusively OLOA 219C, as the appellant had concluded. Furthermore, the term "respectively" at the end of the passage on page 9, lines 23-28 of D1 was a typo, and the term "from e.g." indicated that the aforementioned detergent package components were not limited to those listed. There was thus no disclosure in D1 that detergent package 2 would contain a phenate and a low base sulfonate detergent alone. Lastly, in contradiction of the appellant's conclusion that detergent package 2 was exclusively OLOA 219C, it was stated in said passage that the detergent packages were "blends", and table 1 (D1, page 11) indicated "detergent package 2 (phenate + sulfonate)", i.e. that this package was a blend.
- 1.8.2 The appellant requested that these new submissions not be admitted into the proceedings.

- 1.8.3 The respondent argued that said submissions were not new, but had been submitted in the proceedings before the opposition division. Reference to submissions in opposition proceedings had been made for example in the reply to the statement of grounds of appeal,
- on page 2, point 3, in which it was stated that the respondent "*maintains all of its submissions made in the first instance, in particular in its letter of 24 February 2017 and its position at Oral Proceedings on 11 January 2018*",
 - on page 7, point 3.5, in which it was stated in relation to the novelty objections against the patent in suit on the basis of *inter alia* D1 that the respondent "*maintains its written position of 24 February 2017 and its position at Oral Proceedings on 11 January 2018*".

These submission were therefore part of the appeal proceedings.

- 1.8.4 The board does not agree. Pursuant to Article 12(4) RPBA 2007, applicable pursuant to Article 24 and 25(2) RPBA 2007, everything presented in the statement of grounds of appeal and the reply is taken into account, if and to the extent it relates to the case under appeal and meets the requirements in Article 12(2) RPBA 2007 and without prejudice to the power of the board to hold inadmissible certain submissions. According to Article 12(2) RPBA 2007, the reply shall contain a party's complete appeal case, i.e. shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts arguments and evidence relied on. It is established case law that a mere general

reference to a party's submissions in the proceedings before the opposition division is not sufficient to meet this requirement (see for example T 16/14, reasons 3.1 and 3.2). While the respondent had referred to a specific letter filed in opposition and its "position" at the oral proceedings, these references give room for speculation on the part of the board and the other party as to what exactly was intended to be relied upon by the respondent. It is however for the respondent, and not for the board, to make the respondent's case. The board therefore considers the new submissions of the respondent as new lines of defence submitted for the first time at oral proceedings.

- 1.8.5 The respondent also argued that its submissions did not concern new facts, but merely highlighting what was already present in the text under discussion in D1.

The board disagrees. The respondent's new submissions essentially concern the contention that even if the priority of D1 were to be considered valid, and if D2 could be used to interpret D1, the appellant's calculation would still not allow the conclusion that the claimed subject-matter lacked novelty. This contention is a new line of defence which was not raised by the respondent in written appeal proceedings. Since all the party's new submissions detailed in the minutes have the purpose of supporting this new line of defence, they all represent aspects thereof.

- 1.8.6 Since said lines of defence were first submitted at the oral proceedings before the board, Article 13(2) RPBA 2020, applicable pursuant to Article 24 and Article 25(3) RPBA 2020, applies. According to this provision, any amendment to a party's appeal case made after notification of a summons to

oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

1.8.7 In the board's view, no such exceptional circumstances have been demonstrated, nor were apparent. The respondent's defence submitted in written appeal proceedings was limited to the issues outlined above. Only the argument that D2 could not be used to interpret D1, as set out above, was of any relevance to the appellant's chain of reasoning and calculation leading to its conclusion that the subject-matter of contested claim 1 lacked novelty. On other aspects of the appellant's reading of the disclosure of D1 or the appellant's calculation, the written submissions of the respondent were silent. Before the submission of the new lines of defence during oral proceedings, it was thus reasonable for both the board and the appellant to have assumed that the respondent did not dispute the appellant's arguments in substance beyond its position that the priority date of D1 was invalid, and that D2 could not be used as evidence to interpret D1.

1.8.8 The appellant furthermore rebutted the respondent's written arguments set out above with the letter dated 29 March 2019 (point 6.2). It should therefore have been clear to the respondent long in advance of the oral proceedings held on 14 April 2022 that its written submissions concerning novelty vis à vis D1 were challenged. Yet, it chose not to submit its complete case until the day of oral proceedings before the board. Additionally, in its communication pursuant to Article 15(1) RPBA 2020 (paragraph 4.2), the board stated that D1 was prior art pursuant to Article 54(3) EPC (point 4.2), and drew attention to

the appellant's calculation and the fact that the respondent in written appeal proceedings had not addressed it at all. Even though as noted by the respondent, this communication was received only three weeks before oral proceedings were held, it would nevertheless still have been possible for the respondent to have clarified its position in advance of the oral proceedings.

In view of the foregoing, the board decided not to admit the respondent's new submissions into the appeal proceedings pursuant to Article 13(2) RPBA 2020.

The ground for opposition of lack of novelty pursuant to Article 100(a) and Article 54 EPC therefore prejudices the maintenance of the patent as granted.

Auxiliary request 1 - Admittance

2. The set of claims of auxiliary request 1 was submitted with the reply to the statement of grounds of appeal.

It differs from the main request in claim 1 by the addition of the following text:

"and wherein the base oil comprises at least 50 wt.% of a Group II base oil, based on the total amount of base oil".

- 2.1 The appellant requested that auxiliary request 1 not be admitted into the proceedings on the basis that it had never been submitted in opposition proceedings, and that it was unsubstantiated: no explanation had been provided in the reply to the statement of grounds of appeal as to how the request overcame the objections

raised in the appellant's statement of grounds of appeal.

2.2 Article 12(4) RPBA 2007, applicable pursuant to Article 24 and Article 25(2) RPBA 2020, stipulates that everything presented by the parties under Article 12(1) RPBA 2007 (i.e. including the reply to the statement of grounds of appeal) shall be taken into account by the board if and to the extent it relates to the case under appeal and meets the requirements in Article 12(2) RPBA 2007. The latter provision includes the requirement that the reply shall contain a party's complete case, and set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on.

2.3 As noted by the appellant, with the reply to the statement of grounds of appeal accompanying the set of claims of auxiliary request 1, the respondent merely stated that said claim request was a combination of claims 1 and 8 as granted (reply, point 1, final paragraph). No explanation was provided therein in relation to how the amendments in claim 1 of auxiliary request 1 would overcome the appellant's objections set out in the statement of grounds of appeal or as to why the claims as amended would meet the requirements of the EPC. It follows that the requirements of Article 12(2) RPBA 2007 set out above have not been complied with in relation to the set of claims of auxiliary request 1. This claim request does therefore not form part of the respondent's submissions which had to be taken into consideration in appeal under Article 12(4) RPBA 2007. Instead, the board had the

discretion not to admit this request into the appeal proceedings pursuant to Article 12(4) RPBA 2007.

- 2.4 The respondent explained at oral proceedings that auxiliary request 1 had been submitted as a fall-back position in order to limit claim 1 to subject-matter not disclosed in D1: the examples in D1 for which priority was relevant employed only Group I base oils, and amended claim 1 therefore clearly delimited the subject-matter of claim 1 from D1.
- 2.5 In the board's view, since it was only at the oral proceedings that the respondent submitted that auxiliary request 1 was intended to overcome a lack of novelty over D1, a crucial question was whether this substantiation was self-explanatory, such that it could be understood as having been implicit in the filing of the claim request with the reply to the statement of grounds of appeal. In the board's opinion, this was not the case. The statement of grounds of appeal comprised multiple novelty objections based not only on D1, but also D4, D5, D6 and D7. Therefore, even assuming, to the respondent's advantage, that it would have been readily apparent that auxiliary request 1 was intended to overcome a novelty objection, and not an objection of lack of inventive step, it would still not have been immediately apparent which novelty objection or objections auxiliary request 1 was intended to overcome. Furthermore, there is no apparent reason to deduce that establishing novelty over D1 was the intention behind the new request, since, as noted by the appellant, it is not immediately apparent from the disclosure of D1 that the new feature of claim 1 would indeed overcome the novelty objection raised. Specifically, D1 also comprises examples comprising a group 2 base oil (e.g. page 15, examples 8 and 9) and

therefore the amendment *prima facie* would not appear to establish novelty over D1. Even if, as submitted by the respondent, said examples were not entitled to the priority date (and therefore would not represent state of the art pursuant to Article 54(3) EPC), this only reinforces the conclusion that the intention to establish novelty over D1 was not self-explanatory with the reply to the statement of grounds of appeal. Rather, further non-trivial investigations concerning priority would have been required to arrive at that conclusion.

Furthermore, that a lack of substantiation in relation to auxiliary request 1 was of significant concern to the board and the appellant should not have come as a surprise to the respondent. Specifically, with the letter dated 29 March 2019 (point 9), the appellant requested that auxiliary request 1 not be admitted *inter alia* because the respondent had not explained how the request responded to the objections raised by the appellant. Furthermore, the board in its communication also noted the lack of explanation accompanying the claim request, and indicated in detail the reasons why it was within the discretion of the board not to admit the request for lack of substantiation (point 6.3). Nevertheless, despite these observations, the respondent chose to wait until the day of oral proceedings to substantiate the claim request.

- 2.6 The respondent furthermore argued that no complexity was added to the case by the amendment compared to claim 1 as granted, and procedural economy was not impaired because claim 1 of auxiliary request 1 was a combination of claim 1 and 8 as granted. Furthermore, no new objections would be generated by the amendment, nor was it surprising, and it resolved the outstanding

issues. Finally, the technical effect remained the same as for the main request and there was only one sole auxiliary request.

These further arguments were not relevant to the question of whether the requirements of Article 12(2) RPBA 2007 were fulfilled as set out above. Specifically, none justify or explain the lack of any substantiation of auxiliary request 1 before the day of oral proceedings before the board.

As the explanations presented at the oral proceedings in relation to the claims of auxiliary request 1 could not be considered as having been self-explanatory upon filing the claim request with the reply to the statement of grounds of appeal, they constituted new submissions made first at the oral proceedings before the board, in support of a set of claims filed at an earlier stage.

- 2.7 Irrespective of whether or not a claim request is considered to be effective only once it has been substantiated, the substantiation of a claim request represents an amendment to the respondent's appeal case in the absence of any earlier substantiation or the substantiation not being self-explanatory. As the substantiation was presented only at the oral proceedings before the board, Article 13(2) RPBA 2020, applicable pursuant to Article 24 and Article 25(3) RPBA 2020, applied. However, no exceptional circumstances were apparent to the board which could have justified admission under Article 13(2) RPBA 2020. The arguments presented by the respondent relate to criteria mentioned under Article 13(1) RPBA 2020. The board acknowledges that for submissions made after the summons, the criteria

mentioned under Article 13(1) RPBA 2020 can be considered under Article 13(2) RPBA 2020. However, as set out above, no exceptional circumstances were apparent and the respondent's arguments did not change the board's opinion.

2.8 For these reasons, the board decided not to admit auxiliary request 1 into the proceedings pursuant to Article 12(4) RPBA 2007, in conjunction with Article 12(2) RPBA 2007, and Article 13(2) RPBA 2020.

3. Since there are no further requests on file, the patent is to be revoked.

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:



M. Schalow

M. O. Müller

Decision electronically authenticated