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**Datasheet for the decision  
of 17 May 2022**

**Case Number:** T 2117/18 - 3.2.03

**Application Number:** 06823437.6

**Publication Number:** 1952902

**IPC:** B21B45/02

**Language of the proceedings:** EN

**Title of invention:**

COOLING APPARATUS FOR HOT ROLLED STEEL BAND AND METHOD OF  
COOLING THE STEEL BAND

**Patent Proprietor:**

JFE Steel Corporation

**Opponent:**

SMS group GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 56, 100(a)  
RPBA Art. 12(2), 12(4)  
RPBA 2020 Art. 13(2)

**Keyword:**

Statement of grounds of appeal - party's complete case -  
insufficient substantiation of objection  
Late-filed objection - exceptional circumstances (no)  
Inventive step - (yes)

**Decisions cited:**

T 1732/10, T 1151/11, T 0568/14, T 0972/14, T 1744/14,  
T 1727/15, T 0172/17, T 1846/17, T 2393/18, T 0460/19

**Catchword:**

In order to substantiate an objection in the appeal proceedings which the Opposition Division did not consider convincing, it is necessary to provide specific reasons why the finding and the reasoning in the decision under appeal is supposedly incorrect with regard to this objection (Reasons 2.2.2-2.2.11). As a rule, in appeal proceedings general references to submissions made in the proceedings before the departments of first instance are not taken into account due to a lack of substantiation. Attaching the notice of opposition to the statement of grounds of appeal is to be considered equivalent to such a general reference to previous submissions (Reasons 2.2.13-2.2.14). An objection is to be considered to have been validly submitted only at the time on which sufficient substantiation is provided (Reasons 2.2.17).



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Case Number: T 2117/18 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 17 May 2022**

**Appellant:** SMS group GmbH  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 21 June 2018  
rejecting the opposition filed against European  
patent No. 1952902 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** C. Herberhold  
**Members:** G. Patton  
N. Obrovski

## **Summary of Facts and Submissions**

I. European patent No. 1 952 902 B1 (hereinafter "the patent") relates to a device and a method for cooling a hot-rolled steel strip.

II. Opposition was filed against the patent as a whole and was based on Article 100(a) EPC (lack of novelty and inventive step), Article 100(b) EPC (insufficiency of disclosure) and Article 100(c) EPC (unallowable amendments).

The Opposition Division rejected the opposition and maintained the patent as granted.

The opponent lodged an appeal against the Opposition Division's decision.

III. The Board provided its preliminary, non-binding opinion to the parties in a communication pursuant to Article 15(1) RPBA 2020 annexed to the summons to oral proceedings sent on 28 April 2021.

Oral proceedings were held on 15 May 2022. For matters that arose during the oral proceedings, in particular the issues discussed with the parties and their requests, reference is made to the minutes.

The order of the present decision was announced at the end of the oral proceedings.

IV. The opponent (hereinafter "appellant") requests  
  
that the decision be set aside and  
that European patent No. 1 952 902 be revoked.

The patent proprietor (hereinafter "respondent") requests

that the appeal be dismissed, i.e. that the patent be maintained as granted (main request), subsidiarily, that the patent be maintained on the basis of one of the sets of claims filed as auxiliary requests 1 to 8 with the reply to the statement setting out the grounds of appeal dated 18 March 2019.

V. Claim 1 of the **main request** (patent as granted) reads as follows, with the feature numbering 1.1 to 1.6 used by the parties added by the Board:

- "1.1 A device for cooling a hot strip (12) conveyed on a run-out table (5) after finishing, comprising:
  - 1.2 a plurality of cooling nozzles (15)
    - 1.2.1 that eject rod-like flows of cooling water to the upper surface of the steel strip (12)
    - 1.2.2 such that the ejecting angle is inclined toward a traveling direction of the steel strip (12),
    - 1.2.3 the plurality of cooling nozzles (15) being disposed in a plurality of lines extending in the width direction of the steel strip (12)
    - 1.2.4 and the plurality of lines being disposed in the traveling direction of the steel strip (12); and
  - 1.3 draining means (11; 19) disposed downstream of the cooling nozzles (15) for draining the cooling water

ejected from the cooling nozzles (15) and remaining on the upper surface of the steel strip (12),

1.4 wherein the angle ( $\theta$ ) formed between the steel strip (12) and the rod-like flows of cooling water ejected from the cooling nozzles (15) is  $60^\circ$  or less and  $30^\circ$  or more; and

1.5 the plurality of nozzles (15) being so arranged that the ejecting speed of the cooling water from the outlets of the nozzles (15) is 7 m/s or more, and

1.6 the flows of cooling water are continuous and rectilinear so as to have cross sections that are kept circular after the flows are ejected from the outlets of the nozzles (15) until hitting the steel strip (12)."

Claim 6 of the **main request** (patent as granted) reads as follows, with the feature numbering 6.1 to 6.3 used by the parties added by the Board:

"6.1 A method for cooling a hot strip (12) conveyed on a run-out table (5) after finishing, comprising:

6.2 ejecting rod-like flows of cooling water from nozzles (15) to the upper surface of the steel strip (12)

6.2.1 such that the flows are inclined toward a traveling direction of the steel strip (12),

6.2.2 the ejecting speed of the cooling water from the outlets of the nozzles (15) being 7 m/s or more,

6.2.3 and the flows of cooling water being continuous and rectilinear so as to have cross sections that are kept circular after the flows are ejected from the outlets of the nozzles (15) until hitting the steel strip (12); and

6.2.4 the angle ( $\theta$ ) formed between the steel strip (12) and the rod-like flows of cooling water ejected from the cooling nozzles (15) is  $60^\circ$  or less and  $30^\circ$  or more; and

6.3 draining the cooling water using draining means (11; 19) disposed downstream of the nozzles (15)."

The wording of the claims of the auxiliary requests is irrelevant for the present decision.

VI. The following documents considered in the opposition proceedings are relevant to the present decision:

E1\*: WO 91/04109 A1

E5/E15: JP 2001 286925 A and abstract in English (E5a)

E14: Catalogue of Lechler GmbH + Co KG, "Die ganze Welt der Düsenteknik", Edition 891, front page, page "Vollstrahldüsen VD 0 - VD 4 - 544.XXX-545.XXX" and final page

E19: Affidavit of Mr Roman Dehmel, 16 February 2018, 2 pages

\*with English translation of claim 1 provided by the respondent with its reply to the statement setting out the grounds of appeal, point I.2.1.3.

VII. As far as is relevant to the present decision, the appellant essentially argued as follows:

*Public availability of E14*

On the last page of the commercial catalogue of the company Lechler GmbH + Co KG (E14), the string "12.91" represented the printing date. The public availability of E14 before the priority date of the patent was further confirmed by the affidavit E19.

*E1 as the closest prior art in combination with the teaching of E14*

E1 taken as the closest prior art did not disclose features 1.2.1, 1.5 and 1.6 of claim 1 of the main request (corresponding to features 6.2, 6.2.2 and 6.2.3 of claim 6).

In view of their technical effects, the problem to be solved was to modify the method of E1 in order to cool the hot strip in a more efficient manner.

The skilled person would consider the cleaning nozzles on page 7.5 of E14 for applications in cooling installations since the two types of nozzles - cleaning and cooling - belonged to the same international classification B21B45/02 ("*Devices for surface treatment of work, specially combined with or arranged in, or specially adapted for use in connection with, metal-rolling mills, for lubricating, cooling, or cleaning*"), which was the classification of the patent. The skilled person knew from experience that a cooling effect was also inevitably achieved when cleaning.



E14 disclosed that the nozzles on page 7.5 provided solid spot jets, tight over a long distance, i.e. features 1.2.1 and 1.6 (see top left-hand corner below the pictures: "*Langer, geschlossener punktförmiger, auftreffender Strahl*"). This taught the skilled person that the disclosed nozzles would break the standing wave generated at the liquid-vapor separation interface and reach through to the surface of the hot strip, thereby achieving a better cooling effect. This was a clear incentive (**would**) for the skilled person to implement the nozzles "544.800" of E14, disclosing feature 1.5, in place of the cooling nozzles of bars (4) in the device of E1. Hence, the claimed solution was directly and unambiguously disclosed in E14, which also hinted that the problem posed of cooling the hot strip in a more efficient manner would thereby be solved. The skilled person **would** therefore combine the teachings of E1 and E14 and arrive at the claimed subject-matter in an obvious manner.

The same applied, *mutatis mutandis*, to claim 6 of the main request.

*E5/E15 as the closest prior art in combination with the teaching of E14*

The objection starting from document E5/E15 should be taken into account in the appeal proceedings. This objection had already been referred to in the statement of grounds of appeal. The appellant's submissions in the statement of grounds of appeal had been concise as required by the RPBA, and the notice of opposition had also been annexed to the statement of grounds of appeal. The additional reasoning provided in the submission dated 13 April 2022 had only been a

refinement of the objection already submitted before.  
The objection also was *prima facie* relevant.

VIII. As far as is relevant to the present decision, the respondent essentially argued as follows:

*Public availability of E14*

E14 was an internal document from the appellant which was not retrievable elsewhere.

The string "Kat./12.91/D, E, F, GB/5000" on the last page of E14 could have many different meanings, i.e. not only the one given in the impugned decision, point II.3.1, i.e. it being the printing date of December 1991 ("12.91").

Even if it were the printing date, it still would not amount to a publication date or an indication of what had been done with the catalogue once printed.

Hence, it was insufficiently proven that E14 had been made accessible to the public before the priority date of the contested patent.

*E1 as the closest prior art in combination with the teaching of E14*

The respondent agreed with the appellant on the distinguishing features of claims 1 and 6 over E1 as well as with the objective technical problem derived therefrom.

When faced with this problem, the skilled person had many different solutions at their disposal other than those relating to a modification of the nozzles of the

device of E1. Hence, considering E14 because it dealt with nozzles was already the result of hindsight.

Furthermore, E14 was a thick catalogue presenting many types of nozzles, and there was no reason for the skilled person to select the cleaning nozzles on page 7.5 when dealing with a problem relating to cooling.

In addition, on this page 7.5 of E14, 24 nozzles were presented, and no evidence was provided that all of them fulfilled the requirement of feature 1.5 relating to the ejecting speed of the cooling water (7 m/s or more). Hence, even if the cleaning nozzles on page 7.5 were considered, there was no reason for the skilled person to select the specific nozzle "544.800" as proposed by the appellant.

In fact, not all of the nozzles shown on page 7.5 fulfilled the requirements of feature 1.5 regarding the ejecting speed of the cooling water. In view of the disclosure of E1, page 7, requiring an ejecting speed from 3 to 6 m/s, the skilled person would select the one proposed by the appellant ("544.800") with an ejecting speed falling outside the range of E1 only with hindsight, i.e. in knowledge of the claimed solution.

Finally, the jets created by nozzles "VD 0 - VD 4" on page 7.5 of E14 would break the cooling liquid film (9) and the liquid-vapor separation interface (10) of E1, even if installed with the inclination of E1; see figure 2 and claim 1. Hence, selecting these nozzles meant for the skilled person going against the teaching of E1, which is directed to *"said cooling layer being in a state of stable film boiling, and a standing wave*

*being generated at the liquid-vapor separation interface" (claim 1).*

Thus, the skilled person **would not** select the nozzles on page 7.5 of E14 for implementation in the device of E1.

The same applied, *mutatis mutandis*, to claim 6 of the main request.

*E5/E15 as the closest prior art in combination with the teaching of E14*

The objection starting from document E5/E15 had only been filed with the submission dated 13 April 2022, constituted a very late amendment of the appellant's appeal case and should thus not be taken into account under Article 13(2) RPBA 2020. It was *prima facie* even less relevant than document E1.

## **Reasons for the Decision**

### 1. *Public availability of E14*

E14 is a commercial catalogue of the company Lechler GmbH + Co KG and the string "12.91" on the last page of E14 is considered to represent the printing date. Following the established case law on the balance of probabilities for the distribution to the public of commercial brochures and catalogues, and also taking into consideration the affidavit E19, the Board considers the reasoning and the finding in the impugned decision, point II.3.1, to be correct (see Case Law of

the Boards of Appeal, 9th Edition 2019, Chapters I.C. 3.2.1.c and III.G.4.3.4.a).

Hence, E14 is regarded as belonging to the prior art pursuant to Article 54(2) EPC.

## 2. *Main request*

The appellant considers that the subject-matter of claims 1 and 6 does not involve an inventive step starting from either E1 or E5/E15 as the closest prior art in combination with the teaching of E14.

In the following reference is made to claim 1 only. In view of the parties' arguments with respect to the correspondence of features between claims 1 and 6, the reasoning and conclusion for claim 1 apply, *mutatis mutandis*, to claim 6.

### 2.1 Starting from E1

The Board concurs with the parties that E1 can be regarded as the closest prior art for claim 1 since it lies in the technical field of devices and methods for cooling hot strips (see figure 1 and translation of claim 1).

#### 2.1.1 Disclosure of E1

E1, figures 1 and 3 and translation of claim 1, disclose a device for cooling a hot strip (1) conveyed on a run-out table (see rollers 2), comprising:

a plurality of cooling nozzles (8) that eject flows of cooling water to the upper surface of the hot strip (1) such that the ejecting angle is inclined toward a

traveling direction of the strip since, whichever would be the traveling direction of the hot strip, nozzles (8) are arranged in the claimed manner in view of the symmetry of their inclination,

the plurality of cooling nozzles (8) being disposed in a plurality of lines (nozzle bars 3 and 4) extending in the width direction of the steel strip (1) and the plurality of lines being disposed in the traveling direction of the steel strip (1); and

draining means disposed downstream of the cooling nozzles (8) (nozzle bars (3) whichever the traveling direction of the strip in figures 1 and 3) for draining the cooling water ejected from the cooling nozzles (8) and remaining on the upper surface of the steel strip (1),

wherein the angle ( $\alpha$ ,  $\beta$ ) formed between the steel strip and the flows of cooling water ejected from the cooling nozzles of bars (3) is  $80^\circ$  or less and  $15^\circ$  or more (angle  $\alpha$ ) and that of the cooling water ejected from the cooling nozzles of bars (4) is  $90^\circ$  or less and  $20^\circ$  or more (angle  $\beta$ ) (page 7, lines 4 and 22 and figure 3), such that the claimed range of  $30^\circ$  to  $60^\circ$  cannot be considered a narrow and novel selection from the disclosed ranges.

#### 2.1.2 Distinguishing features

As a result of the above, E1 does not disclose the following features of claim 1 of the main request (see also impugned decision, point II.4.3.1.1):

- a plurality of cooling nozzles that eject rod-like flows of cooling water to the upper surface of the

steel strip (feature 1.2.1; feature 6.2 for claim 6);

- the plurality of nozzles being so arranged that the ejecting speed of the cooling water from the outlets of the nozzles is 7 m/s or more (feature 1.5; feature 6.2.2 for claim 6), and
- the flows of cooling water are continuous and rectilinear so as to have cross sections that are kept circular after the flows are ejected from the outlets of the nozzles until hitting the steel strip (feature 1.6; feature 6.2.3 for claim 6).

All of this was undisputed by the parties.

#### 2.1.3 Technical effects

The distinguishing features make it possible to break the film of remaining water on the upper surface of the hot strip so as to reliably reach and hit it; see contested patent, paragraph 28.

#### 2.1.4 Problem to be solved

In view of the technical effects, the problem to be solved is to modify the method of E1 in order to cool the hot strip in a more efficient manner; see contested patent, paragraph 11 (see also impugned decision, point II.4.3.2.2).

This was also undisputed by the parties.

#### 2.1.5 Combination with E14

The Board considers that the skilled person faced with said objective technical problem and using their common general knowledge would come across the commercial catalogue of E14 taken as a whole and would consider its disclosure since the catalogue concerns nozzles (see title: "The whole world of Nozzle Technology"; see also the affidavit E19), which are known to influence the water jet and, hence, to affect the cooling efficiency.

However, as argued by the respondent, no convincing reason is provided as to why the skilled person facing a problem of cooling **would** select nozzle types "VD 0-VD 4" of E14, since these nozzles explicitly concern the cleaning - and not the cooling - of the strip. This is true even if, as argued by the appellant, cleaning and cooling technologies are considered to be neighbouring technical fields or to fall under the same patent classification.

For this reason alone the subject-matter of claim 1 involves an inventive step starting from E1.

In addition, as argued by the respondent, the catalogue of E14 as a whole contains very many pages with very many different nozzles. There is no apparent reason why the skilled person would specifically select the ones shown on page 7.5. On page 7.5 alone, 24 different types of nozzles are disclosed, and no reason was provided as to why the skilled person would specifically select the nozzle "544.800" as argued by the appellant. Not all of the nozzles shown on page 7.5 were proven to fulfil the requirements of feature 1.5 regarding the ejecting speed of the cooling water. In view of the disclosure of E1, page 7, which gives the range of the ejecting speed as 3 to 6 m/s, the skilled



person would therefore select the nozzle proposed by the appellant (which falls outside the range specified in E1) only with hindsight or with knowledge of the claimed solution.

Furthermore, the skilled person would realise that, even if the nozzles "VD 0 - VD 4" were installed with the inclination of E1, they would break the cooling liquid film (9) and the liquid-vapor separation interface (10) of E1; see figure 2 and claim 1. Hence, installing these nozzles would mean for the skilled person going against the explicit teaching of E1, which is directed to "*said cooling layer being in a state of stable film boiling, and a standing wave being generated at the liquid-vapor separation interface*" (claim 1). Thus, the Board is of the opinion that, even if they **could**, the skilled person **would** not select the nozzles shown on page 7.5 of E14 for implementation in the device of E1.

2.2 Starting from E5/E15 - admittance of the objection

2.2.1 The statement of grounds of appeal was filed before 1 January 2020 and is thus subject to Article 12(4) RPBA 2007 (Article 25(2) RPBA 2020). As Article 12(4) RPBA 2007 explicitly refers to Article 12(2) RPBA 2007, the latter is applicable by way of reference as well (see T 460/19, Reasons 2).

2.2.2 According to Article 12(2) RPBA 2007 (which corresponds substantially to Article 12(3) RPBA 2020), the statement of grounds of appeal must contain a party's complete case. A party must 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.

- 2.2.3 In its statement of grounds of appeal (page 15, penultimate paragraph), the appellant alluded to an inventive-step objection starting from E5/E15 ("D5/D15") only in a single sentence at the end of the reasoning for *another* objection, namely the objection starting from E1 ("D1"):

*"Im Ergebnis sind damit für einen Fachmann zumindest wegen der Kombination der Dokumente D14 und D1 die Merkmale der Ansprüche 1 und 6 des Streitpatents nahegelegt, so dass diese Ansprüche nicht auf eine erfinderische Tätigkeit beruhen. In gleicher Weise gilt diese Schlussfolgerung auch dann, wenn z.B. von dem Dokument D5/D15 als nächstliegender Stand der Technik ausgegangen wird und der Fachmann dies mit dem Dokument D14 kombinieren würde."*

The last sentence of this passage can be translated as follows:

Similarly, this conclusion (i.e. the lack of inventive step) also applies if, for example, document D5/D15 is taken as the closest prior art and the skilled person would combine it with document D14.

- 2.2.4 This single sentence in the statement of grounds of appeal does not sufficiently substantiate the inventive-step objection starting from E5/E15. In particular, contrary to what is required under Article 12(2) RPBA 2007, the appellant did not thereby set out the reasons why the decision under appeal should be reversed or amended, i.e. the reasons why the

finding and the reasoning in the decision under appeal are supposedly incorrect.

- 2.2.5 The appellant argued that it was required under Article 12(2) RPBA 2007 and Article 12(3) RPBA 2020 to set out "concisely" the reasons why the decision under appeal should be reversed, amended or upheld. The requirement to be concise, however, only necessitates the removal of all that is superfluous. It does not exempt a party from the obligation to specify expressly all objections relied on, taking account of the reasoning in the decision under appeal.
- 2.2.6 In its statement of grounds of appeal, the appellant referred to the reasoning for the objection starting from E1, which was supposedly similar. The reasoning for the objection starting from E1 is, however, not a suitable substitute for the required reasoning for the objection starting from E5/E15. This is particularly evident in view of the Opposition Division's identification of an additional distinguishing feature in relation to E5/E15, namely a plurality of nozzles arranged in a plurality of lines (see impugned decision, II.4.3.1.1).
- 2.2.7 The appellant argued in the oral proceedings before the Board that it would be self-explanatory why the Opposition Division had erred when stating that a plurality of nozzles arranged in a plurality of lines was not disclosed in E5/E15. The appellant alleged that such nozzles were always provided in cooling devices, due to the size and width of the strips. This is not persuasive for the following reasons.
- 2.2.8 When exercising its discretion under Article 12(4) RPBA 2007, a Board may exceptionally consider an amended

claim request in the statement of grounds of appeal or the reply thereto to be self-explanatory for the purposes of sufficient substantiation under Article 12(2) RPBA 2007 (see T 568/14, Reasons 8.4). This can be the case if the reasons why the decision under appeal should be reversed or amended follow - indirectly, but still unambiguously - from the claim request itself and the context in which it is made. It may, for example, be self-explanatory why an amended claim request which consists exclusively in the addition of the features which the Opposition Division considered to be missing under Article 123(2) EPC overcomes that particular objection. In such a situation, the amended claim request may render (part of) the reasoning in the decision under appeal irrelevant.

2.2.9 The above case law on self-explanatory claim requests is, however, not applicable to objections. Contrary to an amended claim request, the unsubstantiated reference to an objection which was not deemed convincing does usually not have the potential to render part of the reasoning in the decision under appeal irrelevant. The reasons why the decision under appeal should be reversed or amended do not follow indirectly from the unsubstantiated reference to a certain objection.

2.2.10 Also in the present case, it is not self-explanatory why the Opposition Division's finding and reasoning with regard to the objection starting from document E5/E15 were supposedly incorrect, including with regard to the additional distinguishing feature concerning the plurality of nozzles arranged in a plurality of lines. Leaving aside whether the appellant's allegation that such nozzles are always provided due to the size and width of a cooling device's strips is technically

convincing, such a line of argument can be understood in an unambiguous manner only if it is made explicitly.

- 2.2.11 In order to substantiate an objection in the appeal proceedings which the Opposition Division did not consider convincing, it is thus necessary to provide specific reasons why the finding and the reasoning in the decision under appeal are supposedly incorrect with regard to this objection. Arguments which have already been put forward in the opposition proceedings may be included in these reasons, but must be put in the context of the decision under appeal.
- 2.2.12 The appellant submitted that it had made a reference in the statement of grounds of appeal to the contents of its notice of opposition. It had even attached the notice of opposition to the statement of grounds of appeal, thereby allegedly incorporating it.
- 2.2.13 As a rule, in appeal proceedings, general references to submissions made in the proceedings before the departments of first instance are not taken into account due to a lack of substantiation (T 972/14, Reasons 7; see also T 1744/14, Reasons 4.4, T 1727/15, Reasons 2.9 and T 460/19, Reasons 2). Otherwise, it would be left to the Board and the other party to determine which parts of such submissions are relevant to which parts of the decision under appeal or the arguments of the other party (T 1151/11, Reasons 3).
- 2.2.14 Attaching the notice of opposition to the statement of grounds of appeal is to be considered equivalent to such a general reference to previous submissions. It does not make a mere general reference in the statement of grounds of appeal to previous submissions more specific either. Evidently, the notice of opposition

cannot take account of the decision of the opposition division, which was only taken afterwards.

- 2.2.15 In conclusion, the Board considers the inventive-step objection starting from document E5/E15 as contained in the statement of grounds of appeal to not be sufficiently substantiated under Article 12(2) and (4) RPBA 2007.
- 2.2.16 In its submission dated 13 April 2022, which was only filed after notification of the summons and the Board's preliminary opinion under Article 15(1) RPBA 2020, the appellant provided detailed reasoning for the inventive-step objection starting from document E5/E15. Contrary to its previous statement in the statement of grounds of appeal, it also provided reasons why the objection starting from document E5/E15 was technically different from the objection starting from document E1 (see submission dated 13 April 2022, point 3.4). The appellant submitted that it had merely refined the objection starting from document E5/E15 in its submission dated 13 April 2022.
- 2.2.17 This is not persuasive. As stated above, the objection starting from document E5/E15 was not sufficiently substantiated in the statement of grounds of appeal. Providing the required substantiation for a previously unsubstantiated objection does not qualify as a mere refinement. Rather, an objection becomes effective - and is thus to be considered to have been validly submitted for the first time - only when sufficient substantiation is provided (for unsubstantiated requests, see T 1732/10, Reasons 1.5 and T 2393/18, Reasons 4.2). In the present case, this was done with the submission dated 13 April 2022. Hence, the objection starting from document E5/E15 as contained in

the submission dated 13 April 2022 was submitted after notification of the summons to oral proceedings, constitutes an amendment to the appellant's appeal case, and is subject to Article 13(2) RPBA 2020.

- 2.2.18 Under Article 13(2) RPBA 2020, any amendment to a party's appeal case made after notification of a summons to oral proceedings is, in principle, not taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.
- 2.2.19 The late filing of the objection starting from document E5/E15 was not justified by the appellant with cogent reasons, and the Board is not aware of any exceptional circumstances in this regard either.
- 2.2.20 When applying Article 13(2) RPBA 2020, a Board may also rely on the criteria referred to in Article 13(1) RPBA 2020 (T 172/17, Reasons 5.4, T 1846/17, Reasons 1.5). These criteria include the suitability of the amendment to resolve the issues raised. In the present case this translates to whether the objection starting from document E5/E15 will *prima facie* be successful. This is not the case for the same reasons as given in point 2.1 above for the objection starting from document E1.
- 2.2.21 Therefore, the Board did not take the objection starting from document E5/E15 filed with the submission dated 13 April 2022 into account under Article 13(2) RPBA 2020.
- 2.3 In conclusion, the Board sees no reason to deviate from the finding in point II.4.3.2 of the impugned decision that the subject-matter of claims 1 and 6 involves an inventive step.

3. *Auxiliary requests 1 to 8*

In view of the above conclusion on the main request,  
there is no need to discuss auxiliary requests 1 to 8.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



C. Spira

C. Herberhold

Decision electronically authenticated