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**Datasheet for the decision
of 23 November 2021**

Case Number: T 1806/19 - 3.2.01

Application Number: 12178313.8

Publication Number: 2551150

IPC: B60N2/28

Language of the proceedings: EN

Title of invention:

Child safety seat assemblies having anchor systems

Patent Proprietor:

Wonderland Switzerland AG

Opponent:

CYBEX GmbH

Headword:

Relevant legal provisions:

EPC Art. 54, 56, 123(2), 100(b), 84

RPBA 2020 Art. 13(2)

RPBA Art. 12(4)

Keyword:

main request - Novelty - (no)
auxiliary requests I-V - Novelty - (no)
auxiliary requests VI-X - taken into account - (no)
auxiliary requests XI - admitted (yes)
auxiliary requests XI - insufficiency of disclosure (no)
auxiliary requests XI - added subject-matter (no)
auxiliary requests XI - clarity (yes)
auxiliary requests XI - inventive step (yes)

Decisions cited:

G 0003/14

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 1806/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 23 November 2021

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 April 2019 concerning maintenance of the
European Patent No. 2551150 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
A. Jimenez

Summary of Facts and Submissions

- I. The appeals were filed by appellant 1 (opponent) and appellant 2 (patent proprietor) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1, the patent in suit (hereinafter "the patent") met the requirements of the EPC.
- II. The opposition division decided that:
- claims 8-10 of the main request did not fulfil the requirements of Article 123(2) EPC;
 - auxiliary request 1 fulfilled the requirements of Articles 84, 123(2), (3) EPC and Rule 80 EPC and the subject-matter of claim 1 was novel inter alia over D5/D5a (CN 201777158U and its English translation) and D6/D6a (CN 201677768U and its English translation) and involved an inventive step over inter alia D5/D5a as closest prior art in combination with D18 (US 2008/0073957) or D10/D10a (EP 2295287 A1 and its English translation) and D6/D6a as closest prior art in combination with D18 or D10/D10a.
- The opposition division did not admit documents D19 (US 2005/0011031) and D20-D24 (EP1279554 A1, US6378950 B1, US2002/0195867 A1) into the proceedings.
- III. Oral proceedings were held before the Board on 23 November 2021.
- IV. The appellant 1 (opponent) requested that the decision under appeal be set aside and the European patent be revoked.

The appellant 2 (patent proprietor) requested that the decision under appeal be set aside and the patent be

maintained as granted, differing from the text of the B-publication by the replacement of the word "arc" by the word "are" in claim 1, or alternatively that the patent be maintained in amended form on the basis of auxiliary requests I-V filed with the statement of grounds of appeal on 8 August 2019 or on the basis of auxiliary requests VI-XII filed with letter dated 19 May 2021.

- V. Independent claim 1 of the main request (with the feature numbering used in the appealed decision on page 3, point 11) reads:
- A. A child safety seat assembly comprising: a base (210),
 - B. two connector arms (221,222) assembled with the base (210),
 - C1. the connector arms (221,222) being provided with locking fasteners (225) operable to engage with an anchorage bracket in a vehicle to lock the base (210) in place,
 - C2. wherein the connector arms (221,222) are movable relative to the base (210) to adjust a length of extension of the connector arms (221,222) outside the base; and
 - D. two latches (10,20) assembled with the base (210) and
 - D1. operable to respectively lock the two connector arms (221,222) in position with the base (210), the child safety seat assembly being characterized in that:
 - E. two release actuators (31, 32) are disposed in a region of the base (210) between the connector arms (221,222) and

E1. are respectively connected with the two latches (10,20) to drive unlocking displacements of the two latches (10,20),

E2. the two release actuators (31,32) being movable transversally relative to the base (210) to drive displacements of the latches (10,20) in opposite directions.

VI. Claim 1 of auxiliary requests I-IV is identical to claim 1 of the main request.

VII. Claim 1 of auxiliary request V is based on claim 1 of the main request with the addition of the release actuator being manually operable in feature E1:
E1. are respectively connected with the two latches (10,20) and are manually operable to drive unlocking displacements of the two latches (10,20).

VIII. Claim 1 of auxiliary request XI is based on claim 1 of the main request with the following underlined amendments made to the characterising portion:
- E. two release actuators (31,32) formed as integral handles are disposed in a region of the base (210) between the connector arms (221,222) and
- E1. are respectively connected with the two latches (10,20) and are operable to drive unlocking displacements of the two latches (10,20),
- E2. the two release actuators (31,32) being movable transversally relative to the base (210) to drive displacements of the latches (10,20) in opposite directions,
wherein each of the latches (10,20) has an elongated shape that extends transversally relative to the base (210) and is assembled through a slot (31b,32b) of the associated release actuators (31,32) with an end respectively affixed with the two release actuators

(31,32) via a pin (34,35), wherein the slot (31b,32b) extends parallel to an axis of displacement of the respective release actuator (31,32).

Reasons for the Decision

1. Main request - Novelty over D5/D5a - Article 54 EPC

Contrary to the view of the Opposition Division, the Board judges that the subject-matter of claim 1 is not novel over D5.

1.1 Appellant 2 (patent proprietor) held that D5 does not disclose:

(i) two connector arms "wherein the connector arms (221,222) are movable relative to the base (210) to adjust a length extension of the connector arms (221, 222) outside the base" (feature C2).

(ii) "two release actuators (31,32) are disposed in a region of the base (210) between the connector arms (221,222) and are respectively connected with the two latches (10, 20) to drive unlocking displacements of the two latches (10, 20),

the two release actuators (31,32) being movable transversally relative to the base (210) to drive displacements of the latches (10, 20) in opposite directions" (features E, E1 and E2).

Appellant 2 was of the opinion that in figures 1-3 of D5 the positioning posts 52, 72 of the sliders 5, 7 which engage with the slots 90, 92 of the handle 9 could not qualify as actuators as the positioning posts

52 and 72 are not accessible and cannot be actuated externally.

Appellant 2 considered that an actuator would be considered by the skilled person as a component which could be actuated by an operator and would therefore identify the handle 9 engaging with the positioning posts 52, 72 via the slots as the actuator and not the positioning posts 52, 72.

Furthermore appellant 2 argued that the actuators in claim 1 could not be considered as a mere projection of the latches. The actuators and the latches were distinct components having different functions: the latches were operable to lock the connector arms in position and the release actuator drove the displacement of said latches.

According to appellant 2, the release actuators should therefore be construed as drivers of the motion of the passively displaced latches, wherein the actuators functioned as actuation elements for operating and controlling the release assembly, rather than passive, intermediate mechanical link.

This interpretation was in line with the description, whereby all the described embodiments showed release actuators as actuation elements that could be manually operated by a caregiver. On the other hand, the description did not provide any basis for an understanding of the release actuator as an intermediate element of a mechanical transmission chain.

1.2 The Board judges that D5 discloses features C2, E, E1 and E2

1.2.1 The Board concurs with the Opposition Division that in D5 (figures 1-3) the two connector arms 30, 32 assembled with the base 1 can be adjusted, such that

the length of the connector arms from the rear of the base, outside the base, can be adjusted. The connector arms 30, 31 are therefore movable relative to the base 1 to adjust the length of extension of the connector arms outside the base as required by feature C2.

Reference is made to point 71 of the appealed decision.

1.2.2 However, the Board considers the interpretation of the expression "release actuators" made by appellant 2 too restrictive.

In claim 1 the two release actuators 31 and 32 are connected to the two latches 10, 20. The two release actuators are moved transversally to drive unlocking displacement of the latches. Therefore, the two actuators 31, 32 are passive elements similarly to the two latches. The actual "actuator" in the present invention is the user acting on the release actuators 31, 32 and thereby unlocking the latches.

Therefore contrary to appellant 2's interpretation, the Board considers the "release actuators" as an extension of the latches that may be actuated.

Furthermore, claim 1 neither specifies the shape of the actuators nor requires that the release actuators be directly actuated by the user.

The Board finally notes that the expression "release actuators" is neither ambiguous nor unclear. There is therefore no need to use the description to interpret these terms.

In D5 the latches which are represented by the fixing pins 50, 70 attached to the sliders 5, 7, are unlocked when the release actuators which are represented by the positioning posts 52, 72 connected to the sliders 5, 7 are transversally moved. The Board acknowledges that the positioning posts 52 and 72 in D5 are not actuated directly by the user but are instead actuated via the

handle 9 comprising the slots 90 and 92. However as stated above claim 1 does not require a direct actuation of the release actuators by the user.

2. Auxiliary requests I-IV - Novelty over D5/D5a - Article 54 EPC

The subject-matter of claims 1 of auxiliary requests I-IV is identical to the subject-matter of claim 1 of the main request. The subject-matter of claims 1 of auxiliary requests I-IV is therefore not novel over D5. Reference is made to point 1.

3. Auxiliary request V - Novelty over D5/D5a - Article 54 EPC

The Board judges that the amendment made to claim 1 of auxiliary request V requiring that the actuators be "manually operable" does not render the subject-matter of claim 1 novel over D5.

- 3.1 Appellant 2 was of the opinion that because the positioning posts 52 and 72 were not accessible, they could not be "manually operable". Appellant 2 argued that considering figures 1-3 of D5, the skilled person would consider the handle 9 as the actuator which is manually operable and not the positioning posts 52 and 72.
- 3.2 The Board does not agree and considers that the positioning posts 52 and 72 are manually operable. Indeed the user displaces the positioning posts 52 and 72 transversally by pulling on the handle 9 comprising the slots 90, 92. The Board acknowledges that in D5 the user does not act on the positioning posts directly but instead acts on the handle which in turns acts on the

positioning posts. However claim 1 and in particular the expression "manually operable" does not require a direct actuation on the release actuators.

The term "manually operable" means being operable by hand as opposed to being operable by a machine or some automated system. In D5 no machine or automated system is used to unlock the latches, instead the user pulls on the handle to unlock the latches.

3.3 In view of the above, the question of the admissibility of auxiliary request V raised by appellant 1 can be left unanswered.

4. Admissibility of auxiliary requests VI-XII

The Board does not take into account auxiliary requests VI-X, which were filed for the first time on 19 May 2021. However the Board takes into account auxiliary requests XI and XII filed on 19 May 2021 corresponding to auxiliary requests IX and X filed on 27 February 2019 during opposition proceedings.

4.1 Appellant 1 (opponent) considered that auxiliary requests VI-XII, filed with letter of 19 May 2021 should not be admitted into the proceedings as they were not convergent.

Furthermore appellant 1 argued that auxiliary requests VI-X should not be admitted under Article 13(2) RPBA 2020 as there were no exceptional circumstances, which were justified with cogent reasons by appellant 2 for taking them into account. The statement that auxiliary requests VI-X were filed in response to the preliminary opinion of the Board of Appeal could not be considered as cogent reasons.

Finally appellant 1 held that auxiliary requests XI-XII were not substantiated and should therefore not be considered as admissibly filed.

- 4.2 Appellant 2 (patent proprietor) argued that auxiliary requests VI-X were reordered and clarified to accommodate the comments in the preliminary opinion, in particular regarding the Board's interpretation of the term "actuator" and the Board's finding that claim 1 of the main request lacked novelty over documents D5. Appellant 2 argued that the new filed auxiliary requests VI-X only comprised amendments that were present in previous submitted auxiliary requests and therefore did not substantially change their appeal case. Furthermore auxiliary requests VI-X were filed to streamline the appeal proceedings.

As for auxiliary requests XI-XII, appellant 2 considered that these auxiliary requests were substantiated and referred to pages 10 and 11 of their statement of grounds of appeal and page 10-12 of their letter of 21 April 2020 dealing with auxiliary requests IX and X corresponding to the present auxiliary requests XI and XII.

- 4.3 The Board acknowledges that auxiliary requests VI-XII are not strictly convergent. However considering the numerous objections made by appellant 2 in particular, regarding lack of novelty, lack of inventive step and alleged extension of subject-matter, appellant 2 should have a fair opportunity to overcome the various objections by filing auxiliary requests which may not be convergent.
- 4.3.1 In any case, the Board takes the view that auxiliary requests VI-X filed with letter of 19 May 2021 after

notification of a summons to oral proceedings constitute an amendment to appellant 2's appeal case, which shall in principle, not be taken into account unless there are special circumstances, which have been justified with cogent reasons (Article 13(2) RPBA 2020). Indeed, while auxiliary requests VI-X comprise limitations that were in previous submitted auxiliary requests, auxiliary requests VI-X encompass new combination of features filed after the notification of a summons to oral proceedings.

Appellant 2's justification for the late filing of the new requests, namely that they were filed in reaction to the Board's communication, is not acceptable, because the argumentation in support of the Board's preliminary opinion that claim 1 of the main request lacked novelty over D5 corresponded in substance to the reasoning of appellant 1. This was acknowledged on the first page of appellant 2's letter dated 19 May 2021: *"In its Preliminary Opinion, the Board acknowledges sufficiency of disclosure and conformity of the granted claim 1 with article 123(2) EPC, but preliminary adopts the Opponent's reasoning regarding claim construction and novelty"*.

The Board communication under Art. 15(1) RPBA 2020 was intended as guidance for the oral proceedings and contained a preliminary opinion based solely on the issues raised by the parties and their arguments; accordingly the preliminary opinion of the Board does not constitute an exceptional circumstance that would justify the submission of new requests that the parties could have filed earlier.

Furthermore the Board does not agree that filing new auxiliary requests that contain new combinations of features enables to streamline the appeal procedure as

each new combination of features needs to be reassessed.

- 4.3.2 Regarding auxiliary requests XI and XII, which correspond to auxiliary requests IX and X filed in opposition proceedings and filed again with the statement of grounds of appeal, these requests have been sufficiently substantiated for the Board and appellant 1 to be in a position to understand the rationale behind these requests. Basis for the amendments of corresponding auxiliary requests IX and X were provided with the statement of ground of appeal. Furthermore it is immediately apparent that the limitations regarding the geometry and the structural features of the actuation assembly were added to overcome the novelty objections. Hence auxiliary requests XI-XII meet the requirements of Article 12(2) RPBA 2007 and are taken into account according to Article 12(4) RPBA 2007.

5. Auxiliary request XI

5.1 Insufficiency of disclosure - Articles 100(b) and 83 EPC

As held by the Opposition Division, the Board judges that the invention is disclosed in a manner sufficiently clear and complete for it to be carried by a person skilled in the art.

During oral proceedings, the parties relied on their written submissions. The Board sees no reason to deviate from its preliminary opinion as expressed in the communication under Article 15(1) RPBA, in which it was explicitly referred to points 27-32 on pages 6 and 7 of the appealed decision.

In particular, while paragraph [0021] discloses "*that alternate embodiments may also implement a simplified construction using one latch 10 or 20 associated with one release actuator 31 or 32*", this does not mean that claim 1 using two release actuators does not provide a simpler way of adjusting a child safety seat assembly as compared to the prior art.

Furthermore, the patent discloses in figures 1-11 and the associated passages in the description detailed embodiments of the invention.

5.2 Added subject-matter - Article 123(2) EPC

The Board judges that auxiliary request XI complies with the requirements of Article 123(2) EPC.

5.2.1 Appellant 1 argued that the amendments made to claim 1 led to an unallowable intermediate generalisation, because features from a specific embodiment were introduced into claim 1 without taking all the related features of the embodiment.

(i) The two release actuators "*formed as integral handles*" was introduced to claim 1. This feature was disclosed in paragraph [0033], lines 52-55 and was part of the embodiment depicted on figures 2, 4-6, 8 and 9 and described in paragraphs [0033]-[0036]. However, the recess cavities 31a and 32a provided in the handles part of this embodiment were not introduced into claim 1.

(ii) The features "*wherein each of the latches (10,20) has an elongated shape that extends transversally relative to the base (210) and is assembled through a slot (31b, 32b) of the associated release actuators*

(31, 32) with an end respectively affixed with the two release actuators (31, 32) via a pin (34, 35) wherein the slot (31b,32b) extends parallel to an axis of displacement of the respective release actuator (31,32)" were added to claim 1. These features were disclosed in paragraph [0033], column 3, line 49 - column 4, line 3. However in this embodiment the cavity 31c extending parallel to an axis of displacement of the connector arm 221, inextricably linked to the slot 31b, was not introduced into claim 1.

5.2.2 The Board holds that the amendments made to claim 1 comply with the "gold standard", in that they can be derived directly and unambiguously from the application as filed and do not present the skilled person with new technical information (see G 2/10).

(i) Paragraph [0036] of the A1-publication discloses that the *"Middle areas of the release actuators can be respectively provided with recess cavities 31a and 32a to facilitate the placement of the caregiver's fingers for operating the release actuators 31 and 32"*. The use of the wording "can be" indicates that the recess cavity is an optional feature such that the provision of cavities is a possible way of designing the release actuators, but other designs may be considered by the skilled person.

(ii) While the slot 31b of the actuator is disclosed in combination with the cavity 31c in paragraph [0033], original dependent claim 9, corresponding to granted dependent claim 6, which has been incorporated into claim 1, defines the slot in the release actuator wherein the elongated latch is inserted without the slot 31c. The skilled person reading the application as a whole (description and claims) does not therefore

consider the slot and the cavity as inextricably linked.

Furthermore the use of a pin to affix the latch to the release actuator is disclosed in a general manner in paragraph [0033], on column 3, lines 52-55 and in paragraph [0034], on column 4, lines 18-21. A detailed way of attaching the release actuator with the latch, in particular with the provision of cavities 31c, 32c and claws 31d, 32d is then disclosed in paragraphs [0033] and [0034]. The introduction of the pin for affixing the end of the latch to the release actuator in claim 1 without introducing the specific details of the implementation does not present the skilled person with new technical information. Indeed the use of a pin for attaching two components is a well-known means, which the skilled person has no difficulty to implement. The general teaching at the beginning of paragraphs [0033] and [0034] of the use of a pin for fixing the latch to the release actuator therefore provides the basis for the use of the pin without having to introduce all the specific features described for implementing the pin.

5.3 Clarity - Article 84 EPC

The amendments made to claim 1 do not introduce a lack of compliance with the requirements of Article 84 EPC.

5.3.1 Appellant 1 was of the opinion that the terms "elongated shape", "slot" and "integral handles" were not clear.

Appellant 1 considered in particular that the limitation of the term "integral" in the expression "two release actuators formed as integral handles" was unclear. In his opinion the term "integral" could only

make sense if it was in relation to another entity. Appellant 1 added that should there be no limitation imparted by the term "integral", then it resulted in a lack of conciseness.

- 5.3.2 The terms "elongated shape" and "slot" were already present in granted claim 6, which has been incorporated into claim 1. These two terms may therefore not be examined for compliance with Article 84 EPC pursuant to G3/14, since the alleged lack of clarity, even if it were acknowledged, was already present in the patent as granted.

Furthermore, the Board judges that the term "integral" is clear. The term "*integral*" in the expression "*two release actuators formed as integral handles*" defines the release actuator forming a whole handle in such a way that no other component is required to form the handle apart from the actuator.

- 5.4 Inventive step - Article 56 EPC

The Board judges that the subject-matter of claim 1 involves an inventive step either starting from D5/D5a or from D6/D6a as closest prior art.

- 5.4.1 The subject-matter of claim 1 differs from D5 (i)- in that the two release actuators are formed as integral handles (feature E); and (ii)- in the way the two latches as associated to the release actuators. (feature E3)
These distinguishing features are not disputed.

- 5.4.2 Appellant 1 considered that the two distinguishing features do not interact with each other and do not

provide a synergetic effect, such that partial problems may be defined.

Appellant 1 considered that both distinguishing features do not provide a technical effect and should therefore be considered as providing alternative designs of the release actuators and alternative means for affixing the latches with the release actuators respectively.

Starting from D5, the skilled person, in view of the teaching of D10/D10a, D18 or in view of common general knowledge represented by documents D20-D24, would design the release actuators in form of integral handles. Furthermore the use of slots to insert the latches and pins to affix the latches with the release actuator was basic knowledge. The skilled person would therefore implement such a solution without inventive step.

- 5.4.3 The Board does not agree with Appellant 1. While partial problems may be used and may be considered as the provision of an alternative design for the handle (partial problem associated to the difference i) and the provision of alternative attachment means between the latches and the release actuators (partial problem associated to the difference ii), it is at least not obvious for the skilled person starting from the embodiment of D5 to change the design of the release actuators to integral handles.

Indeed in D5 the latches are provided with positioning posts 52 and 72, which are inserted into slots 90, 92 of the handle 9. The handle 9 protrudes at the front of the seat assembly providing an easy access to the handle, irrespective of whether the child seat is mounted or not. When the handle 9 is pulled, the two slots are displaced thereby unlocking the two latches

simultaneously. Pulling on a single handle thereby moving transversally the two latches simultaneously is presented in paragraph [0009] as being convenient.

D20-D24 illustrate that release actuators formed as integral handles are common general knowledge. However, starting from the teaching of D5, the skilled person has no incentive to remove the handle 9 and to change the positioning posts 52, 72 into two integral handles as such a modification would render the release system less accessible and less convenient for the user. The reasoning of appellant 1 is based on an ex-post facto analysis.

Document D18 discloses the use of two release actuators formed as integral handles (holes 21 of the catches 18 on figures 1-4) for moving up and down the shoulder belts to accommodate the size of the child.

The intended use of the disclosed handles 21 in D18 is very different from the adjustment of the length of the connector arms in D5. Starting from D5, the skilled person would not consider replacing the release system used to move the latches enabling the adjustment of the connecting arms with the release system of D18 used to adjust the height of the shoulder belt. Indeed the release system of D18 is submitted to different constraints and in particular to lower stresses than the release system of D5.

Document D10/D10a discloses several release systems:

(a)- Paragraphs [0043]-[0052] and figure 4 disclose release actuators 23 placed outside the base to unlock the latches 22. This release system enables the movement of the connector arms.

(b)- Paragraphs [0055]-[0065] and figure 5 disclose release actuators 34 placed outside the base to unlock

the latches 43. This release system enables the platform 30 to be translated.

(c)- Paragraphs [0079]-[0084] and figures 10 and 11 disclose two release actuators 94 inside the base to unlock the latches 91. The release actuators 94 and the latches 91 rotate as the crank rotates and enable the locking of the pin 83 in the hole 63, locking thereby the rotary movement.

Starting from D5, disclosing a release system to enable the movement of the connector arms, the skilled person would not implement the release system (c), which locks a rotary movement but would implement the release system (a) directed to the same intended use. However by implementing the release system (a) the skilled person would not arrive at the subject-matter of claim 1 as the release actuators are placed outside the base.

The subject-matter of claim 1 therefore already involves an inventive step in view of the first distinguishing feature.

5.4.4 Appellant 1 argued that D6 could also be taken as the closest prior art and that similarly to D5, the skilled person starting from D6 would without inventive skills combine its teaching with the teaching of D10/D10a, D18 or their common general knowledge and implement release actuators formed as integral handles. This measure is according to appellant 1 an obvious design alternative.

5.4.5 For the same reasons as starting from D5, the skilled person starting from D6 would not attach integral handles to the two locking pins 42. In D6, the easily accessible push button 41 is symmetrically formed with a bifurcated portion 41a connected to the member 45 of the two locking pins 42, enabling a simultaneous displacement of the latches. Removing the push button

41 located at the front end of the base and connecting integral handles to the locking pins 42, would require extensive modification to the release system of D6 and would make the handle less convenient and accessible to the user. Therefore, the skilled person would neither combine the teaching of D6 with D18, D10/D10a nor with common general knowledge.

- 5.5 The question whether documents D20-D24 should be admitted in the proceeding can be left unanswered as documents D20-D24 representing the common general knowledge, combined with either D5 or D6 as closest prior art do not render the subject-matter of claim 1 obvious. In other words whether documents D20-D24 are admitted or not does not change the outcome of the inventive step assessment.
6. Remittal of the case to the opposition division for the adaptation of the description to claims.

Both appellants agreed to remit the case to the Opposition Division to adapt the description according to the claims of auxiliary request XI. Under these circumstances the Board remits the case to the Opposition Division for an adaptation of the description.

Order

For these reasons it is decided that:

The decision under appeal is set aside

The case is remitted to the opposition division with the order to maintain the patent in amended form in the following version:

- claims 1-7 of auxiliary request XI filed with letter of 19 May 2021, and
- a description to be adapted.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated