

Internal distribution code:

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

**Datasheet for the decision
of 21 February 2023**

Case Number: T 3171/19 - 3.5.07

Application Number: 09765288.7

Publication Number: 2289261

IPC: G11B27/10, H04L29/08,
H04N21/262, G06F17/30,
H04N21/414, H04N21/433,
H04N21/458, H04N21/4722

Language of the proceedings: EN

Title of invention:
METHOD AND SYSTEM FOR REPUBLISHING MOBILE CONTENT

Applicant:
BlackBerry Limited

Headword:
Republishing mobile content/BLACKBERRY

Relevant legal provisions:
EPC Art. 56
RPBA Art. 12(4)
RPBA 2020 Art. 13(2)

Keyword:

Inventive step - main request (no)
Amended claims filed with the statement of grounds of appeal -
first to third auxiliary requests - not admitted
Amendment after summons - exceptional circumstances - fourth
to seventh auxiliary requests (no)

Decisions cited:

G 0010/93, T 1178/08, T 1472/08



Beschwerdekammern
Boards of Appeal
Chambres de recours

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

Case Number: T 3171/19 - 3.5.07

D E C I S I O N
of Technical Board of Appeal 3.5.07
of 21 February 2023

Appellant: BlackBerry Limited
(Applicant) 2200 University Avenue East
Waterloo, ON N2K 0A7 (CA)

Representative: MERH-IP Matias Erny Reichl Hoffmann
Patentanwälte PartG mbB
Paul-Heyse-Strasse 29
80336 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 10 July 2019
refusing European patent application No.
09765288.7 pursuant to Article 97(2) EPC**

Composition of the Board:

Chair J. Geschwind
Members: M. Jaedicke
P. San-Bento Furtado

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the examining division's decision refusing European patent application No. 09765288.7, filed as international application PCT/CA2009/000620 (published as WO 2009/152603), with a filing date of 4 May 2009 and claiming a priority date of 18 June 2008.
- II. The documents cited in the contested decision included:
- D6 US 2008/108376 A1, published on 8 May 2008
 - D7 Steve Friedl, "An Illustrated Guide to Cryptographic Hashes", published 25 August 2004, retrieved from <https://web.archive.org/web/20040825112648/http://www.unixwiz.net/techtips/iguide-crypto-hashes.html>
 - D8 "Checksums and Hashes", dated 6 April 2005, retrieved from the blog "CODING HORROR - programming and human factors" using <https://blog.codinghorror.com/checksums-and-hashes>
- III. The examining division refused the application on the grounds that the subject-matter of independent claim 1 of the main request lacked novelty over document D6 and the independent claims of the auxiliary request lacked inventive step in view of document D6. The examining division also cited documents D7 and D8, but only to demonstrate that using checksums to detect changes was known in the art.
- IV. In its statement of grounds of appeal, the appellant requested that the contested decision be set aside and

that a patent be granted on the basis of a main request or one of a first to fourth auxiliary requests, all requests as submitted with the grounds of appeal.

- V. In a communication under Article 15(1) RPBA 2020, the board expressed, among other things, its provisional opinion that the subject-matter of claim 1 of the main request lacked an inventive step in view of document D6 and that the board intended not to admit the first to fourth auxiliary requests under Article 12(4) RPBA 2007.
- VI. By letter of 20 January 2023, the appellant resubmitted the main request and the first to third auxiliary requests, withdrew its prior fourth auxiliary request and filed new fourth to seventh auxiliary requests. Furthermore, it submitted the following procedural request (see page 4, second paragraph):
"As a further auxiliary request, for the case that the Board of Appeal is also not willing to grant a patent on basis of any of the main request claims or first to seventh auxiliary request claims, but accepts that the decision of the Examining Division is improper, it is requested that the decision of the Examining Division is set aside and the case be remitted to the Examining Division for further prosecution."
- VII. Oral proceedings were held as scheduled, and the appellant was heard on the relevant issues. The appellant did not maintain its procedural auxiliary request for remittal (see point VI. above). At the end of the oral proceedings, the Chair announced the board's decision.
- VIII. The appellant's final requests were that the decision under appeal be set aside and that a patent be granted

on the basis of the main request or one of the first to third auxiliary requests, all four requests submitted with the grounds of appeal, or one of the fourth to seventh auxiliary requests filed with the letter of 20 January 2023.

IX. Claim 1 of the main request reads as follows:

"A content delivery system (512) for republishing a set of content for a wireless device (102), the system comprising:

 a content server (226) configurable to deliver push content to the wireless device (102), the content server (226) having a processor connected to a memory; and

 a mobile connector (504) coupled to the content server (226) for delivering the set of content to the wireless device (102) by pushing the set of content to the wireless device (102),

 the content server (226) being configured to:

 include a verification piece in a content manifest, the content manifest being associated with the set of content comprising at least two content items, wherein the verification piece comprises a checksum for each of the at least two content items for identifying changes to each of the at least two content items;

 push (702) the content manifest to the wireless device (102), the content manifest providing:

 information for retrieving each of the at least two content items, and

 information for identifying each of the at least two content items, wherein the information for identifying each of the at least two content items comprises the verification piece for verifying each of the at least two content items, wherein the verification piece is further for determining, at the

wireless device (102), content that is different from existing content stored in the wireless device (102) and for making, at the wireless device (102), a corresponding selection of one or more content items selected from the at least two content items; and

in response to a request from the wireless device (102) for the selection of one or more content items selected from the at least two content items, provide (704) the selected one or more content items to the wireless device (102); and

wherein content items are not provided to the wireless device (102) until receipt of the request from the wireless device (102)."

X. Claim 1 of the first auxiliary request differs from claim 1 of the main request in that (underlining has been added by the board):

- "the content manifest being associated with" has been amended to "the content manifest being an XML file associated with"
- "push (702) the content manifest to the wireless device (102)" has been amended to "push (702) the content manifest to the wireless device (102) for use by a mobile content application (308) of the wireless device (102)"
- "information for retrieving each of the at least two content items" has been amended to "information for retrieving each of the at least two content items, the information for retrieving comprising URLs for the at least two content items"
- "provide (704) the selected one or more content items to the wireless device (102)" has been amended to "provide (704) the selected one or more content items to the wireless device (102), the request comprising the URLs of the selected one or more content items, the content items for being

played by the mobile content application (308) of the wireless device (102)"

XI. Claim 1 of the second auxiliary request differs from claim 1 of the first auxiliary request in that (underlining has been added by the board):

- "a processor connected to a memory" has been amended to "a processor connected to a memory and a central storage device (508) for storing the set of content to be delivered to the wireless device (102), the set of content created by a content authoring and publishing system (506)"
- "for the selection of one or more content items selected from the at least two content items," has been amended to "for the selection of one or more content items selected from the at least two content items, retrieve the selected one or more content items from the central content storage (508) and"

XII. Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that (underlying has been added by the board):

- "republishing a set of content for a wireless device (102)" has been amended to "republishing a set of content for a wireless device (102), wherein the set of content is assigned to the wireless device (102)"
- "push (702) the-content manifest to the wireless device (102)" has been amended to "identify the wireless device (102) to which the set of content is assigned; push (702) the content manifest to the wireless device (102) to which the set of content is assigned, in the absence of a request from the wireless device (102),"

XIII. Claim 1 of the fourth auxiliary request differs from claim 1 of the main request in that (underlining has been added by the board):

- "wherein the verification piece comprises a checksum" has been amended to "wherein the set of content comprises at least one updated content item corresponding to changes to existing content previously delivered to the wireless device (102), and also comprises at least one old content item that is unchanged from the existing content, wherein the verification piece comprises a checksum"
- "in response to a request from the wireless device (102) for the selection" has been amended to "in response to a request from the wireless device (102) including the selection"
- ", wherein the request selects the at least one updated content item and excludes the at least one old content item" has been added after "provide (704) the selected one or more content items to the wireless device (102)"

XIV. Claim 1 of each of the fifth to seventh auxiliary requests differs respectively from claim 1 of each of the first to third auxiliary requests in that the following three amendments were made (underlining has been added by the board):

- "wherein the verification piece comprises a checksum" has been amended to "wherein the set of content comprises at least one updated content item corresponding to changes to existing content previously delivered to the wireless device (102), and also comprises at least one old content item that is unchanged from the existing content, wherein the verification piece comprises a checksum"

- "in response to a request from the wireless device (102) for the selection" has been amended to "in response to a request from the wireless device (102) including the selection"
- ", wherein the request selects the at least one updated content item and excludes the at least one old content item" has been added after "for being played by the mobile content application (308) of the wireless device (102)"

XV. The appellant's arguments relevant to the present decision are discussed in detail below.

Reasons for the Decision

1. The invention

The application relates to republishing mobile content from a content server to a wireless device (see description as published, paragraph [0002]; Figures 5 and 6). The application explains that known content delivery models were limited in that repeated transfer of data to a mobile device was not avoided. This caused increased bandwidth usage (description, paragraphs [0003] and [0004]).

Main request

2. Admissibility

2.1 The main request is the auxiliary request considered in the contested decision with two amendments. First, it specifies that the checksum is for identifying changes to each of the at least two content items. This amendment is based on paragraphs [0055], [0067] and [0075] of the description. Second, it specifies that

the content items are provided to the wireless device (102), which is based on paragraph [0082] of the description.

2.2 The board exercises its discretion under Article 12(4) RPBA 2007 to admit the main request since it is based on the auxiliary request considered in the contested decision with minor clarifications that may have been prompted by the reasons given in the contested decision, points 16.3 to 16.4, and since the board can readily deal with the amendments made.

3. *Inventive step*

3.1 In section II of its statement of grounds of appeal, the appellant argued that document D6 failed to disclose at least the following distinguishing feature of claim 1 of the main request.

DF1 The verification piece comprises a checksum for each of the at least two content items for identifying changes to each of the at least two content items.

This distinguishing feature was not a mere alternative to using version numbers but had the technical effect that a change to each of the content items was detected more reliably, for example, in case of data corruption. The version number disclosed in D6 did not allow identifying corrupted content items. The objective technical problem was how to enhance the reliability of identifying updates.

Document D6 used the primary message version field to indicate whether any changes have occurred within the primary message, and the skilled person would not find any suggestion in document D6 to change the use of

version numbers in view of the overall technical aim of a power and resource efficient implementation (D6, paragraphs [0007], [0026], [0042] and [0046]), which required a fast and efficient decision procedure. Using a checksum was detrimental to this aim since it increased the use of processing resources.

In D6, primary messages were broadcasted, and the skilled person would not consider changing from version information to checksums for identifying updates. At best, they might consider using a checksum of the primary message itself, but not a checksum for a single content item. Consequently, the main request was inventive over document D6 as the skilled person would not arrive at the solution claimed even if they considered using a checksum.

3.2 In its letter of 20 January 2023, pages 11 and 12, the appellant submitted for the first time in the appeal proceedings that document D6 also failed to disclose the following features of claim 1.

F2 The verification piece is also for determining, at the wireless device, content that is different from existing content stored in the wireless device and for making, at the wireless device, a corresponding selection of one or more content items selected from the at least two content items; and

F3 in response to a request from the wireless device for the selection of one or more content items selected from the at least two content items, providing the selected one or more content items to the wireless device.

The appellant argued that the distinguishing features DF1, F2 and F3 solved the objective technical problem

of how to enhance the efficiency of content update delivery in a reliable manner. The system of D6 failed to support efficient bandwidth usage for content data transmission and, at the same time, reliable identification of updates to content items. D6 was about a low-level message exchange of system state information between the wireless device and the server. It was not apparent how a checksum of a content item used for identifying changes to content items at a high processing level could be applied to replace the primary message version for indicating a change of system state information at a low processing level (see paragraph [0060] of D6). It was not evident how a checksum of a content item could be implemented in the system of D6 to trigger the acquiring of the updates of the system state information in the context of D6.

- 3.3 In the oral proceedings, when the board raised the issue that the admissibility of the appellant's newly submitted arguments on distinguishing features F2 and F3 was questionable under Article 13(2) RPBA 2020, the appellant declared that it maintained these arguments only in so far as the context of document D6 and the invention was different. The invention according to claim 1 concerned a set of high-level, human readable/consumable content as disclosed in the use cases in paragraphs [0003] and [0085] of the description. By contrast, D6 concerned a low-level wireless broadcast system which transmitted system state information to enable wireless devices to communicate at a technical level (see D6, paragraph [0007]). Consequently, document D6 was not directed to content presented to the user. Document D6 also used the term "content" but with a different meaning to the current application.

- 3.3.1 The main principle of document D6 was to leave the wireless device in sleep mode as much as possible (see Figure 8 of D6). In document D6, there was no issue with the reliability of data due to corruption, and checksums were not used. The different context of D6 and the invention had to be taken into account when assessing obviousness. A checksum could achieve something different in different contexts.
- 3.3.2 In the oral proceedings, the appellant submitted that the objective technical problem solved by the invention was how to facilitate information distribution for created content and how to enhance the flexibility of content distribution. Checksums provided additional functionality and more flexibility over version numbers.
- 3.3.3 When trying to solve the objective technical problem, the skilled person would not change the version numbers in document D6 as this was against the overall aim of D6. They would instead provide a more elaborate directory structure. Even if it was assumed that the skilled person would be motivated to improve the reliability of update identification, the skilled person would focus just on this issue. Consequently, when starting from the flowchart shown in Figure 8 of D6, the skilled person would at best consider using a checksum in the triggered update procedures (see reference signs 810, 814, 818 and so on) but not within the decision blocks (reference signs 806, 808, 812 and so on).
- 3.4 The board agrees with the examining division's feature mapping as set out in points 13.2 and 16.2 of the contested decision. The appellant did not contest this mapping when it submitted its complete case with its

statement setting out the grounds of appeal (see section II, starting on page 8).

The board agrees that the "content manifest" according to claim 1 can be mapped to a primary message in document D6 (see Figures 4 and 8; paragraphs [0041] to [0043], [0045] and [0059] to [0063]; and claims 23 to 27, for example). Furthermore, the primary message version information disclosed in document D6 (see claim 25; paragraphs [0039], [0042] and [0045]) can be mapped to the "verification piece" according to claim 1. Consequently, the board considers that feature DF1 is the only distinguishing feature over the disclosure in document D6.

3.4.1 Since the appellant did not maintain its arguments on the alleged distinguishing features F2 and F3, the board is not obliged to discuss their admissibility or merit. Nevertheless, the board remarks that it is convinced that features F2 and F3 are disclosed in document D6. According to the wording of claim 1, the verification piece may comprise more than just checksum information. Consequently, the version numbers for information fields in the primary message disclosed in D6 (see for example paragraphs [0042], [0045] and [0047]) can be part of the verification information. According to Figure 8 of document D6, the primary message version number and the version numbers of individual fields both contribute at the wireless device to identify, select and request updated content items.

3.4.2 The board is not convinced by the appellant's argument that the invention and document D6 have a very different context. Document D6 discloses in paragraph [0007] that "wireless devices need to obtain

the latest or updated system state information so that users of such devices can access and receive the latest data or content over the wireless broadcast network with minimal delay". Moreover, in D6 the primary message contains programme guide information and market place information (see paragraphs [0045] and [0047]), i.e. information on media content. Moreover, claim 1 is not limited to any use case, and the current application discloses in paragraph [0085] as use cases, among other things, delivering video, audio and data files from content publishers. Consequently, the overall context in document D6 and the invention is not different over the whole scope of the claim.

3.4.3 The board agrees with the appellant that document D6 does not disclose any use of checksums and that using a checksum is more reliable than using version information when content is corrupted. Since the use of checksums for detecting data corruption was well known, the skilled person would have considered using checksums to implement, in the system disclosed in document D6, content data corruption detection in information fields of the primary message such as the programme guide or the market place (D6, paragraphs [0045] and [0047]). Adding distinguishing feature DF1 to the system of D6 would thus have been obvious. The board sees no reason why checksums could not be used in addition to version numbers. Consequently, the appellant's arguments that the skilled person would not use checksums to replace version numbers in view of the overall aim of document D6 are not convincing.

3.4.4 The objective technical problem as formulated by the appellant in the oral proceedings is not convincing as

it is too vague and not based on the only credible effect of the checksums over document D6, which is to reliably identify data corruption.

- 3.4.5 Consequently, the subject-matter of claim 1 of the main request lacks inventive step (Article 56 EPC) in view of document D6 and the common general knowledge on checksums (see also the comments on documents D7 and D8 in point 17.4 of the contested decision).

Admissibility of the auxiliary requests

4. *Admissibility of the first to third auxiliary requests*
- 4.1 With its statement of grounds of appeal, the appellant submitted for the first time the current first to third auxiliary requests (see point IV. above).
- 4.1.1 The first auxiliary request essentially adds to the main request that the content manifest is an XML file and that the wireless device's request for content items comprises the URLs for these content items. These URLs were comprised in the content manifest. Moreover, the request specifies that the content items are for being played on the wireless device. These amendments are based on paragraphs [0043], [0056], [0067], [0070] and [0079] of the description.
- 4.1.2 Claim 1 of the second auxiliary request, when compared to claim 1 of the first auxiliary request, additionally specifies that the content server has a central storage device for storing the set of content to be delivered to the wireless device and that the set of content is

created by a content authoring and publishing system. These amendments have a basis in paragraphs [0054], [0055], [0057] and [0067] of the description.

- 4.1.3 Claim 1 of the third auxiliary request, when compared to claim 1 of the second auxiliary request, has been amended to cite that the set of content is assigned to the wireless device and that the content server is configured to identify the wireless device to which the set of content is assigned. Furthermore, it has been added that the content server is configured to push the content manifest to the wireless device to which the set of content is assigned, in the absence of a request from the wireless device. These amendments are supported by originally filed claim 10.
- 4.2 The board has discretion under Article 12(4) RPBA 2007 to admit new requests filed for the first time with the statement of grounds of appeal that could have been presented earlier in the first-instance proceedings.
- 4.3 The appellant was informed of the relevance of document D6 for the main request considered in the contested decision in an official communication dated 13 June 2018 and also in the annex to the summons to oral proceedings dated 18 December 2018. In a telephone interview dated 12 June 2019, the appellant was informed about objections in view of document D6 against the auxiliary request considered in the contested decision, and documents D7 and D8 were introduced "as a mere example of checksums and hashes being used to detect changes". The appellant did not attend the oral proceedings held on 21 June 2019.

- 4.4 In its statement of grounds of appeal, the appellant did not provide any reasons for filing its new claim requests for the first time in the appeal proceedings.
- 4.5 In its reply to the summons, the appellant argued that the amendments to the claims for the first to third auxiliary requests were made to clarify the concept of the invention as defined in the claims of the main request. These amendments did not add anything new that gave rise to new objections.
- 4.5.1 The amendments on the use of XML and URLs made in the first auxiliary request clarified what exactly the information for retrieving each of the at least two content items was. This aspect had been discussed on page 6 of the appellant's letter of reply dated 21 May 2019. Consequently, it had been admissibly raised in the first-instance proceedings.
- 4.5.2 The amendment of claim 1 of the second auxiliary request that the content server had a central storage device for storing the set of content to be delivered to the wireless device was based on former dependent claim 3 (original claim 9), which had been under examination in the first-instance proceedings and consequently should be taken into account also in the appeal proceedings.
- 4.5.3 The third auxiliary request merely clarified the concept of pushing the manifest file to the wireless device, which had been included in the claims under examination in the first-instance proceedings. Consequently, the third auxiliary request should be admitted.

4.6 In the oral proceedings, the appellant argued that its argument that the mapping to document D6 was wrong had already been submitted. Since the examining division had kept the mapping, the appellant had submitted the auxiliary requests. The first-instance proceedings had been suboptimal since documents D4 to D8 could have been cited earlier. Document D6 had been used in the summons only as an *obiter dicta*. After the summons, the examining division had introduced two new documents D7 and D8. The examining division had been ready to cite new documents whenever necessary. The principle of "equality of arms" therefore supported admitting the first to third auxiliary requests.

4.6.1 Moreover, the examining division's negative overall opinion on the case expressed, for example, in point 4.11.5 of its communication dated 13 June 2018 ("implementation details") convinced the appellant that in the first-instance proceedings, newly filed requests would lead nowhere. In view of the inefficient first-instance proceedings and the high cost of attending oral proceedings in the first-instance proceedings in The Hague, the appellant considered it appropriate to shift funds towards the appeal procedure and to enter into appeal proceedings with the case.

This had been usual at the time as the RPBA 2007 were still in force. The case law under the RPBA 2020 was very explicit on the need to act in the first-instance proceedings. However, the appellant should have the right to file new requests with the statement of grounds of appeal under the RPBA 2007, which were less strict. The appellant was aware that the case law on admissibility under the RPBA 2007 had become more strict in the years before the appeal was filed. Consequently, the admissibility of the first to third

auxiliary requests was also a question of the right to be heard and legitimate expectations.

4.6.2 The appellant also argued that some of the features added in the first to third auxiliary requests, such as XML, had been discussed in the first-instance proceedings and were therefore admissible even though they had not been discussed in the decision under appeal.

4.7 The board considers that the first to third auxiliary requests add to claim 1 new features extracted from the description or the dependent claims and appear to be a reaction to the prior art disclosed in document D6. These requests do not appear to be a reaction to any issue raised for the first time in the decision under appeal or to documents D7 and D8, which were introduced at a late stage in the first-instance proceedings, nine days before the oral proceedings.

The auxiliary request considered in the contested decision added the feature that the verification piece comprises checksums. This feature has been further defined in the main request admitted by the board. However, the first to third auxiliary requests add features that cannot be regarded as an attempt to further specify the use of checksums as a distinction over documents D6 to D8 (see, for example, points 2.6.2 and 2.6.3 of the Reasons for decision T 1178/08 of 9 May 2012).

Rather, as evident from the appellant's submissions, these auxiliary requests attempt to shift the discussion of inventive step to different features raising fresh issues for inventive step (see the board's communication under Article 15(1) RPBA 2020,

points 10.1 to 10.3.2). Consequently, admitting these requests would be against the need for procedural economy and extend the scope of the appeal proceedings beyond a judicial review of the decision under appeal.

It is not relevant that some of the features may have been present in dependent claims or related to arguments made in the first-instance proceedings. Rather, the appellant could and should have submitted the first to third auxiliary requests when it had the opportunity to react to document D6 in the first-instance proceedings (see point 4.3 above). This would have ensured that the board could review a respective decision of the examining division.

- 4.7.1 The board observes that the auxiliary request considered in the decision under appeal was filed after the appellant became aware of the examining division's negative opinion on allegedly obvious implementation details such as checksums and that it added the feature that the verification piece comprises a checksum for each of the at least two content items. This course of action demonstrates that the examining division's negative opinion on a checksum as an allegedly obvious implementation detail did not hinder the appellant from submitting an auxiliary request directed to this implementation detail in the first-instance proceedings. These circumstances of the current case confirm that the appellant could and should have filed the first to third auxiliary requests in the first-instance proceedings, for example, as a legitimate reaction to the introduction of new documents or evidence, in particular document D6. Consequently, the appellant's arguments are not convincing.

In this context, the board also remarks that an applicant normally has a right to file, at the earliest opportunity, new claim requests as a direct reaction to new prior art cited by the examining division since filing such requests is a legitimate defence against fresh facts introduced for the first time into the proceedings.

4.7.2 The board is also not convinced by the cost-related arguments of the appellant. It is not convincing that the appellant should be allowed to file new requests in the appeal proceedings to reduce its costs since the aim of the appeal proceedings is primarily to conduct a judicial review of the contested decision (Article 12(2) RPBA 2020, see also G 10/93, OJ EPO 1995, 172, Reasons 4, and T 1472/08 of 8 February 2012, Reasons 2.6) and not an opportunity for reducing prosecution costs.

4.7.3 Consequently, the board does not admit the first to third auxiliary requests under Article 12(4) RPBA 2007.

5. *Admissibility of the fourth to seventh auxiliary requests*

5.1 The fourth to seventh auxiliary requests were filed for the first time after the oral proceedings before the board had been arranged (see point VI. above).

5.2 Under Article 13(2) RPBA 2020, 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.

5.3 When it submitted the fourth to seventh auxiliary requests, the appellant did not argue why these requests should be admitted under Article 13(2) RPBA 2020. It did not submit that these requests were a reaction to any exceptional circumstances. Rather, it argued that these auxiliary requests defined the subject-matter of the higher ranking requests (i.e. the main request and the first to third auxiliary requests) more clearly to further distinguish it from the disclosure of document D6. Furthermore, these auxiliary requests did not provide any new aspects that gave rise to new objections.

In the oral proceedings, the appellant also argued that the board's preliminary opinion, which confirmed the examining division's view, prompted the appellant to reconsider its case and to file the fourth to seventh auxiliary requests.

5.4 In the current case, the board is not aware of any exceptional circumstances that could justify an admission of the fourth to seventh auxiliary requests under Article 13(2) RPBA 2020. Neither the fact that the board confirmed in essence the examining division's reasoning, nor that the appellant felt a need to further clarify its claim requests to emphasise the distinctions over the closest prior-art document D6 constitute exceptional circumstances under Article 13(2) RPBA 2020. It is to be expected that a board will agree with the decision under appeal, and this cannot be a reason for providing the appellant with a further opportunity, at a late stage of the appeal proceedings, to file new claim requests.

Furthermore, it is the appellant's responsibility to clarify its claim requests at the earliest possible opportunity, i.e. usually in the first-instance proceedings.

5.5 In view of the above, the board does not admit the fourth to seventh auxiliary requests under Article 13(2) RPBA 2020.

Conclusion

6. Since the main request is not allowable and none of the auxiliary requests is admitted into the appeal proceedings, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

J. Geschwind

Decision electronically authenticated