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Datasheet for the decision of 29 April 2025

Case Number: T 0617/20 - 3.3.10

Application Number: 08798495.1

Publication Number: 2178814

IPC: C07C21/18, C07C17/25, C07C17/21, C07C19/08, C07C17/087, C07C19/10, C07C17/04

Language of the proceedings: EN

Title of invention:
METHOD FOR PRODUCING FLUORINATED OLEFINS

Patent Proprietor:
Honeywell International Inc.

Opponents:
ARKEMA FRANCE
Mexichem Fluor S.A. de C.V.
Zhejiang Huanxin Fluoro Material Co., Ltd.
Sino-Resource Imp. & Exp. Co., Ltd.

Headword:
Apportionment of costs occasioned by a withdrawal of an appeal

Relevant legal provisions:
EPC Art. 104(1), 106(1), 111(1), 112a(4), 122
EPC R. 88(1), 88(2), 88(3), 88(4), 100(1), 103(3), 103(4)(a), 132(1), 136(1), 139
RPBA 2020 Art. 16, 16(1), 16(1)(c)

Keyword:
Apportionment of costs - admissible (yes) - allowable - (no)

Decisions cited:
R 0003/22, T 0765/89, T 0674/03, T 1556/14, T 0211/15, T 1310/19, T 1484/19, T 0695/18, T 1087/20, T 0433/21, T 1549/22

Catchword:
1. A request for apportionment of costs is not inadmissible for the sole reason that it had been filed after the closure of the appeal proceedings. Decision T 1556/14 is not followed. (Reasons 1.1 to 1.17)

2. A request for apportionment of costs after termination of the appeal proceedings can still open ancillary proceedings for deciding issues arising out of the original appeal proceedings, without re-opening the substantive appeal proceedings. (Reasons 1.6 to 1.7)

3. A reasonable time limit for filing a request for apportionment of costs where the appeal proceedings are terminated by a withdrawal of an appeal should correspond to the usual time limits applicable to proceedings before the EPO, namely the standard two months of Rule 132(1) EPC. Questions should be asked only if the request is submitted after a reasonable period of time. (Reasons 1.20 to 1.21)

4. Beyond the general obligation to inform the other parties as soon as possible, the parties have no formal obligation to take even more active steps merely to avoid the costs already foreseen by the other parties. At most, parties must seek to avoid additional costs. The recognition of such a formal obligation would place an unrealistic burden on parties to the proceedings before the EPO. (Reasons 2.6)

Europäisches Patentamt
European Patent Office
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Case Number: T 0617/20 - 3.3.10

D E C I S I O N
of Technical Board of Appeal 3.3.10
of 29 April 2025

Appellant: (Patent Proprietor)	Honeywell International Inc. 115 Tabor Road Morris Plains, NJ 07950 (US)
Representative:	Crooks, Elizabeth Caroline Kilburn & Strode LLP Lacon London 84 Theobalds Road London WC1X 8NL (GB)
Respondent: (Opponent 1)	ARKEMA FRANCE Département Propriété Industrielle 420, rue d'Estienne d'Orves 92700 Colombes (FR)
Representative:	Arkema Patent Arkema France DRD-DPI 420, rue d'Estienne d'Orves 92705 Colombes Cedex (FR)
Respondent: (Opponent 2)	Mexichem Fluor S.A. de C.V. Eje 106 (sin número) Zona Industrial C.P. 78395 San Luis Potosi, S.L.P. (MX)
Representative:	Potter Clarkson Chapel Quarter Mount Street Nottingham NG1 6HQ (GB)
Respondent: (Opponent 3)	Zhejiang Huanxin Fluoro Material Co., Ltd. Yanggongwan, Huajie Town Yongkang City Zhejiang 321302 (CN)

Representative:	dompatent von Kreisler Selting Werner - Partnerschaft von Patent- und Rechtsanwälten mbB Deichmannhaus am Dom Bahnhofsvorplatz 1 50667 Köln (DE)
Respondent: (Opponent 4)	Sino-Resource Imp. & Exp. Co., Ltd. FL9, Wenhua Mansion No. 488 Zhenming Road Ningbo, Zhejiang 315010 (CN)
Representative:	Cohausz & Florack Patent- & Rechtsanwälte Partnerschaftsgesellschaft mbB Postfach 10 18 30 40009 Düsseldorf (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 23 January 2020 revoking European patent No. 2178814 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	P. Gryczka
Members:	T. Bokor
	A. Zellner

Summary of Facts and Submissions

I. The patent proprietor appealed the decision of the opposition division to revoke the European patent No. 2 178 814. The patent was originally opposed by four opponents. One opposition was later withdrawn.

II. Oral proceedings before the Board were summoned in person originally for 23 July 2024 and later re-scheduled to 10 October 2024, following a request from opponent 4.

III. The appellant proprietor requested on 22 November 2023 that the oral proceedings take place by videoconference rather than in person. The opponent 3 requested on 27 November 2023 that the oral proceedings take place in person. The Board did not change the originally scheduled format and also the re-scheduled oral proceedings were maintained as an in-person hearing.

IV. The patent proprietor informed the Board with letters dated 15 March 2024 and 17 July 2024 that it will attend the oral proceedings with two professional representatives and two accompanying persons from the appellant company.

V. The Board gave a preliminary opinion in a communication under Article 15(1) RPBA dated 13 August 2024 and stated that the appeal is likely to be dismissed.

VI. The respondent opponent 3 informed the Board with letter received in the EPO on 4 September 2024 that it will attend the oral proceedings with two professional representatives and a patent attorney trainee, and four

personally named technical experts, without further details about the technical experts.

VII. With a letter dated 1 October 2024 the patent proprietor withdrew its appeal.

VIII. The Board cancelled the oral proceedings on 4 October 2024 and informed the parties about the termination of the appeal proceedings with the EPO Form 3324 on 10 October 2024.

IX. The respondent opponent 3 submitted a request for apportionment of costs under Article 104(1) EPC and Article 16(1)(c) RPBA with a letter dated 12 November 2024. They requested that the Board orders to pay all, or at last a part of the costs of the opponent 3 incurred in the preparation for the oral proceedings. The partial costs should correspond to the cancellation fees for the travel arrangements for the named four technical experts. The costs were set out in detail and invoices were submitted as documentary evidence that these costs indeed arose.

X. The opponent 3 argued that costs could have been avoided if the appellant proprietor had warned the opponents in good time about its intentions to withdraw the appeal. Their failure to do so amounted to an omission under Article 16(1)(c) RPBA. The technical experts also had to cancel their trip to a trade fair in Nürnberg.

XI. The original appellant proprietor requested to reject the request for apportionment of costs with letter dated 13 January 2025, both as inadmissible and unfounded. They argued that the request was out of time, given the closure of the appeal proceedings. The

withdrawal of an appeal was always a legitimate exercise of rights. The technical experts were not prevented from attending the fair trade, and it was the opponent 3 who insisted on the in-person hearing, instead of the hearing by videoconference as proposed by the proprietor.

XII. With a communication pursuant to Rule 100(2) EPC dated 31 January 2025 the Board issued a preliminary opinion about the admissibility and allowability of the request for apportionment. The request seemed admissible but not allowable, for the detailed reasons given for both issues and essentially corresponding to the reasons of the present decision. The Board also stated that it did not intend to summon the parties to oral proceedings. The parties were given an opportunity to comment within a time limit of two months.

XIII. No comments were received within the time limit.

Reasons for the Decision

1. Admissibility of the request for apportionment of costs

Effect of the closure of the appeal proceedings

1.1 The original appellant patent proprietor submitted that the requests should be deemed inadmissible, because according to the relevant case law such a request is only admissible as long as the proceedings are not closed. Only exceptionally may a request be admissible after the termination of the proceedings (T 1556/14, Reasons 3.). However, in the present case the requesting opponent 3 was timely informed and therefore was not prevented from submitting the request before the closure of the proceedings.

1.2 The Board holds that the admissibility of the request for apportionment of costs need not be strictly tied to those procedural events that could be seen as the closure of the appeal proceedings. There are two such events that lend themselves as the identifiable end point of the proceedings. First, the withdrawal of the appeal is going to automatically terminate the substantive appeal proceedings, without any additional action of the Board. The other possibility is the usually later effected formal closure of the appeal proceedings, where the Board takes note of the withdrawal and establishes, merely as a declaratory finding, that the appeal proceedings are terminated without a substantive decision and therefore closes the appeal proceedings also procedurally. This latter will normally be communicated to the parties within a few days after the receipt of the withdrawal of the appeal, so that towards the parties this would indicate that the appeal proceedings are now also formally closed. This happened also in the present case, cf. point VIII. above.

1.3 However, there is no need to categorically exclude a request for apportionment following any of these two possible end points of the proceedings. The Board does not call into question the general principle that proceedings should be closed as soon as feasible and at a recognisable point in time, and parties should be able to rely on such a closure of the proceedings. This is dictated by the need for legal certainty, and therefore the formal closure of the proceedings normally means that no new legal matter may be raised.

1.4 The Board considers that the wording of Article 16 RPBA, Article 104(1) or Rule 88(1) EPC does

not support the proposition that requesting cost apportionment after the closure of the proceedings should be normally excluded as a question of principle, contrary to the findings of T 1556/14, Reasons 2 (seemingly also approved by T 1484/19, Reasons 1.1). Article 16 RPBA contains no recognisable reference to the procedure within which the cost apportionment can be ordered, nor the form of the decision. On the face of it, Article 16(1) RPBA only confirms what is already derivable from Article 111(1), second sentence, EPC and from Rule 100(1) EPC, namely the Board's competence to decide on cost apportionment, exercising the powers of the Opposition Division under Article 104(1) EPC. Otherwise Article 16(1) RPBA only provides a non-exhaustive list about the types of costs which may be subject to apportionment. Article 104(1) EPC seems primarily be devoted to the general principle that parties bear their own costs. For the exceptional case of the cost apportionment for reasons of equity, it only stipulates that the same body is to decide which is competent to decide on the opposition, namely the Opposition Division. The provisions of Rule 88(1) EPC are to be seen together with those of Rule 88(2) to (4) EPC, which make it clear that the legislator did not at all expect that the cost apportionment issue should be finally settled already in the decision on the substance of the opposition, but would possibly involve proceedings extending beyond it.

1.5 Rule 88(1), first sentence, EPC merely stipulates that the apportionment of costs shall be dealt with in the decision on the opposition. There is also no reason to assume that this provision was intended to cover all cases without exception. Otherwise a withdrawal of an appeal or of an opposition would inevitably lead to the arguably manifestly inequitable result that also such

requests on apportionment would have to remain undecided that were timely filed still during the pending proceedings. Therefore, Rule 88(1) EPC should only be seen as a general rule that permits exceptions, and it need not imply any firm legislative intent that in those cases where there is no final decision on the merits at all, as in the case of the withdrawal of the appeal (or of an opposition for that matter), the possibility of a request for apportionment of costs would also end together with the termination of the substantive proceedings.

1.6 On the other hand, at least since decision R 3/22 by the Enlarged Board of Appeal it has become clear that proceedings before a board of appeal may well come into existence also after the formal closure of the appeal proceedings. Decision T 0695/18 found that the Enlarged Board's decision implies that such ancillary proceedings, though not re-opening the original appeal proceedings in substance, did in fact come into existence through a request submitted after the closure of the appeal proceedings (there a request for correction under Rule 139 EPC) and these ancillary proceedings were those proceedings that were re-opened through the order of the Enlarged Board (T 0695/18, Reasons 2.9). The same approach was confirmed in T 0433/21, Reasons 7 with sub-points, see in particular Reasons 7.4: "*Such proceedings are not the appeal proceedings, but may, according to the nomenclature proposed in the final decision in case T 695/18, be considered as "ancillary proceedings", i.e. proceedings arising out of or in connection with the earlier appeal proceedings, once those proceedings have been concluded.*". This finding was also made in the context of a request for correction under Rule 139 EPC.

1.7 In the opinion of this Board, there is no apparent reason why the same findings would not be transferable to the present issue before the Board. It seems undisputed that the issue of the cost apportionment is clearly an issue the arises out of or is in connection with the earlier appeal proceedings. The Board's competence to decide such issues also appears undisputed (see also T 0765/89, Reasons 1). Thus it appears that a request for apportionment submitted after the closure of the appeal proceedings will similarly open such ancillary proceedings, and again, there is no apparent reason why such ancillary proceedings would not be suitable to resolve also the issue on the merits, i.e. to decide whether a cost apportionment is equitable in the circumstances.

1.8 The Board observes that case law does not seem to give a consistent and definite answer, but also does not seem to fundamentally contradict the Board's conclusion in point 1.7 above.

1.9 The possibility of filing a request after the termination of the substantive proceedings was also considered by later decisions (see. e.g. T 1484/19, Reasons 1.2 to 1.4, raising the question of principle whether the Board has the formal competence at all to decide the matter after the Board has issued its final decision on the merits, but ultimately leaving the issue undecided).

1.10 Some decisions at least tacitly accepted such requests: see T 0674/03, where the deciding Board did not raise any objection of inadmissibility, in a case where a request was filed five days after the withdrawal of the appeal, terminating the substantive appeal proceedings. Similarly, in T 1310/19 the deciding Board did not

question the admissibility of the requests for cost apportionment, although it found that the proprietor's withdrawal of consent effectively meant a withdrawal of its appeal (Reasons 3.). This was further underlined by the fact that the deciding Board saw no need to make any formal decision on the substance of the appeal in the order of the decision, but only observed that the appealed decision became final (Reasons 5.). This effectively meant that the request for apportionment was filed after the termination of the substantive appeal proceedings. In decision T 0211/15 by this Board (in a different composition) a request for apportionment of costs, made five days after the withdrawal of the appeal - and the resulting termination of the appeal proceedings - was treated by the Board without questioning the admissibility of the request.

1.11 These decisions did not mention whether the appeal proceedings were also formally closed by the usual information sent to the parties in such cases by the Board's Registrar, as also in the present case (see EPO Form 3324 posted on 10 October 2024). However, it is noted that even where the parties are notified of the closure of the appeal proceedings, the actual date of the Board's instructions to the Registrar to close the proceedings is usually earlier and remains unknown to the parties. See also T 1484/19, Reasons 1.1 and 1.2, where the Board raises the question whether the Board's internal decision-making process should be the decisive date for the admissibility of a request for apportionment.

1.12 The fact that the substantive appeal proceedings will not be reopened is completely unproblematic for the question of apportionment of costs, the outcome of

which is in no way linked to the substantive outcome of the appeal proceedings. The apportionment of costs may be ordered against any party, irrespective of its party position or the success of its case on the merits.

1.13 The Board is of the view that it is also irrelevant whether the request is made before the formal closure of the proceedings (but after the withdrawal of the appeal) or only thereafter. If it is recognised that it would be inequitable to deny the possibility of apportionment of costs which may result from the withdrawal of the appeal (which seems to be recognised by T 1556/14, see Reasons 3, with reference to T 0765/89), it would not be significantly less inequitable to require the filing of the request still before the formal closure of the proceedings. Therefore, the Board does not agree with the approach that can be deduced from T 1556/14, Reasons 4.

1.14 This approach would seem to require the requesting party to file the request for apportionment with the utmost urgency, at the risk of it being found inadmissible, simply because it would theoretically have been possible to file the request immediately after learning of the withdrawal. This approach favours form over substance, and completely overlooks the overall situation and the essence of the request for apportionment of costs under Article 104(1) EPC: the requesting party claims that the other party's procedural behaviour has resulted in an unfair financial burden on it, while the requesting party implicitly assumes that its own procedural behaviour has been impeccable. There is no obvious reason why this request should have to be made with an urgency that would put even more unnecessary burden on the requesting party, in order to be able to claim some

compensation within the possibilities of Article 104(1) EPC. After all, the requesting party cannot be blamed for not submitting the request still during the pending proceedings. The case is not comparable to those in which a mistake or omission on the part of the requesting party makes it necessary to reopen the closed proceedings, as is the case with requests for correction under Rule 139 EPC or a request for re-establishment of rights under Article 122 EPC, and where the requesting party can be expected to act with utmost urgency already for this reason.

1.15 There is simply no reason for urgency in the current situation: the claim to a different apportionment of costs is based on facts that already happened. The continuation of the proceedings in the form of ancillary proceedings does not alter the substantive patent rights, so that public interest is not affected - the cost apportionment only concerns the parties. Some delay does not prevent the Board from deciding on the issue, as ancillary proceedings are perfectly possible, as explained above. Case law requires that the party also specifies its costs and submits evidence (see CLBA 10th edition 2022, III.R.4.1., last paragraph). Such a requirement is in stark contradiction to the usual practice of the boards to issue the order of the closure of the proceedings after a withdrawal of an appeal within a few days, quite often on the very same day of the receipt of the withdrawal. Requiring the requesting party to submit its request together with the evidence of its costs still before the board issues the usual communication about the closure of the proceedings would appear to put the wholly unreasonable obligation on parties to keep a permanently updated record of their costs. E.g. attorneys working for clients would have to keep a

permanently updated record not only of their own costs, but also of the costs of their clients, as demonstrated in the present case.

1.16 On the other hand, if the submission of the evidence should be admissible also later, it is not apparent why the request itself should not be admissible later, given that it will anyway not be examined until the underlying facts have been substantiated. The only party that may possibly be surprised by a formally late request would be the one whose action triggered the request in the first place, the party withdrawing the appeal. The situation is hardly comparable to a notice of appeal and the grounds of appeal, where the formal separation of the request and the substantiation is foreseen because of the important suspensive effect of the notice of appeal (Article 106(1), second sentence, EPC), while leaving sufficient time for parties to prepare their case.

1.17 In summary, the Board considers that the request is not inadmissible for the sole reason that it had been filed after the closure of the appeal proceedings.

Significance of the time period following the termination of the appeal proceedings

1.18 The Board has no doubt that even if a request for apportionment after a withdrawal is not inadmissible per se, it should not be possible to file such a request after an arbitrarily long period of time, e.g. only years after the closure of the proceedings. However, as set out above, it appears questionable whether the decision on such a request should be unnecessarily burdened with the detailed examination of the procedural conduct of the requesting party and the

circumstances of the submission of the request, before the actual subject of the request, namely the allegedly inequitable conduct of the other party is going to be examined. It is not apparent to the Board what legal interest would be served by forcing the requesting party to submit the request for apportionment of costs within the shortest possible time.

1.19 The Board also observes that apportionment of costs is regularly requested also in the comparable situation where a patent proprietor withdraws its agreement to any claims in the proceedings. This also leads to the formal and fast closure of the proceedings, albeit there with a formal decision of the Board (see T 1549/22 and T 1087/20 as more recent decisions). In such cases the formal closure of the proceedings regularly takes longer because of the different character of the final decision (a revocation with a constitutive character and also requiring a formal reasoned decision of the Board, even if very brief). Against this stands the termination of the proceedings without a substantive decision (which latter is only a declaratory finding and does not result in a formal reasoned decision, given that the withdrawal of the appeal immediately terminates the substantive proceedings by operation of the law). Therefore, if the formal closure of the proceedings is to be regarded as the decisive date for the admissibilty of a request for cost apportionment, due to the boards' differing procedures it would establish an unjustified difference between those cases where justification of the cost apportionment is seen in the late withdrawal of the appeal as compared to those cases where the late withdrawal of the patentee's agreement to the text is argued to be the justification for the apportionment.

1.20 To avoid such unreasonable outcomes, the Board finds it more equitable to proceed on the assumption that a request that is prima facie submitted within a reasonable period of time in view of the circumstances, should be accepted as admissible, and without any detailed examination whether the party might have submitted the request already before the formal closure of the proceedings, or just one day earlier than it actually did. As set out above, there is simply no apparent reason for urgency and therefore the requesting party should not be burdened with the pressure of meeting a tight and badly defined time limit, which is anyway not known to it and on which it has practically no influence.

1.21 In this respect, it seems sufficient to orient the expected reasonable time limit for filing a request for apportionment along the usual time limits applicable to proceedings before the EPO, namely the standard two months of Rule 132(1) EPC. Questions should be asked only if the request is submitted after a reasonable period of time.

1.22 The Board also points to Rule 136(1) and Article 112a(4) EPC, where a time limit of two months is foreseen by the legislator for submitting a request that is effectively going to open new proceedings, even in situations where not only the legal interest of the parties but also public interest is directly affected, unlike in cases of cost apportionment.

1.23 In the present case, the withdrawal of the appeal and the formal closure of the appeal proceedings had been communicated to the respondent opponents on 2 October 2024 and 10 October 2024, respectively. As usual, the notification of the closure of the appeal

proceedings contained no indication about the date on which the Board formally instructed the Registrar to close the proceedings and to notify the parties concerned. The request for apportionment of costs together with the supporting evidence was submitted on 12 November 2024, i.e. about one month later.

1.24 The Board has no reason to believe that the opponent 3 deliberately delayed the submission of the request or did not act diligently to collect the required evidence from its clients in China. As set out above, it would also appear both inequitable and unnecessary for the opponent 3 to be obliged to demonstrate that an earlier submission of the request for apportionment would not have been possible. The request was submitted within the reasonable two months after having been notified about the allegedly inequitable conduct of the proprietor, namely the withdrawal of the appeal, which in turn made the costs incurred in preparation for the oral proceedings unnecessary. Thus the request was submitted within a reasonable time and the Board sees no reason to hold it inadmissible under the circumstances.

2. On the merits of the request

Obligation of an appellant to inform the other party of the withdrawal of the appeal and/or a non-attendance at the oral proceedings

2.1 The Board does not doubt that all parties are obliged, as a question of principle, to conduct the proceedings before the EPO in good faith. This also implies that they are generally obliged to avoid causing damage to anyone, including the other parties to the proceedings. For professional representatives, such an obligation

also follows from the provisions of the Regulations on Discipline and the Code of Conduct. The obligation to notify the EPO, hence also the other party, in case of non-appearance at oral proceedings before the EPO is even specifically addressed by the European Patent Institute (epi), see epi resolution 4.2.4 "Resolution regarding non-attendance at oral proceedings", accessible on the website of the epi.

2.2 The Board also accepts that the opponent 3 could have avoided costs if it had been notified about the intentions of the proprietor earlier. However, the mere fact that the costs of the opponent 3 possibly could have been avoided does not immediately establish that the proprietor acted in bad faith in this respect and therefore should be held financially liable through a cost apportionment under Article 104(1) EPC.

2.3 As has been repeatedly held in the case law, the exercise of procedural rights, in particular the right to withdraw the appeal, in itself does not establish culpable behaviour of a party, unless there is evidence of intentional causing of harm to the other party (e.g. see T 0674/03, Reasons 3., CLBA III.R.2.4 and the decisions there cited.)

2.4 The Board also points to the legislative intent behind Rule 103(4)(a) EPC, which would be negated by potential requests for cost apportionments based on the mere fact that the appeal is withdrawn late, see also T 1484/19, Reasons 1.8. The present Board adds that the legislator certainly saw the benefit of an early withdrawal, which is expressed in the higher proportion of reimbursement under Rule 103(3) EPC. However, the entitlement of the lower portion of reimbursement is foreseen even where the appeal is withdrawn only at the oral proceedings.

2.5 If, for the sake of argument, the Board were to accept that, in the present case, the proprietor was indeed under an obligation to give notice of withdrawal earlier, a number of questions would immediately arise: how much earlier should the proprietor have withdrawn the appeal in order to be free of financial liability to the other parties? On what factual and legal basis should the Board set such an earlier date? How could the representative of the proprietor have been expected to know that date? Did it have a duty to contact the other parties to enquire about the cancellation periods of their travel arrangements? Was it incumbent on the party and its representatives to arrange their own internal workflow to take these factors into account, e.g. to arrange a timely consultation on the case well in advance of the oral hearing, in order to avoid costs for the other parties (and thereby possibly incurring additional costs for themselves)?

2.6 In the view of the Board, these questions demonstrate that, beyond the general obligation to inform the other parties as soon as possible, a party has no formal obligation to take more active steps merely to avoid such costs which were already foreseen by the other parties. At most, in procedural situations such as the present case, the parties must endeavour to avoid additional costs, typically by informing the other parties as soon as the firm decision to withdraw the appeal has been taken. To recognise such a formal obligation (i.e. to take active steps already before the decision to withdraw has been taken, in order to avoid costs for the other party) seems to place an unrealistic burden on parties to proceedings before the EPO.

2.7 Where, as in the present case, there are many opposing parties, a party intending to withdraw the appeal might even be tempted to take part in the oral proceedings without any real interest in the outcome, merely in order to avoid the accusation that the costs of preparing for the oral proceedings were unnecessary and should be apportioned. For these reasons, the Board sees no culpable conduct on the part of the patent proprietor and no justification for awarding apportionment of costs, either in whole or in part.

Costs to be covered

2.8 Notwithstanding the above findings on the lacking justification for an apportionment, the Board observes that it would also appear questionable whether the costs of four technical experts travelling to the oral proceedings from China could be deemed to be necessary to ensure proper protection of the rights involved within the meaning of Rule 88(1), second sentence, EPC.

2.9 The Board also agrees with the observations of the appellant proprietor concerning the offered but declined videoconference and the possibility for the opponent's experts to visit the trade fair in Nürnberg.

Final conclusion

2.10 For these reasons, the parties are to bear their own costs (Article 104(1), first half-sentence, EPC). The request for a different apportionment of costs is not belated but there are no apparent reasons of equity that would justify a different apportionment.

Order

For these reasons it is decided that:

The request of opponent 3 for a different apportionment of costs pursuant to Article 104(1) EPC is refused.

The Registrar: The Chairman:

L. Stridde P. Gryczka

Decision electronically authenticated