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**Datasheet for the decision
of 9 May 2023**

Case Number: T 0897/20 - 3.4.03

Application Number: 14166066.2

Publication Number: 2779146

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G02F1/13357, E04B9/00,
F21V5/00, F21V7/00, G09F13/22,
F21V15/01, G02F1/1335

Language of the proceedings: EN

Title of invention:
Display device

Patent Proprietor:
Signify Holding B.V.

Opponents:
Majert GmbH & Co. KG
OSRAM GmbH

Headword:

Relevant legal provisions:
EPC Art. 76(1), 100(c), 101(2), 111(1)
RPBA 2020 Art. 12(4), 12(6), 13(1), 13(2)

Keyword:

Divisional application - sequence of divisional applications -
intermediate generalisation (yes) - subject-matter extends
beyond content of earlier application (yes)
Amendment to case - filed with the grounds of appeal -
suitability of amendment to address issues (no)
Amendment after summons - exceptional circumstances (no) -
taken into account (no)

Decisions cited:

G 0001/06, T 0346/15, T 1369/19

Catchword:



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 0897/20 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 9 May 2023

Appellant:
(Patent Proprietor)

Signify Holding B.V.
High Tech Campus 48
5656 AE Eindhoven (NL)

Representative:

Eisenführ Speiser
Patentanwälte Rechtsanwälte PartGmbH
Johannes-Brahms-Platz 1
20355 Hamburg (DE)

Respondent:
(Opponent 1)

Majert GmbH & Co. KG
Landsberger Strasse 80
45219 Essen (DE)

Representative:

Andrejewski - Honke
Patent- und Rechtsanwälte Partnerschaft mbB
An der Reichsbank 8
45127 Essen (DE)

Respondent:
(Opponent 2)

OSRAM GmbH
Marcel-Breuer-Strasse 6
80807 München (DE)

Representative:

Epping - Hermann - Fischer
Patentanwaltsgesellschaft mbH
Schloßschmidstraße 5
80639 München (DE)

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 26 March 2020
revoking European patent No. 2779146 pursuant to
Article 101(3)(b) EPC.**

Composition of the Board:

Chairman T. Häusser
Members: A. Böhm-Pélissier
 D. Prietzel-Funk

Summary of Facts and Submissions

- I. The appeal is against the decision of the opposition division to revoke the European patent EP 2 779 146 B1 (Articles 100(c), 76(1) and 83 EPC).
- II. Grounds for opposition were lack of novelty and inventive step, insufficient disclosure and added subject-matter (Articles 100(a) to (c) EPC).
- III. Reference is made to the following **documents**:
- E3 = EP 2 390 866 A2, publication of the **parent** application (case T 1369/19)
- E5 = W0 2007 / 043886 A1, publication of the **root** application (case T 0346/15)
- IV. At the oral proceedings before the board the **appellant** (patentee) **requested**
- (a) that the decision under appeal be set aside and that the patent be maintained as granted, or
- (b) that the patent be maintained in amended form on the basis of the claims of auxiliary requests 1', I, 1, II, 2, II', 2', III, IIIa, IIIb, IV, IVa, IVb, V, V', Va, Vb, VI, VIa, VIb, VII or 7,
- (i) new auxiliary request 1' filed during the oral proceedings before the board,
- (ii) auxiliary requests I and II filed with the statement setting out the grounds of appeal being identical with auxiliary requests II respectively IIc underlying the impugned decision,

- (iii) auxiliary requests III to VII filed with the statement setting out the grounds of appeal being based on auxiliary requests III to VII underlying the impugned decision,
- (iv) auxiliary requests II', IIIa, IIIb, IVa, IVb, V', Va, Vb, VIa and VIb filed for the first time with the statement setting out the grounds of appeal, and
- (v) auxiliary requests 1, 2, 2' and 7 filed with the letter dated 6 April 2023.

The **first respondent** (opponent 1, in the following referred to as "respondent") requested that the appeal be dismissed.

The **second respondent** (opponent 2) did not attend the oral proceedings before the board but had requested in writing that the appeal be dismissed.

V. **Claim 1** of the **main request**

(patent as granted, labelling M1.1, M1.2, ... introduced by opponent 2, labelling (A), (B), ... introduced by the board):

(A) (M1.1) *Display device (1, 8, 19, 21, 22, 125) such as a light box, for instance for an illuminated advertisement, a traffic sign, a signpost, an illuminated ceiling, a TFT screen, an LCD screen, a dial for a clock or a measuring instrument, which device comprises:*

(B) (M1.2) *a housing (2);*

(C) (M1.3) *a light source (3, 4, 5, 9, 10, 11, 12, 13, 14, 20, 23, 26, 27, 43) accommodated in this housing,*

- (D) (M1.4) *said light source positioned upon an inner surface (17) of a wall of said housing,*
- (E) (M1.5) *said inner surface of said wall extending in a transverse direction relative to at least one diffusely translucent display face (6, 7, 33, 42),*
- (F) (M1.6) *said at least one diffusely translucent display face illuminated by the light from this light source;*
- (G) (M1.7) *wherein said light source comprises at least one LED and*
- (H) (M1.8) *is provided with orienting means (14) so as to obtain a directional characteristic of said light output,*
- (I) (M1.9) *said directional characteristic orienting the light output from said light source towards an inner surface of a second wall (18, 28) being diffusely reflective of said housing;*
- (J) (M1.10) *said inner surface of said second wall being diffusely reflective such that a part of the light incident thereon is reflected to said diffusely translucent display face, **characterised in that***
- (K) (M1.11) *said second diffusely reflective wall extends at least more or less in transverse direction relative to the display face; and*
- (L) (M1.12) *wherein said second wall is opposite to a wall on which the light source is arranged.*

VI. Claim 1 of **auxiliary request I** differs from claim 1 of the main request in that features (H) and (L) were modified to (*underlining of additions, strike-through of deletions added by the board*):

(H1) *is provided with ~~orienting~~ lens means (14) so as to obtain a directional characteristic of said light output,*

(L1) wherein said second wall is opposite to ~~a~~ the wall on which the light source is arranged,

Furthermore, features (M) and (N) were added at the end of the claim:

(M) and in that the lens means is configured such that a part of the light emitted by the light source impinges upon the smooth inner side of the at least one diffusely translucent display face (6, 7, 33, 42) at an angle of incidence (γ) relative to the normal N,
(N) said angle of incidence of said part of the light is such that it is reflected towards the inner surface of the second diffusely reflective wall.

VII. Claim 1 of **auxiliary request II** differs from claim 1 of auxiliary request I in that features (J), (M) and (N) were modified to:

(J2) ~~said inner surface of said second wall being diffusely reflective such that a part of the light incident thereon is reflected to said diffusely translucent display face, characterised in that,~~
wherein

~~(M2) and in that the lens means is configured having an aperture angle such that a part of the light incident on said inner surface of said second wall is reflected to said diffusely translucent display face (6, 7, 33, 42) and the other part of the light emitted by the light source impinges upon the smooth inner side of the at least one diffusely translucent display face (6, 7, 33, 42) at an angle of incidence (γ) relative to the normal N,~~

~~(N2) said angle of incidence of being larger than the Brewster angle, said part of the light is such that it~~

is being reflected towards the inner surface of the second diffusely reflective wall.

- VIII. Claim 1 of **auxiliary request II'** differs from claim 1 of auxiliary request II in that feature (N2) was modified to:

(N22) said angle of incidence being larger than the Brewster angle, ~~said part of the~~ wherein relevant light being is reflected towards and imping [sic] upon the inner surface of the second diffusely reflective wall, wherein the second diffusely reflective wall functions as a secondary diffuse source.

- IX. Claim 1 of **auxiliary requests III, IIIa and IIIb** differs from claim 1 of auxiliary requests I, II and II', respectively, in that after feature (I) the following feature is added:

(I3) , wherein said directional characteristic of the light output is elliptical

Furthermore, compared to claim 1 of auxiliary request II', "imping" was corrected to "impinging" in claim 1 of auxiliary request IIIb.

- X. Claim 1 of **auxiliary requests IV, IVa and IVb** differs from claim 1 of auxiliary requests III, IIIa and IIIb, respectively, in that before feature (K) it was added:

(K4) the display face (6, 7, 33, 42) is diffusely translucent substantially over its entire surface; and in that

Furthermore, in claim 1 of auxiliary requests IVa and IVb "in that" in feature (K4) is replaced by "wherein".

XI. Claim 1 of **auxiliary request V** differs from claim 1 of auxiliary request IV in that feature (G) was modified to:

(G5) wherein said light source comprises ~~at least one LED~~ a first group of LEDs extending in substantially the same direction and

and after feature (N) the following feature is added:

(N5) and in that the lens means are configured such that a part of the light emitted by the first and second light sources impinges upon the smooth inner side of the at least one diffusely translucent display face (6, 7, 33, 42) at an angle of incidence (γ) relative to the normal N, said angle of incidence being larger than the Brewster angle, said part of light being reflected towards the inner surface of the second diffusely reflective wall

XII. Claim 1 of **auxiliary request V'** differs from claim 1 of auxiliary request V in that feature (N5) is deleted and before feature (M) the following feature is added:

(M5) and in a further light source comprising a second group of LEDs extending in substantially the same direction is situated on said second wall, said second light source provided with lens means (14) so as to obtain a directional characteristic of said light output, said directional characteristic orienting the light output from said light source towards the inner surface (17) of the wall of said housing, wherein said directional characteristic of the light output is elliptical;

XIII. Claim 1 of **auxiliary request Va** differs from claim 1 of auxiliary request IVa in that feature (G) is replaced by feature (G5), and features (M2) and (N2) are replaced by feature (M5) (with "and in" replaced by "and"), feature (M2) (with "and" replaced by "and in that" and "a part of the light" replaced by "a part of the light emitted by the light source"), feature (N2), and the following feature (N5a):

(N5a) and such that a part of the light emitted by the further light source incident on said inner surface of the wall is reflected to said diffusely translucent display face (6, 7, 33, 42) and the other part of the light emitted by the further light source impinges upon the smooth inner side of the at least one diffusely translucent display face (6, 7, 33, 42) at an angle of incidence (γ) relative to the normal N, said angle of incidence being larger than the Brewster angle, said part of the light being reflected towards the inner surface of the wall.

XIV. Claim 1 of **auxiliary request Vb** differs from claim 1 of auxiliary request IVb in that feature feature (G) is replaced by feature (G5), and features (M2) and (N22) are replaced by feature (M5) (with "and in" replaced by "and"), feature (M2) (with "and" replaced by "and in that" and "a part of the light" replaced by "a part of the light emitted by the light source"), feature (N22) (with "imping" replaced by "impinging"), and feature N5a (with "the wall" replaced by "said wall" and "said part of the light being reflected towards the inner surface of the wall" replaced by "wherein relevant light is reflected towards and impinging upon the inner surface of the wall, wherein the wall functions as a secondary diffuse source").

XV. Claim 1 of **auxiliary requests VI, VIa and VIb** differs from claim 1 of auxiliary requests III, IIIa and IIIb, respectively, in that the following feature is appended at the end of the claim:

(O) wherein the proportion of the light energy of the light which is oriented directly at the display face by the light source and exits through the display face amounts to less than 10% of the total light energy of the light emitted by the light source.

XVI. Claim 1 of **auxiliary request VII** differs from claim 1 of auxiliary request VI in that feature (N) is replaced by feature (N2).

XVII. Claim 1 of **auxiliary requests 1, 2, 2' and 7** differs from claim 1 of auxiliary requests I, II, II' and VII, respectively in that feature (G) is amended to:

(G') wherein said light source comprises ~~at least one~~ a plurality of LEDs and

XVIII. Claim 1 of **auxiliary request 1'** differs from claim 1 of auxiliary request 1 in that "light source" is replaced by "elongated light source" throughout the claim and in that at the end of feature (I) the following feature (X) is added:

(X) , such that the elongate light source (20, 23, 26, 27) directly illuminates said second wall (18, 28) almost exclusively.

Furthermore, features (L1), (M), and (N) are replaced by the following feature (Y):

(Y) wherein said second wall is opposite to a wall on which the elongate light source is arranged; wherein, for each LED, the lens means ensure that each LED has aperture angle of about 25° in a longitudinal direction of the second wall (18, 28) and an aperture angle of about 4° in the transverse direction.

XIX. The **appellant** argued essentially as follows in relation to extension of the subject-matter beyond the content of the root application and admission of the requests:

- (a) Feature M1.7 was disclosed in the root application E5 on page 8, last but one paragraph, with no inextricable link to any other feature.
- (b) The general teachings of Figures 4 to 7, 9A and 9C disclosed features M1.8, M1.9, and M1.11 in a general manner so that these features could be isolated from the context of these embodiments without intermediate generalisation.
- (c) In particular Figure 9C of the parent application was an isolated embodiment and did not fall within the characterizing portion of claim 1 of the root application. Therefore, this embodiment did not fall within the specific context of the embodiment of Figure 4 and the features inextricably linked thereto. Therefore, features (G'), (H1), (X) and (Y) do not need to be incorporated into claim 1 of the main request in order to prevent intermediate generalisation.
- (d) Only in the oral hearing before the board it was argued that features (G'), (H1), (X) and (Y) were all together inextricably disclosed in connection with features M1.8, M1.9 and M1.11 in the root application. Because of this new line of argument, which circumstance consequently should be seen as exceptional, the appellant had to be given the

opportunity to react to this new objection by filing amended claims.

XX. The **respondents** argued essentially as follows in relation to extension of the subject-matter beyond the content of the root application and admission of the requests:

- (a) The opposition division's decision to admit the main request into the proceedings should be set aside, since it was not allowable to return to the claims of the patent as granted after having them previously replaced by amended claims in the form of another main request as had been done by the appellant.
- (b) The embodiments shown in figures 9A and 9C were variants of the embodiment shown in and described according to Figure 4 and described features M1.8, M1.9 and M1.11 in mutual connection with each other and only in connection with other specific features such as features (G'), (H1), (X) and (Y), which could not be separated from features M1.8, M1.9 and M1.11.
- (c) From the general teaching of the root application in Figures 4 to 7, 9 and 19A - used as basis for features M1.8, M1.9 and M1.11 - the skilled person deduced that a plurality of LEDs was necessary to form the elongated lamp shown in these embodiments in contrast to feature M1.7, which also included the option of "a single LED". The parent application E3 required "at least three LEDs".
- (d) All of the arguments had already been set forth in the written submissions and in the board's communication under Article 15(1) RPBA 2020, and the appellant could and should have reacted promptly to the objections contained therein.

Therefore, no exceptional circumstance could be identified and new auxiliary request 1' filed during the oral proceedings before the board should not be admitted.

Reasons for the Decision

1. The invention as claimed

1.1 The invention relates to a display device such as a light box, for instance for an illuminated advertisement. It is an object of the invention to embody a display device such that the display face is illuminated homogeneously within relatively close tolerances. It is not only the luminance, but also the homogeneity of the luminance which determines the visibility of the information present on the display face, for instance the legibility of texts present thereon.

1.2 The invention provides orienting means (lenses) that are added to the light source so as to obtain a directional characteristic of the light emitted by the light source such that the light source directly illuminates at least one wall almost exclusively and that this at least one wall is diffusely reflective such that a part of the light incident thereon is reflected to the display face.

2. Admission of the current main request (claims as granted)

2.1 The board is of the opinion that the question whether the opposition division's admission of the main request was incorrect does not need to be decided by the board. Although it might be questionable whether the

opposition division should have admitted the main request into the proceedings, the board holds that no consequence in the sense of opponent 2's request to set aside this decision could be drawn from such a finding.

2.2 According to established case law of the boards of appeal, the EPC does not provide any legal basis for retroactively excluding on appeal documents, requests or evidence which had been admitted by the department of first instance and on which the contested decision was based ("Case Law of the Boards of Appeal of the European Patent Office", 10th edition, 2022, section V.A.3.4.4). According to Article 12(1)(a) RPBA 2020, such submissions are automatically part of the appeal proceedings.

3. Main request - Articles 76(1) and 100(c) EPC

3.1 According to G 1/06, headnote, in the case of a sequence of applications consisting of a root (originating) application followed by divisional applications, each divided from its predecessor, it is a necessary and sufficient condition for a divisional application of that sequence to comply with Article 76(1), second sentence, EPC that anything disclosed in that divisional application be directly and unambiguously derivable from what is disclosed in each of the preceding applications as filed, i.e. in the present case from the root application (E5) and the parent application (E3).

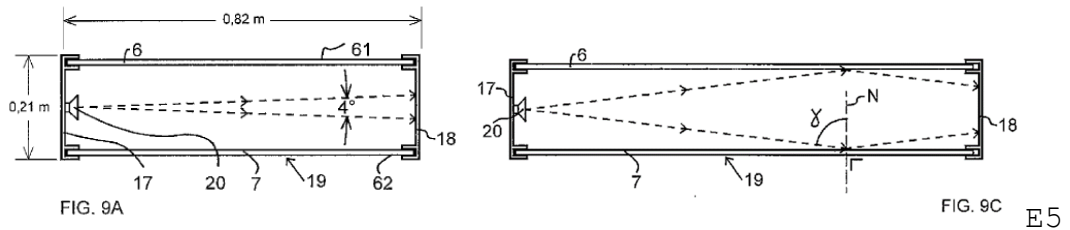
3.2 The board concurs with the respondents and the opposition division that claim 1 of the main request does not comply with the requirements of Article 76(1) EPC for the following reasons:

3.3 As a first difference between the root application (E5) and the patent in suit the feature "*such that the light source directly illuminates at least one wall almost exclusively, for instance for more than 75%*" (corresponding to feature (X)) in the characterizing part of claim 1 of E5 is deleted in claim 1 of the patent in suit. The deleted feature is inextricably linked to features M1.8 and M1.9 (directional characteristic of the light), but also to features M1.11 and M1.12 (position of the reflective wall). Furthermore, according to the second paragraph on page 5 of E5 it is the objective of the invention to provide "*a display device such that the display face is illuminated homogeneously within relatively close tolerances*". The solution to this problem is according to the third paragraph on the same page and according to the characterizing portion of claim 1 of the root application E5 that (highlighting by the board) "*orienting means are added to the light source so as to obtain a directional characteristic of the light emitted by the light source such that the light source directly illuminates at least one wall almost exclusively, for instance for more than 75%*". An almost exclusive illumination of at least one wall is therefore an essential feature of the invention as described in the root application E5.

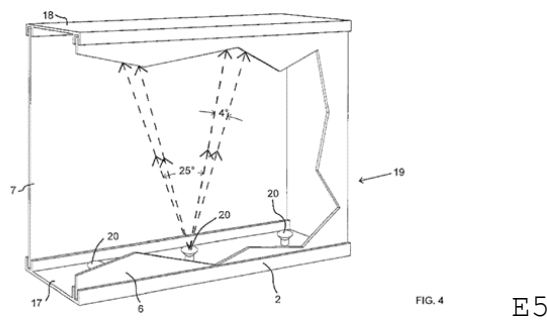
3.4 The appellant held that the almost exclusive illumination of the at least one wall could not be considered an essential feature of the invention, since it was not even part of each embodiment of the invention as disclosed in the root application, in particular the embodiment shown in Figure 9C.

3.5 However, the board agrees with the reasoning of the respondent that all embodiments showing a transverse

opposing wall (i.e. Figures 4 to 7, 9A and 9C) imply the deleted feature.



3.6 Figures 9A and 9C show a transverse cut through the display box of Figure 4 for different variants of one and the same embodiment (see E5, page 17, lines 4 to 5, in combination with page 11, lines 9 to 10, and page 10, line 28 to 29).



3.7 It is undisputed that in Figure 9A the light source 20 directly illuminates the wall 18 almost exclusively. In Figure 9C, the aperture angle is (slightly) increased compared to Figure 9A, so that part of the light impinges on the lateral display surfaces 6 and 7. As a consequence this part of the light is reflected in the direction of the opposite wall 18 (cf. E5, page 17, line 5 ff). However, the board has no reason to doubt that most ("*for instance ... more than 75%*") of the light emitted by the LED 20 directly illuminates (almost exclusively) the wall 18, while a smaller portion (e.g. less than 25%) of the light is directed towards the display surfaces 6 and 7 and then

reflected. This is in particular the case since the light has an elliptical directional characteristic and the part of the light directed to faces 6 and 7 only represents a relatively small part of the elliptical cross section. Therefore, the embodiment of Figure 9C also implements the deleted feature. Consequently, none of the embodiments or figures described thus excludes the deleted feature.

3.8 Therefore, the skilled person infers from the disclosure of the root application E5 as a whole, in particular from the characterizing part of claim 1 and page 5, that the deleted feature is the central idea of the invention and thus that this feature is essential and cannot be omitted in a claim without extending the claimed subject-matter beyond the content of the root application as filed.

3.9 The appellant referred to T 346/15. However, in this decision the deciding board held that (see point 2.6 of the Reasons) from the group of embodiments disclosed in Figures 4 to 7, 9A and 19A, the skilled reader would derive the general teaching that where the wall to be *almost exclusively illuminated* is transverse to the display face, it should also be a wall (or walls) situated opposite a wall (or walls) on which the light source is arranged. Therefore the deciding board in that case held that the teaching of an "opposing wall" in "transverse direction" can be reached only under the assumption that said wall is directly illuminated almost exclusively. This is in line with the deleted feature (exclusive illumination) being directly and inextricably linked not only to features M1.8 and M1.9 (directional characteristic) but also to features M1.11 and M1.12 (relative positioning of the opposing wall).

- 3.10 Feature M1.11 (orientation of the reflective wall) requires that said second diffusely reflective wall, i.e. wall 18 in the embodiments, extends at least more or less in a *transverse direction relative to the display face*, i.e. transverse relative to the display faces 6 and 7 in the embodiments. This feature is disclosed in the root application only in the figures (Figures 4 to 7, 9A, 9C). Figures 9A and 9C are variants of the embodiment shown in Figure 4 and are described on page 16, line 29 ff, and page 17, line 4 ff. In the general description of the invention on pages 5 to 10 it is not specified that the "*at least one wall*" mentioned in the deleted feature extends "*in transverse direction relative to the display face*". This leaves only wall 18 in the variants of Figures 4 to 7, 9A, 9C and 19A as a source of disclosure for the orientation of the wall transverse to the display surface.
- 3.11 However, Figure 4 discloses feature M1.11 at most in conjunction at least with the features according to which the light source is a series of substantially equidistantly arranged light-emitting diodes 20 and according to which lens means are added to the light-emitting diodes which have an aperture angle of 25° in the longitudinal direction and an aperture angle of 4° in the transverse direction (in order to achieve the desired effect of exclusive illumination). These features (corresponding to features (G'), (H1) and (Y)) have a technical connection with each other and with the orientation of the diffusely reflecting wall being transversely arranged in relation to the display surface, since only in this way it is at all possible to solve the problem of the patent in suit, namely to achieve a substantially homogeneous illumination of the

display surface by means of an almost exclusive illumination of the transverse wall.

- 3.12 Since Figures 9A and 9C correspond to variants of Figure 4, these variants are in the same specific context as described with respect to Figure 4 above. The board is not persuaded by the appellant's argument that Figure 9C corresponded to an isolated embodiment and that a different problem was to be solved by means other than those described on page 5, third paragraph, of the root application.
- 3.13 The same reasoning also applies for feature M1.5, i.e. that the wall comprising the light source extends *in a transverse direction relative to at least one diffusely translucent display face*.
- 3.14 In the context of the embodiment related to Figures 4 to 7, 9A and 9C the light source is a light emitting diode module comprising a plurality of light emitting diodes arranged in a row thus forming an elongated light source for illuminating an elongated display device (with elongated walls 6, 7, 17 and 18). The embodiments (Figures 4 to 9C) show multiple light emitting diodes or elongated light sources rather than a single LED. The root application teaches, therefore, in connection with the above figures, that the light source requires at least a plurality of light emitting diodes and not just a single one. Consequently, "*at least one LED*" of feature M1.7 is not originally disclosed in the context of features M1.5 and M1.11.
- 3.15 Consequently, features M1.5 and M1.11 cannot be isolated from the feature of a plurality of light emitting diodes without extending beyond the content of the root application as filed.

3.16 Therefore, the subject-matter of granted claim 1 extends beyond the content of the root application as filed and thus the requirements of Article 76 (1), second sentence, and 100 (c) EPC prejudiced the maintenance of the patent as granted at least for the reasons discussed above.

4. **Auxiliary requests I, 1, II, 2, II', 2', III, IIIa, IIIb, IV, IVa, IVb, V, V', Va, Vb, VI, VIa, VIb, VII and 7**

4.1 At least one of the objections under Articles 100(c) and 76(1) EPC discussed above applies to claim 1 of each of the auxiliary requests listed above. Therefore, the subject-matter of claim 1 of these auxiliary requests also extends beyond the content of the root application as filed. Consequently, auxiliary requests II', IIIa, IIIb, IVa, IVb, V', Va, Vb, VIa and VIb, having been filed for the first time in the appeal proceedings together with the statement setting out the grounds of appeal, are not admitted into the proceedings under Articles 12(4) and (6) RPBA 2020 since they *prima facie* are not suitable to address and overcome the above objections.

4.2 The same holds true regarding auxiliary requests 1, 2, 2' and 7 having been filed with the letter dated 6 April 2023, since the objections are *prima facie* not overcome by these requests, either, which leads to their non-admission under Article 13(2) in combination with Article 13(1) RPBA 2020.

5. **Auxiliary request 1' filed during the oral proceedings before the board**

- 5.1 The appellant requested that this auxiliary request be admitted into the proceedings since he had been surprised by the fact that the objections relating to features M1.8, M1.9 and M1.11 were all related. This constituted a new objection raised by the Board for the first time against claim 1 of the main request at the oral proceedings. The respondent disagreed.
- 5.2 The board agrees with the respondent in that all objections were already raised in the communication pursuant to Article 15 (1) RPBA 2020 as well as in the statements setting out the grounds of appeal of the opponents. Hence, in substance no new objections were discussed at the oral proceedings.
- 5.3 Consequently, no exceptional circumstances can be identified and new auxiliary request 1' is not admitted into the proceedings according to Article 13 (2) RPBA 2020.

6. **Summary**

Claim 1 of the main request does not comply with the requirements of Article 76 (1), second sentence, and Article 100(c) EPC. The same objection applies to respective claim 1 of auxiliary requests I, II, III, IV, V, VI, and VII.

Auxiliary requests II', IIIa, IIIb, IVa, IVb, V', Va, Vb, VIa and VIb as well as auxiliary requests 1, 1', 2, 2' and 7 are not admitted into the proceedings.

Hence, the decision of the opposition division revoking the opposed patent is confirmed and the appeal against the decision has to be dismissed (Articles 101(2) and 111(1) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

T. Häusser

Decision electronically authenticated