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**Datasheet for the decision
of 5 October 2022**

Case Number: T 1312/20 - 3.4.02

Application Number: 12002831.1

Publication Number: 2518454

IPC: G01F1/74, G01F1/84, G01N9/00,
G01N11/16

Language of the proceedings: EN

Title of invention:
Meter electronics and fluid quantification method for a fluid
being transferred

Applicant:
Micro Motion, Inc.

Headword:

Relevant legal provisions:
RPBA 2020 Art. 13(2)

Keyword:
Amendment after summons - taken into account (no)

Decisions cited:
T 1421/20, T 0798/18

Catchword:



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Case Number: T 1312/20 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 5 October 2022

Appellant: Micro Motion, Inc.
(Applicant) 7070 Winchester Circle
Boulder, CO 80301 (US)

Representative: Ellis, Christopher Paul
Ollila Law Limited
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 28 November
2019 refusing European patent application No.
12002831.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Bekkering
Members: C. Kallinger
G. Decker

Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the examining division refusing European patent application No. 12002831.1.
- II. The examining division concluded that the subject-matter of the independent claims according to the then main request and the then first auxiliary request did not involve an inventive step.
- III. With the statement setting out the grounds of appeal, the appellant filed amended claims according to a main request and an auxiliary request and requested that the decision of the examining division be set aside and that a patent be granted on the basis of the claims set out in these two requests.
- IV. Oral proceedings were appointed as requested. In a communication pursuant to Article 15(1) RPBA 2020 the board informed the appellant that it intended, in exercising its discretion under Article 12(4) RPBA 2020, not to admit the requests into the appeal proceedings, as the subject-matter of the independent claims according to these requests had been largely reworded and presented a plurality of new issues with respect to the requirements of Article 123(2) EPC. In addition, the subject-matter of the amended claims had not been examined with respect to inventive step during the first-instance proceedings.
- V. In response to the board's communication, with the letter dated 5 September 2022 the appellant filed two sets of claims according to a new main request and a first auxiliary request, replacing the previously filed

requests. These new requests correspond to the main request and the first auxiliary request on which the appealed decision was based. With its reply the appellant also provided arguments in favour of inventive step for these requests.

VI. On 5 October 2022 oral proceedings took place.

VII. 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 claims according to the main request, or, alternatively, on the basis of the claims according to the first auxiliary request, both requests filed by letter dated 5 September 2022.

Reasons for the Decision

1. According to Article 13(2) RPBA 2020, *"[a]ny 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"*.
2. The board holds that the reintroduction of previously abandoned requests, as is the case here (see points III to V above), even if these requests correspond to requests on which the decision was based, is an amendment to the appellant's case. This amendment is therefore subject to the admission into the appeal proceedings by the board under Article 13 RPBA 2020 (see Case Law of the Boards of Appeal of the European

Patent Office, 10th edition 2022, section V.A.4.2.2 h), and decisions T 1421/20 and T 798/18 cited there).

3. The appellant argued that it reverted to these requests in reaction to the board's intention, exercising its discretion under Article 12(4) RPBA 2020, not to admit the previously filed requests.
4. By replacing the requests on which the decision was based at the beginning of the appeal, the appellant withdrew these requests. Consequently, the board did not need to consider them in preparation of its preliminary opinion. Reverting to these requests only at this late stage constitutes a departure from the legal and factual framework of the present appeal case.
5. If the appellant had wanted the board to review the patentability of the requests on which the decision under appeal was based, it should have pursued these requests with its statement of grounds of appeal. Thus, there are no exceptional circumstances, let alone any cogent reasons, to file the amended claim requests only at this late stage of the proceedings (see T 1421/20 Reasons 5.4.3; T 798/18 Reasons 2.5).
6. In conclusion, the board, exercising its discretion under Article 13(2) RPBA 2020, does not admit the main request and the first auxiliary request filed by letter of 5 September 2022 into the appeal proceedings.
7. As no admitted requests are on file, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



L. Gabor

R. Bekkering

Decision electronically authenticated