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**Datasheet for the decision
of 25 January 2024**

Case Number: T 0655/21 - 3.5.03

Application Number: 11778122.9

Publication Number: 2567473

IPC: H04B7/185, H04B7/204

Language of the proceedings: EN

Title of invention:

Flexible capacity satellite communications system

Patent Proprietor:

ViaSat, Inc.

Opponent:

The European Union, represented by the European
Commission

Headword:

Capacity allocation in satellite systems/VIASAT

Relevant legal provisions:

EPC Art. 56, 100(a), 111(1)

RPBA 2020 Art. 11, 13(2)

Keyword:

Inventive step - main request (no): no credible technical effect over the whole scope claimed
Admittance of amendment to opponent's appeal case - new line of attack based on document D18 (yes): "exceptional circumstances"
Admittance of amendment to proprietor's appeal case - auxiliary request 1 (yes): "exceptional circumstances"
Admittance of D23 not admitted by opposition division - (no): no need to prove skilled person's common general knowledge
Admittance of D26 not admitted by opposition division - (yes): "exceptional circumstances"
Remittal to opposition division - (yes): "special reasons" - facts and claim requests underlying appeal case have changed

Decisions cited:

G 0009/91, G 0010/91, G 0001/19, T 0182/89, T 1799/08,
T 862/16, T 2271/18, T 0735/19, T 3208/19

Catchword:

As to the argument that the board should/could not review parts of the appealed decision which were not challenged by the appellant, reference is made to point 1.7 of the Reasons.



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Case Number: T 0655/21 - 3.5.03

D E C I S I O N
of Technical Board of Appeal 3.5.03
of 25 January 2024

Appellant: The European Union, represented by the European
(Opponent) Commission
200, rue de la Loi
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 March 2021
rejecting the opposition filed against European
patent No. 2567473 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chair K. Bengi-Akyürek
Members: K. Peirs
R. Romandini

Summary of Facts and Submissions

I. The appeal of the opponent (appellant) lies from the decision of the opposition division to reject the opposition (Article 101(2) EPC). The appealed decision referred to the following prior-art documents:

D18: M. YAJIMA et al.: "3-6 Ka-band Active Phased Array Antenna", Journal of the National Institute of Information and Communications Technology, vol. 54, no. 4, 2007, pp. 53 to 59

D23: G. MARAL and M. BOUSQUET: "Satellite Communications Systems - Systems, Techniques and Technology", 2009, John Wiley & Sons Ltd

D26: H. OGAWA et al.: "Special Issue on Wideband InterNetworking Engineering Test and Demonstration Satellite (WINDS)", Journal of the National Institute of Information and Communications Technology, vol. 54, no. 4, 2007, pp. 1 to 33, 35 to 43, 45 to 59, 61 to 63, 65 to 83, 85 to 99, 101 to 111, 113 to 125, 127 and 128.

Documents D23 and D26 were not admitted into the opposition proceedings under Rule 116(1) EPC.

II. The opposition division deemed that the grounds for opposition invoked by the opponent under

- Article 100(a) EPC in conjunction with Articles 54 and 56 EPC and

- Article 100(c) EPC in conjunction with Article 123(2) EPC

did not prejudice the maintenance of the patent as granted.

III. A communication was issued under Article 15(1) RPBA 2020 including the board's preliminary opinion.

IV. Oral proceedings before the board were held on 25 January 2024. The parties' final requests were as follows:

- The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- The patent proprietor (respondent) requested that the appeal be dismissed, i.e. that the patent be upheld as granted (**main request**). In the alternative, it requested that the patent be maintained in amended form on the basis of **auxiliary requests 1 to 6**, filed on 6 December 2023 with its reply to the board's preliminary opinion, or on the basis of **auxiliary requests 7 to 9** filed with the written reply to the proprietor's statement of grounds of appeal.

V. Claim 1 of the **main request** reads as follows (board's feature labelling):

- (a) "A satellite (105) for satellite communication, the satellite containing a plurality of pathways and comprising:
- (b) one or more processors configured to:
obtain a specified weight set and a specified beam hop frame definition for a beam hopping frame, the

beam hopping frame comprising a plurality of timeslots, the specified weight set comprising a plurality of receive weight vectors and a plurality of transmit weight vectors for generating uplink beam signals and downlink beam signals in timeslots of the beam hopping frame, the specified beam hop frame definition defining a plurality of sequential dwell times and a plurality of pathway gains, each timeslot associated with a dwell time;

- (c) generate a plurality of receive weights and a plurality of transmit weights in accordance with the specified weight set; and
- (d) set the plurality of pathway gains in accordance with the specified beam hop frame definition; and
- (e) one or more beam forming networks configured to: generate the uplink beam signals and downlink beam signals for pathways using the plurality of receive weights, the plurality of pathway gains, and the plurality of transmit weights in accordance with the plurality of sequential dwell times defined by the specified beam hop frame definition, characterised in that
- (f) the specified weight set and the specified beam hop frame definition support an allocation of capacity between forward traffic, from at least one gateway (115) to a plurality of terminals (130), and return traffic, from a plurality of terminals to at least one gateway,
- (g) wherein the specified weight set and the specified beam hop frame definition specifies configuration of at least one pathway of the plurality of pathways as a forward pathway for at least one timeslot in the beam hopping frame, and configuration of at least one pathway of the plurality of pathways as a return pathway for at

least one timeslot in the beam hopping frame,
wherein

- (h) configuring a pathway as a forward pathway comprises configuring the pathway for reception of a multiplexed signal from a gateway destined for a plurality of terminals, the plurality of terminals located in a respective forward link coverage area; and
- (i) configuring a pathway as a return pathway comprises configuring the pathway for reception of a composite signal derived from a plurality of terminals and destined for a gateway, the plurality of terminals located in a respective return link coverage area."

VI. Claim 1 of **auxiliary request 1** comprises all the features of claim 1 of the main request and further includes, at the end, the following clause (board's feature labelling):

- (j) "wherein the specified weight set and the specified beam hop frame definition are a first weight set and a first beam hop frame definition supporting a first allocation of capacity between forward traffic and return traffic, the first weight set comprising a first plurality of receive weight vectors and a first plurality of transmit weight vectors, the specified first beam hop frame definition defining a first plurality of sequential dwell times and a first plurality of pathway gains;
- (k) the one or more processors are further configured to:
obtain a specified second weight set and a specified second beam hop frame definition for a beam hopping frame, the specified second weight set comprising a second plurality of receive weight

vectors and a second plurality of transmit weight vectors for generating uplink beam signals and downlink beam signals in timeslots of the beam hopping frame, the specified second beam hop frame definition defining a second plurality of sequential dwell times and a second plurality of pathway gains;

generate a second plurality of receive weights and a second plurality of transmit weights in accordance with the specified second weight set; and

set the second plurality of pathway gains in accordance with the specified second beam hop frame definition; and

- (l) the one or more beam forming networks are further configured to:

switch the generation of the uplink beam signals and downlink beam signals for pathways using the first plurality of receive weights, the first plurality of pathway gains, and the first plurality of transmit weights in accordance with the first plurality of sequential dwell times to generation of the uplink beam signals and downlink beam signals for pathways using the second plurality of receive weights, the second plurality of pathway gains, and the second plurality of transmit weights in accordance with the second plurality of sequential dwell times defined by the specified second beam hop frame definition,

- (m) wherein the specified second weight set and the specified second beam hop frame definition support a second allocation of capacity between forward traffic and return traffic".

Reasons for the Decision

1. *"Exceptional circumstances" of the present appeal case*
 - 1.1 In advance of addressing the admittance issues outlined in points 2, 4 and 5 below, the board finds it expedient to first delineate certain particularities of the present appeal case.
 - 1.2 As apparent from point II above, the appealed decision concerned several substantive aspects. As an example, Reasons 20 to 22.3.2 of the appealed decision dealt with the issue of novelty as to the subject-matter of granted claim 1 in view of no fewer than seven different prior-art documents. In the board's view, it would have been prudent for the appellant to address in its statement of grounds of appeal at least some of the appealed decision's substantive aspects regarding added subject-matter or regarding patentability having regard to prior-art documents that were actually in the proceedings. However, for whatever reasons, this was not the course of action pursued by the appellant. The statement of grounds of appeal only addressed the matter of novelty in a substantiated manner. It did so in view of a single document (i.e. prior-art document **D26**). This document was not among the prior-art documents which the appealed decision dealt with. In fact, it was not even admitted into the proceedings by the opposition division. This means that the scope of the appeal lodged by the appellant was uncommonly restricted.
 - 1.3 This restrictive submission was not the only unusual aspect here. The way in which the statement of grounds of appeal was structured also underlined the "exceptional" nature of the present appeal case. This

is illustrated, for example, by the appellant's analysis of the relevance of document D26. This analysis was particularly extensive: approximately half of the statement of grounds of appeal was devoted to it. If the analysis had really been intended to be of a *prima facie* nature, as contended by the appellant, it should have been more concise. Moreover, the sections of D26 referred to by the appellant in this analysis exacerbated the situation. These sections were not only partly missing from the appealed decision. They also consisted of different parts of D26, which were linguistically distant from each other and related to different figures (see also the comparative table indicated in point 5.10 of the statement of grounds of appeal). As a precautionary measure, the appellant could have refrained from relying on such sections, particularly in view of the concern expressed in Reasons 16.4 of the impugned decision as to whether "*the figures refer to one single embodiment*". All these issues evidently entailed an increased time involvement on the part of the board in evaluating the relevance of D26 in the present appeal proceedings.

- 1.4 This increased involvement of time was an important aspect for several other reasons. One of these other reasons is that, from the minutes of the first-instance oral proceedings and from Reasons 16.4 of the appealed decision, it is apparent that the opposition division studied D26 "for quite some time". Therefore, any further time involvement by the board in this regard could only have reinforced a legitimate expectation on the part of the appellant that the document was already in the proceedings. Moreover, in the board's assessment, document D26 was not more relevant than D18 which was already in the proceedings. Both documents related to the "Wideband InterNetworking engineering

test and Demonstration Satellite (WINDS)". The relevant information to be derived from D26 was already disclosed in D18. For the sake of procedural economy, the board considered it more expedient to avoid an analysis and a discussion on whether D26 had already been implicitly admitted or *should* have been admitted already in the opposition proceedings, as well as an in-depth analysis of its contents. Instead, it was more appropriate to examine, in its preliminary opinion, another substantive aspect with which the appealed decision was concerned, namely the matter of inventive step starting out from D18 as dealt with in Reasons 23 to 25.1 of the appealed decision. In so doing, the board may have contributed to making the circumstances of the appeal case "exceptional". On the other hand, it upheld the EPO's responsibility towards the public not to maintain invalid patents. It also, in its view, simplified the current proceedings.

- 1.5 Against this approach, however, the proprietor raised the following objection: the only ground on which the opponent had appealed was that claim 1 lacked novelty with respect to document D26. Therefore, the board should have not extended the scope of the appeal proceedings to documents and attacks which were part of the opposition proceedings but not of the appeal proceedings. Instead, it was at least "appropriate for the Board to confine the appeal proceedings to the grounds set out by the opponent in its grounds of appeal". It referred in that regard to the *Case Law of the Boards of Appeal, Tenth Edition, 2022, V.A.3.2.3 i) and V.A.3.3.1*, and in particular to decisions **T 1799/08** and **T 182/89**. By referring to Article 12(2) RPBA 2020, the respondent further argued that there "is no requirement for the Board to review any aspects of the Decision outside the scope of the case put forward by

the appellant".

- 1.6 As to the cited case law, decision **T 1799/08** relates to a case, where the opponent remained passive and where the competent board held that it could not be expected that the board would fully investigate a ground not properly substantiated by the opponent. The present case is clearly different, with the opponent not being passive. Moreover, the present board did not need to investigate any ground not properly substantiated in the case at hand: the appealed decision in fact addressed several grounds for opposition in considerable detail (cf. point 1.2 above), based upon which the board could indeed conduct a judicial review within the meaning of Article 12(2) RPBA 2020. In addition, according to decision **T 182/89** (see Headnote IV), Article 114(1) EPC "should be interpreted as enabling the EPO to investigate fully the grounds of opposition which have been both alleged and properly supported as required by Rule 55(c) EPC [1973, now Rule 76(2) (c) EPC 2000]".
- 1.7 The proprietor's observation that the only ground on which the opponent has appealed the impugned decision was that claim 1 of the patent lacked novelty with respect to D26 is correct. However, its conclusion that the board should or could not review parts of the appealed decision other than those challenged by the appellant is not tenable for two reasons.
 - 1.7.1 First, the board cannot see any legal basis for such a limitation, neither in the text of the EPC nor in the Rules of Procedure of the Boards of Appeal (RPBA). Pursuant to Article 114(1) EPC, the EPO (and thus also the Boards of Appeal) shall not be restricted in its examination to the facts, evidence and arguments

provided by the parties and the relief sought. Moreover, pursuant to Article 101(3) EPC, it should be fully examined whether the patent as amended complies with the EPC (cf. **G 9/91** and **G 10/91**, Reasons 19). According to the jurisprudence of the Enlarged Board of Appeal, the only limitation for a Board's review of the decision under appeal is that it cannot introduce or admit a "fresh" opposition ground without the consent of the proprietor (G 9/91 and G 10/91, Reasons 18). Also the RPBA cannot limit the powers and the duties enshrined in Article 114 EPC in appeal proceedings (see e.g. **T 862/16**, Reasons 8.3.1).

- 1.7.2 Second, if there were such a limitation on the board's powers, this would arguably lead to the following contradiction: On the one hand, the board could not review parts of the decision under appeal which were not challenged by the appellant. On the other hand, if a party were to amend its case during appeal proceedings and, for example, supplement a novelty objection with an inventive-step attack, based on the same (or different) document(s), against the same (or different) claim request(s), a Board would typically have the discretion to admit such an amendment to the party's appeal case if, for instance, inventive step was also a ground for opposition relied upon by the opponent in the opposition proceedings.

The existence of this discretionary power has not been challenged by the proprietor. Such a discretionary power would, however, be clearly in tension with the proprietor's assumption that the filed appeal would define - in a binding and definitive manner - the scope of the review which the board is supposed to conduct within the meaning of Article 12(2) RPBA 2020.

1.8 In the present case, the board did not have to take a final position on the relationship between the decision of an opponent to limit the appeal to a specific part of the impugned decision and the board's powers as well as the public interest in the revocation of invalid patents. Indeed, following the board's communication under Article 15(1) RPBA 2020, the opponent had amended its appeal case (see point 2.1 below).

2. *Main request: claim 1 - admittance of objections based on D18 alone*

2.1 In its reply to the board's preliminary opinion, the appellant agreed with the board that the subject-matter of claim 1 of the main request did not involve an inventive step when starting out from document **D18**. Although prompted by the board (see points 1.4 and 1.8 above), this line of argument constitutes an "amendment" to the appellant's appeal case within the meaning of Article 12(4) RPBA 2020. Indeed, as convincingly argued by the respondent, the statement of grounds of appeal did not substantiate any objection based on this document (see also point 1.2 above). The board does not share the appellant's view that the "WINDS" system *itself* constituted the relevant public prior-use disclosure and not some specific prior-art document in the form of D18 or D26. The respondent persuasively submitted that, if the appellant's view were correct, this line of attack would have effectively amounted to an allegation of "public prior use". However, the appellant had never relied on such public prior use. Instead, it relied simply on prior-art documents. Therefore, the selection of a specific prior-art document for a particular line of attack does have a direct impact on the current case.

2.2 The board further agrees with the respondent that the appellant amended its appeal case in accordance with point 2.1 above *after* notification of the summons to oral proceedings and the board's communication under Article 15(1) RBPA 2020. The appellant may have done so in view of the board's reasoning set out in that preliminary opinion. However, as regards the application of Article 13(2) RPBA 2020, the critical factor is not the timing of the *initial* objection. Instead, it is the moment at which the party in fact implemented the "amendment".

2.3 The present appeal case is indeed characterised by "exceptional circumstances" (see points 1.2 to 1.4 above). It should also be emphasised that, as the appellant argued, the teaching of D18 is a subset of that of D26. This means that the appellant's "amendment" potentially simplifies its appeal case. In particular, it may avoid the need for the board to decide on the admittance of D26. Rather, it allows the board focusing on substantive matters, such as reviewing the opposition division's reasoning in Reasons 23 to 25.1 of the appealed decision.

2.4 Consequently, the board decided to admit the appellant's objection as regards lack of inventive step starting out from D18 against claim 1 of the main request into the appeal proceedings.

3. *Main request: claim 1 - inventive step*

In Reasons 23 to 25.1 of the appealed decision, the opposition division found the subject-matter of claim 1 as granted to involve an inventive step when starting out from **D18**. The board's review of this finding is as

follows.

- 3.1 The board endorses the consideration of this document in Reasons 24 of the appealed decision as a suitable starting point for assessing inventive step. The appellant, moreover, did not contest the conclusion drawn in Reasons 22.1 of the appealed decision that **features (b) to (i)** are not disclosed in D18. For the sake of argument, the board did not contest this either.
- 3.2 However, for the reasons set out below, the board is not able to identify any technical effect that could be credibly achieved by these features (b) to (i) over the whole scope claimed by the main request.
 - 3.2.1 In Reasons 25.1 of the appealed decision, the objective technical problem underlying the subject-matter of claim 1 was phrased as "to provide a more flexible satellite system with respect to the one of D18". Nevertheless, this objective problem cannot be credibly derived from actual effects directly and causally related to **features (a) to (i)**. This is particularly true for features (b) to (i), to which the respondent attributed the technical effect that "the claimed system has increased flexibility".
 - 3.2.2 The board acknowledges that paragraph [0011] of the opposed patent identifies, amongst others, a need to provide a satellite architecture with "increased flexibility". Some paragraphs of the opposed patent indeed mention features that could possibly contribute to such an "increased flexibility". As an example, paragraph [0074] of the opposed patent mentions that "individual weight vectors" taken from a particular "weight set" can be dynamically accessed. In addition,

paragraphs [0099] to [0130] of the opposed patent provide details on a "flexible forward/return capacity allocation". However, none of this is reflected in features (a) to (i). For instance, the "receive and transmit weight vectors" mentioned in feature (b) of claim 1 are not necessarily dynamically accessed, i.e. they are not adaptively adjusted. They could, according to features (b) and (c), be "obtained" and "generated" only once and subsequently kept static for the entire operation of the claimed "satellite", in particular when being used in accordance with feature (e). The same applies, for instance, to the "[sequential] dwell time[s]" according to features (b) and (e) and the "plurality of pathway gains" of features (b), (d) and (e). Moreover, there is no hint towards allocating the capacity between the "forward and return traffic" of feature (f) or the "forward and return pathway" of features (g) to (i) in a flexible way. The "capacity" mentioned in feature (f) can e.g. be allocated as a one-off action without any adjustment during the satellite's operation. The same is valid for the "configuration" specified in feature (g) and for the "configuring" steps mentioned in features (h) and (i).

3.2.3 The respondent argued in this respect that the term "flexibility" should not to be understood as a "flexibility in time". Instead, in the context of features (a) to (i), it related to "flexibility" in terms of "different capacity requirements for forward versus return traffic".

The board considers, however, that features (b) to (i) do not credibly achieve this kind of "flexibility" either, at least not over the whole scope claimed. This is because these features do not necessarily require the claimed "satellite" to have the ability to set

different "pathway gains", depending on whether the pathway is a "forward or return pathway". This is the case even when assuming, in the respondent's favour, that

- the "forward pathway" according to feature (h) and the "return pathway" in accordance with feature (i) is part of the "plurality of pathways" mentioned in feature (a) and
- the "configuring" as per features (h) and (i) is performed by the "one or more processors" in accordance with feature (b), while the claimed "satellite" is *in orbit* instead of, for instance, this "configuring" being performed by a technician on the ground prior to the satellite's launch.

The board agrees in this regard with the respondent that the skilled reader would, based on their common general knowledge, be aware of the fact that the "plurality of terminals" as per feature (f) will typically need, when communicating with the claimed "satellite", a more strongly amplified signal than the "at least one gateway" according to that feature. Stated differently, the skilled reader would understand the "forward and return pathway" defined in features (h) and (i) to have different "minimum-gain requirements". However, this does not automatically mean that the skilled reader would understand that the "plurality of pathway gains" mentioned in feature (d) are to be set differently, depending on whether they specify a *forward* or a *return* pathway. Rather, the skilled reader could simply glean that this "plurality of pathway gains" is to be set to the *same* value altogether. This could be, for instance, the gain for which even the weakest one of the "plurality of

terminals" can "safely" receive a signal from the claimed satellite. While this may not be an efficient use of resources (particularly in terms of power), features (a) to (i) do not impose any restrictions in that respect.

3.2.4 It is therefore not credible that features (a) to (i) bring about any kind of "flexibility", let alone an "increased flexibility". Thus, contrary to what is set out in Reasons 25.1 of the appealed decision, features (a) to (i) do not contribute to solving an objective technical problem. Consequently, they cannot contribute to an inventive step (cf. **G 1/19**, Reasons 49, last two sentences). Instead, they relate mainly to the definition of the satellite's processing and the processing of the beamforming networks as a "black box" (see e.g. **T 2271/18**, Reasons 2.1), with several general input parameters such as "weight sets", "transmit/receive weight vectors", "sequential dwell times", "pathway gains" and generic output parameters such as "uplink and downlink beam signals" in a static rather than an adapted or dynamic way.

3.3 For the reasons set out above, the subject-matter of claim 1 of the main request does not involve an inventive step (Article 56 EPC).

4. *Admittance of auxiliary request 1*

4.1 The respondent submitted **auxiliary request 1** with its reply to the board's preliminary opinion (cf. point IV above). This constituted a late-filed "amendment" of the respondent's appeal case. The respondent justified this by referring to the "new" objection raised by the board in its preliminary opinion (see also points 1.4

and 2.1 above).

4.2 In the board's view, the presence of a "new" objection in the appeal proceedings is not *in itself* sufficient to justify the admittance of a new auxiliary request into the proceedings (see e.g. **T 2271/18**, Reasons 3.3; **T 3208/19**, Reasons 4.2; **T 735/19**, Reasons 1.1.4(b)). Nevertheless, for the reasons set out above, the board considers that the circumstances of the present appeal case are indeed "exceptional" within the meaning of Article 13 RPBA 2020. In particular, if the appellant had addressed some of the substantive aspects of the contested decision in its statement of grounds of appeal, the board might have had to intervene to a lesser extent - or possibly not at all - in its preliminary opinion. These circumstances therefore justify the admittance of auxiliary request 1 into the appeal proceedings.

4.3 Therefore, the board decided to admit auxiliary request 1 into the proceedings.

5. *Admittance of D23 and D26*

5.1 The appellant had requested to admit documents **D23** and **D26** into the appeal proceedings in its statement of grounds of appeal. This request was, following the admittance of auxiliary request 1, revisited during the oral proceedings before the board.

5.2 The admittance of a new claim request under Article 13(2) RPBA 2020 is, in the board's experience, not a frequent occurrence. However, it does not *in itself* constitute an "exceptional circumstance" that would entitle the opponent to an unfettered admittance of any prior-art document which it considers to be

relevant in this regard.

5.2.1 Concerning document **D23**, the appellant only used this document to illustrate the skilled person's common general knowledge. This common general knowledge was however not challenged during these appeal proceedings. The board therefore sees no need to consider D23 in more detail. Consequently, it is not appropriate to admit this document into the proceedings.

5.2.2 As regards document **D26**, the situation is different: the statement of grounds of appeal addressed in detail *prima-facie* relevance of D26 in view of granted claim 1 (see also point 1.3 above). Parts of this submission are also relevant for claim 1 of auxiliary request 1. The board refers in particular to the following passage on page 15, fourth paragraph, of the statement of grounds of appeal:

"Since the beam-forming networks (i.e. the APAA and the MBA) are controlled by the SW-CONT, it naturally follows that the uplink/downlink signals are generated according to the TDMA slot control table in the SW-CONT".

In view of this, the board considers that at least the way in which the "switch[ing]" according to **feature (1)** (cf. point VI above) relates to the "switch controller" ("SW-CONT") mentioned on pages 23 and 24 of D26 deserves an in-depth examination. Therefore, it is appropriate to admit this prior-art document into the proceedings as a legitimate reaction of the appellant to the admittance of auxiliary request 1.

5.3 In summary, the board decided not to admit document D23, but to admit document D26 into the proceedings.

6. *Remittal of the case to the opposition division*

6.1 The admittance into the proceedings of auxiliary request 1 and of document D26 represents a considerable change in the facts and claim requests underlying the present appeal case.

6.2 In addition, already in its statement of grounds of appeal, the appellant considered it to be appropriate to remit the case to the opposition division. During the oral proceedings before the board, the parties had no objections against such a remittal.

6.3 Hence, "special reasons" present themselves for remitting the case to the opposition division for further prosecution on the basis of **auxiliary request 1** (Article 111(1) EPC and Article 11 RPBA 2020).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated