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Datasheet for the decision of 24 April 2023

Case Number: T 0735/21 - 3.2.01

Application Number: 11754719.0

Publication Number: 2619524

IPC: F42D5/04, B63G7/02

Language of the proceedings: EN

Title of invention:
ATTACHMENT DEVICE AND ASSEMBLIES AND SYSTEMS USING SAME

Patent Proprietor:
ATLAS ELEKTRONIK GmbH

Opponent:
Saab Seaeye Limited

Headword:

Relevant legal provisions:
EPC Art. 100(c), 123(2)
RPBA 2020 Art. 13(2)

Keyword:

Amendments - added subject-matter (yes) - intermediate generalisation - allowable (no)
Amendment after summons - exceptional circumstances (no) - taken into account (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
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Beschwerdekammern

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Case Number: T 0735/21 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 24 April 2023

Appellant: (Patent Proprietor)	ATLAS ELEKTRONIK GmbH Sebaldsbrücker Heerstraße 235 28309 Bremen (DE)
Representative:	Eisenführ Speiser Patentanwälte Rechtsanwälte PartGmbB Postfach 10 60 78 28060 Bremen (DE)
Respondent: (Opponent)	Saab Seaeye Limited 20 Brunel Way Segensworth Fareham, Hampshire PO15 5SD (GB)
Representative:	Vleck, Jan Montagu Reddie & Grose LLP The White Chapel Building 10 Whitechapel High Street London E1 8QS (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 10 May 2021 revoking European patent No. 2619524 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	M. Geisenhofer
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The appeal was filed by the patent proprietor (appellant) against the decision of the opposition division to revoke the European patent EP 2 619 524.

II. During the opposition proceedings, the opponent had raised the grounds for opposition under Article 100(a) EPC (lack of novelty and/or lack of inventive step) and Article 100(c) EPC.

The opposition division decided that both the main request (patent as granted) and each of the auxiliary requests 1 - 6 contained subject-matter extending beyond the content of the application as filed, contrary to Articles 100(c) and 123(2) EPC.

III. Oral proceedings were held before the Board on 24 April 2023.

(a) The appellant (patent proprietor) requested that the decision under appeal be set aside and the opposition be rejected, i.e. the patent be maintained as granted (main request), auxiliarily that the patent be maintained in amended form based on one of auxiliary requests 1 – 9 filed with the statement of grounds of appeal, or auxiliary requests 10 and 11 filed with the letter dated 24 March 2023, or auxiliary request 11a filed with the letter dated 18 April 2023.

Furthermore, the appellant requested reimbursement of the appeal fee based on the allegation that their right to be heard was not respected in opposition proceedings.

(b) The respondent (opponent) requested that the appeal be dismissed.

IV. Independent claim 1 according to the **main request** (patent as granted) reads as follows:

"*An impact initiated attachment device (6) for attachment to a target (4), the device (6) comprising:*
a housing having a front face which abuts against the target in use, one or more fasteners (23),
a drive mechanism (24, 25) for driving the fastener(s) (23) from a first position within the housing to a second 5
position protruding from the front face of the housing, and
a mechanical trigger mechanism for triggering activation of the drive mechanism comprising a trigger(22)
extending from the front face of the housing and mechanically connected to the drive mechanism(24, 25) such that pressure on the trigger (22) towards the front face of the housing causes activation of the drive mechanism (24, 25) to drive the fastener(s) (23) from the first position to the second position."

Claim 1 of **auxiliary request 1** differs from claim 1 according to the main request in that it additionally requires the following feature:

"*wherein the mechanical trigger mechanism is designed such, that when the trigger (22) is depressed by contacting the target a striker (42) is allowed to be released, a pin on the end of the striker strikes a rim of a cartridge (24) and the cartridge (24) is fired causing a piston (25) to drive a nail (23) forming the*

fastener or one of the fasteners respectively through the front face of the housing and into the target"

Claim 1 of **auxiliary request 2** differs from claim 1 according to the main request in that it additionally requires the following feature:

"*wherein the mechanical trigger mechanism is designed such, that when the trigger (22) is depressed by contacting the target a striker release sleeve is moved rearwardly allowing balls (50) to travel outwardly along a cam surface (44a) of the release sleeve (44) such that the striker (42) is allowed to be released, a pin on the end of the striker strikes a rim of a cartridge (24) and the cartridge (24) is fired causing a piston (25) to drive a nail (23) forming the fastener or one of the fasteners respectively through the front face of the housing and into the target*"

Claim 1 of **auxiliary request 3** differs from claim 1 according to the main request in that it additionally requires the following features:

"*wherein the trigger forms a protrusion extending through a hole in a front wall (27) of the housing (21), the trigger (22) has a shaft (30) that extends rearwardly to a striker release sleeve abutting against the striker release sleeve adapted to move the striker release sleeve,*
and wherein
the mechanical trigger mechanism is designed such, that when the trigger (22) is depressed by contacting the target the striker release sleeve is moved rearwardly allowing balls (50) to travel outwardly along a cam surface (44a) of the striker release sleeve (44) such that the striker (42) is allowed to be released, a pin

on the end of the striker strikes a rim of a cartridge (24) and the cartridge (24) is fired causing a piston (25) to drive a nail (23) forming the fastener or one of the fasteners respectively through the front face of the housing and into the target"

Claim 1 of **auxiliary request 4** differs from claim 1 according to the main request in that it additionally requires the following features:

"*wherein the trigger forms a protrusion extending through a hole in a front wall (27) of the housing (21), the trigger is retained in the housing by means of an annular collar (26) which is biased against the front wall (27) by means of a spring (28) captured in a chamber (29) within the housing (21), the trigger (22) has a shaft (30) that is integral with the trigger and extends through the chamber (29) abutting against a striker release sleeve adapted to move the striker release sleeve,*
and wherein
the mechanical trigger mechanism is designed such, that when the trigger (22) is depressed by contacting the target the striker release sleeve is moved rearwardly allowing balls (50) to travel outwardly along a cam surface (44a) of the striker release sleeve (44) such that the striker (42) is allowed to be released, a pin on the end of the striker strikes a rim of a cartridge 5 (24) and the cartridge (24) is fired causing a piston (25) to drive a nail (23) forming the fastener or one of the fasteners respectively through the front face of the housing and into the target"

Claim 1 of **auxiliary request 5** differs from claim 1 according to the main request in that it additionally requires the following features:

"*wherein the trigger (22) is designed such that it is sealed to prevent water ingress into the housing, the trigger forms a protrusion extending through a hole in a front wall (27) of the housing (21), the trigger is retained in the housing by means of an annular collar (26) which is biased against the front wall (27) by means of a spring (28) captured in a chamber (29) within the housing (21), the trigger (22) has a shaft (30) that is integral with the trigger and extends through the chamber (29) abutting against a striker release sleeve adapted to move the striker release sleeve, and the collar (26) is sealed against the ingress of water into the chamber (29),*
and wherein
the mechanical trigger mechanism is designed such, that when the trigger (22) is depressed by contacting the target the striker release sleeve is moved rearwardly allowing balls (50) to travel outwardly along a cam surface (44a) of the striker release sleeve (44) such that the striker (42) is allowed to be released, a pin on the end of the striker strikes a rim of a cartridge (24) and the cartridge (24) is fired causing a piston (25) to drive a nail (23) forming the fastener or one of the fasteners respectively through the front face of the housing and into the target"

Claim 1 of **auxiliary request 6** differs from claim 1 according to the main request in that it additionally requires the following features:

"*wherein the attachment device comprises a fastening mechanism (40) having fastened and unfastened configurations in which the activation of the trigger (22) causes the fastening mechanism (40) to move from*

the fastened configuration to the unfastened configuration."

Claim 1 of **auxiliary request 7** differs from claim 1 according to auxiliary request 6 in that it additionally requires the following features:

"*the fastening mechanism (40) comprises a member (40) movable in response to activation of the trigger (22) from the closed position to an open position, and wherein in the closed position the member (40) bridges an opening (62) in the housing and in the open position the member (40) is at least partially retracted from the opening (62)*"

Claim 1 of **auxiliary request 8** differs from claim 1 according to auxiliary request 6 in that it additionally requires the following features:

"*wherein the mechanical trigger mechanism is designed such, that when the trigger (22) is depressed by contacting the target a striker (42) is allowed to be released, a pin on the end of the striker strikes a rim of a cartridge (24) and the cartridge (24) is fired causing a piston (25) to drive a nail (23) forming the fastener or one of the fasteners respectively through the front face of the housing and into the target*"

Claim 1 of **auxiliary request 9** differs from claim 1 according to the main request in that it additionally requires the following features:

"*wherein the attachment devices comprises a fastening mechanism (40) having fastened and unfastened*

configurations in which the activation of the trigger (22) causes the fastening mechanism (40) to move from the fastened configuration to the unfastened configuration,
wherein the fastening mechanism (40) comprises a member (40) movable in response to activation of the trigger (22) from the closed position to an open position
and wherein
in the closed position the member (40) bridges an opening (62) in the housing and in the open position the member (40) is at least partially retracted from the opening (62),
and wherein
the mechanical trigger mechanism is designed such, that when the trigger (22) is depressed by contacting the ta get a striker (42) is allowed to be released, a pin on the end of the striker strikes a rim of a cartridge (24) and the cartridge (24) is fired causing a piston (25) to drive a nail (23) forming the fastener or one of the fasteners respectively through the front face of the housing and into the target"

Claim 1 of **auxiliary request 10** differs from claim 1 according to the main request in that it additionally requires the following features:

"*wherein the impact initiated attachment device is designed as a grappler (6) consisting of a barrel assembly (21), comprising a housing and a breech assembly (20),*
wherein the impact initiated attachment device is designed such that upon impact with a target, a front mounted trigger (22) is activated and the grappler (6) is attached to the target (4) by means of one or more high-tensile nails (23), which are fired using a

proprietary powder actuated impact tool cartridge (24), and having a cartridge being a rim activated cartridge, wherein the grappler (6) is an indirect acting tool that uses a retained piston (25) and captive nail (23) to transfer energy from the proprietary impact tool cartridge (24) to secure the grappler unit (6) to the desired target,
and wherein contained in the barrel assembly (21) is a trigger mechanism, which ultimately fires the grappler (6), wherein the trigger (22) is designed such that it is sealed to prevent water ingress into the housing, wherein the trigger itself is a simple protrusion extending through a hole in a front wall (27) of the housing (21), and wherein the trigger is retained in the housing by means of an annular collar (26) which is biased against the front wall (27) by means of a spring (28) captured in a chamber (29) within the housing (21), wherein the trigger (22) has a shaft (30) that extends through the chamber (29) and is integral with the trigger, wherein the collar (26) is sealed against the ingress of water into the chamber (29), wherein components of the breech assembly (20) are a release bolt (40), a tail plate (41), a striker (42), a striker spring (43) and a striker release sleeve (44), wherein the release bolt (40) is coaxial with and attached to the striker (42), the striker release sleeve (44) is biased in the forward direction by means of a spring (45) acting against an annular shoulder (46) on the sleeve (44), the striker (42) and hence the release bolt (40) are biased in the forward direction by means of the striker spring (43) acting against an annular shoulder (48) provided on the striker (42), wherein the striker (42) and the spring (43) are surrounded by a striker sleeve (49) which is partially surrounded by the striker release sleeve (44), the striker sleeve (49) accommodates a number of ball bearings (50) in an

annular configuration surrounding a front portion of the striker 42, the ball bearings are trapped between the striker (42) and the striker release sleeve (44) which have respective cam surfaces (42a, and 44a), wherein to load the grappler the breech assembly (20) and the barrel assembly (21)are separated from each other, the breech assembly (20) is then armed, and in order to arm it an arming tool (60) is inserted through a hole in the tail plate (41) into the breech assembly and connected into the release bolt (40), wherein the position of the release sleeve is controlled by the ball bearings (50) abutting against the cam surface (44a) of the release sleeve (44), the release bolt (40) is then drawn back using the a tool (60), which draws back the striker (42) and compresses the striker spring (43), and the ball bearings travel down the cam surface (42a) provided on the striker (42) enabling the striker release sleeve to move forward and lock the striker in an "armed" position, wherein the cartridge (24) is then inserted into the end of the barrel and the barrel housing (21) is then re-assembled onto the breech housing (20) and the impact initiated attachment device is designed such that when the trigger (22) is depressed the striker release sleeve is moved rearwardly allowing the balls (50) to travel outwardly along the cam surface (44a) of the release sleeve (44), thus the striker (42) is allowed to be released, a pin on the end of the striker strikes the rim of the cartridge (24) and the cartridge (24) is fired causing the piston (25) to drive the nail (23) through the end face (27) of the barrel housing and into the target, and a shunt buffer (51) then arrests the piston (25) and the explosive gasses are discharged into an expansion chamber (52) through a discharge port (53)."

Claim 1 of **auxiliary request 11** differs from claim 1 according to the main request in that it additionally requires the following features:

"*the impact initiated attachment device is designed as a grappler comprising a breech assembly (20) and a barrel assembly (21) whereby the barrel assembly includes the trigger mechanism and is attached to the breech assembly, the spring-loaded trigger when pressed extends through a back wall of the barrel assembly into the breech assembly where it actuates a striker release sleeve (44) to move rearwardly thereby allowing balls (50) to travel outwardly, wherein this releases a spring-loaded striker (42) which hits a proprietary powder actuated impact tool cartridge (24) in the barrel assembly, thereby the powder in the cartridge exploding and thus causing a piston (25) to drive the nail 23, which is the fastener, forward and into the target.*"

Claim 1 of **auxiliary request 11a** differs from claim 1 according to auxiliary request 11 in that the term "*the nail 23*" was replace by "*a nail (23)*".

V. The appellant's arguments can be summarised as follows:

(a) The **main request** was not unallowably generalized since the terms "mechanical trigger mechanism" and "mechanically connected" reflected what the skilled person would implicitly understand as being the essential concept of the invention when reading the first paragraph on page 11 of the description.

(b) In **auxiliary requests 1** the relevant features of the attachment device cited in the passage on page 11 were added. The mechanism allowing to release

the striker (balls travelling outwardly along a cam surface of the release sleeve) were an irrelevant detail that could be omitted.

(c) Should it be necessary, **auxiliary request 2** defined in addition to auxiliary request 1 how the mechanical actuated striker was released (i. e. the features omitted in auxiliary request 1 were now added).

(d) In claim 1 of **auxiliary requests 3 - 5**, features defining the trigger, the release sleeve and the striker in more detail were taken from the description to define more precisely the mechanical actuation of these members of the grabbler.

(e) **Auxiliary requests 6 - 9** originated from the opposition proceedings and the opposition division decided upon them. These requests were maintained to review the opposition division's decision with regard to these requests.

(f) **Auxiliary request 10** incorporated all features cited on pages 9 - 11 of the description concerning the embodiment forming the basis for the amendments made to claim 1.

The request should be admitted albeit filed only after the summons since it was a reaction to the Board's preliminary opinion. Furthermore, it remedied all deficiencies and was *prima facie* allowable.

(g) **Auxiliary requests 11 and 11a** were a reaction to the suggestion of the Board giving in its preliminary opinion an enumeration of features that

needed to be incorporated into claim 1 to remedy the objection of unallowable amendment. Auxiliary request 11a contained a minor modification in reaction to the clarity objection raised by the respondent.

Both requests should be admitted as a reaction to the Board's preliminary opinion and the newly raised objection from the respondent.

(h) The opposition division referred in their decision to an argument that was not discussed during oral proceedings in opposition proceedings. The appellant's right to be heard on this argument was hence infringed such that the appeal fee must be reimbursed.

VI. The respondent's arguments can be summarised as follows:

(a) The terms "mechanical trigger mechanism" and "mechanically connected" used in claim 1 of the **main request** constituted an unallowable amendment. The passage on page 11 of the description as originally filed only provided disclosure for a particular trigger mechanism comprising several parts that were not mentioned in claim 1.

(b) Claim 1 of **Auxiliary requests 1 - 5** also did not include the relevant features of the embodiment which were structurally and functionally linked to the trigger mechanism. They were hence based on an unallowable intermediate generalization.

(c) **Auxiliary requests 6 - 9** did not add features of the trigger mechanism and hence could not remedy

the objection of unallowable intermediate generalization.

(d) **Auxiliary requests 10, 11 and 11a** should not be admitted, since the appellant did not provide cogent reasons justifying exceptional circumstances for filing these requests only after the summons.

Reasons for the Decision

Main request

1. Claim 1 of the main request is unallowably amended (Article 100(c) EPC).

1.1 The opposition division held that the introduction of the term "*mechanical*" in claim 1, reciting "*mechanical trigger mechanism*" and "*mechanically connected*", resulted in an unallowable generalization of an embodiment disclosed in the description of the originally filed application.

1.2 It is undisputed that the term "*mechanical trigger mechanism*" and the feature "*trigger is mechanically connected to the drive mechanism*" are not explicitly mentioned in any part of the application as originally filed.

1.3 The appellant, however, asserts that the skilled person would deduce from the first paragraph on page 11 of the originally filed description that the trigger mechanism is a mechanical trigger mechanism with a trigger that is mechanically connected to the drive mechanism.

1.3.1 The first paragraph on page 11 is part of the description of an embodiment of the invention. This embodiment comprises a trigger actuating a striker release sleeve having a cam surface that interacts with balls. When the release sleeve is moved rearwardly, the balls are allowed to travel outwardly thus releasing the striker. A pin on the end of the striker then strikes the rim of a cartridge, which is fired, causing a piston to drive a nail into a target.

According to the application as filed, the "*drive mechanism*", which is recited in claim 1 (see second paragraph of page 2 of the description as filed) may include the striker.

1.3.2 The passage on page 11 hence defines a particular mechanism with a plurality of interacting parts for triggering activation of the drive mechanism (i.e. the striker). In other words, although this passage indeed discloses a mechanical trigger mechanism with a trigger that is mechanically connected to the drive mechanism, the mechanism and the connection disclosed are of a specific kind only.

Claim 1 of the main request, however, is not limited to the particular mechanical trigger mechanism disclosed in the first paragraph of page 11 involving a cam surface on the release sleeve cooperating with balls, but generally covers any mechanical trigger mechanism to release the striker.

1.3.3 The application as originally filed, however, does not disclose any other mechanical trigger mechanism than the specific one disclosed on page 11. Hence the claim covers subject-matter that was not disclosed in the application as originally filed.

1.3.4 The appellant argues that it is implicitly disclosed in the first paragraph on page 11 that the trigger mechanism is mechanical and that it is mechanically connected to the drive mechanism. In the appellant's view, this is the essence of the invention and also the main advantage, which the skilled person clearly understands when reading the passage on page 11.

1.3.5 The Board does not agree for the following reasons:

(a) The advantages of the invention are described on page 2, lines 1 - 6: The claimed attachment device is simple to operate and might be used in an underwater environment since the user does not have to place the assembly and then fire the attachment device to attach the assembly to an object, but the attachment device is actuated automatically upon contact to the object.

This does, however, not necessarily require a mechanical trigger mechanism.

(b) The passage on page 11 does not contain any indication that it shall be considered to be an (additional) advantage of the invention that the mechanism works fully mechanically.

(c) There is also no comparison with a non-mechanical trigger mechanism and/or a trigger being non-mechanically connected to the drive mechanism disclosed - neither in this passage nor in any other passage of the application.

The skilled person hence would not implicitly understand from the first paragraph on page 11 that the

invention is generally directed to a trigger mechanism working mechanically. In particular it is not apparent to the skilled person that the trigger mechanism operating mechanically should be the inventive concept of the application.

1.4 The amendments to claim 1 hence do not comply with the requirements of Article 100(c) EPC, as correctly decided by the opposition division.

Auxiliary requests 1 - 5

2. Claim 1 of auxiliary request 1 is also unallowably amended.

2.1 The opposition division held that claim 1 of the auxiliary request 1 is an unallowable intermediate generalization of the embodiment described in the first paragraph of page 11.

2.1.1 Claim 1 requires in addition to the subject-matter of the main request that the mechanical trigger mechanism is designed such that when the striker is released, a pin on the end of the striker strikes a rim of the cartridge, the cartridge being fired and thus causing a piston to drive a nail through the front face of the housing and into the target.

2.1.2 Although the drive mechanism of claim 1 is thereby further specified,the mechanical trigger mechanism, however, still lacks the definition of the balls 50 cooperating with the cam surface 44a on the striker release sleeve 44 such that the balls can travel outwardly to free the striker. These are features which, in the above-mentioned embodiment described on

page 11, are inextricably linked with the features added to claim 1. The release of the striker is indeed obtained by the cam surface allowing the balls to travel outwardly.

2.1.3 For this reason alone, auxiliary request 1 does not comply with Article 123(2) EPC.

2.2 Furthermore, adding only the features identified in section 2.1.1 above results in a further unallowable amendment for the following reasons:

2.2.1 The passage identified by the opposition division concerns an embodiment of the invention. However, the first paragraph on page 11 is not an isolated disclosure but this passage is part of the description of said embodiment starting on page 9, line 11 and ending on page 11, line 14.

2.2.2 This part of the description describes a grabbler in its entirety and explains how a plurality of interacting parts transfer a movement of the trigger due to the contact with an object into a nail being driven into that object. The mechanism involved is indeed purely mechanically (if actuating the nail by explosives is considered to be mechanical) and requires a trigger 22 with a shaft 30, a striker release sleeve 44, a striker 42, a cartridge 24 with explosives and a nail 24. Furthermore, these parts interact using *inter alia* a striker spring 43, balls 50, a cam surface 44a on the striker release sleeve, a spring 45 urging the striker towards the cartridge and a piston 25.

All these parts of the attachment device, but also their particular interaction are required to drive the nail into the object, the parts and their interaction

hence being functionally and structurally linked. It is not possible to omit any of these parts and/or the information on how the parts interact since otherwise the attachment device would not be able to drive the nail into the target.

2.2.3 Since claim 1 of the auxiliary request 1 does not mention all of the plurality of the interacting features identified in paragraph 2.3.2 above, it is based on an unallowable intermediate generalization of the embodiment described in the originally filed description on pages 9 - 11.

2.3 This objection applies *mutatis mutandis* also to claim 1 of any of auxiliary requests 2 - 5 such that none of auxiliary requests 1 - 5 complies with Article 123(2) EPC.

3. It hence can be left undecided whether auxiliary requests 3 - 5 submitted with the statement of grounds of appeal can be admitted into the procedure (Article 12(4) and (6) RPBA 2020).

Auxiliary requests 6 - 9

4. Claim 1 of each of auxiliary requests 6 - 9 is unallowably amended and hence does not comply with the requirements of Article 123(2) EPC.

4.1 Auxiliary requests 6 and 7 are based on a combination of granted claim 1 with the features of dependent claims. However, none of the dependent claims added to claim 1 provides a complete definition of the "mechanical trigger mechanism" mentioned in the independent claim of the respective request.

4.2 Auxiliary request 8 combines the amendments of auxiliary requests 6 and 1, and hence also does not provide a more specific definition of the "mechanical trigger mechanism" than auxiliary request 1.

4.3 Claim 1 of each of auxiliary requests 6 - 9 therefore does not comply with Article 123(2) EPC for the same reasons as set out with regard to the main request and auxiliary request 1.

4.4 In fact, the appellant did not contest that if the main request and auxiliary request 1 would fall, then these auxiliary request would also fall as a consequence.

Auxiliary requests 10, 11 and 11a

5. Auxiliary requests 10, 11 and 11a were filed after the summons to oral proceedings such that pursuant Article 13(2) RPBA 2020 they should, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

5.1 The appellant argued that exceptional circumstances for filing the requests only after the summons should be acknowledged since the requests were a direct reaction to the preliminary opinion of the Board issued with the summons.

5.1.1 The objection of added subject-matter was, however, already raised and discussed during opposition proceedings. The revocation of the patent by the opposition division was based exclusively on the reason that neither the granted patent nor any of the

auxiliary requests filed during opposition proceedings complied with Article 100(c) or Article 123(2) EPC, respectively. The issue of added subject-matter therefore was not first raised by the Board but was the central issue discussed intensively in the opposition proceedings.

5.1.2 The Board only expressed in their communication according to Article 15(1) RPBA 2020 that they tended to follow the view of the opposition division and the respondent. Although in the communication (see point 1.3) reference is made to the features of the grappler mentioned in the context of figures 2 (figures 2a to 2c are even entitled "Grappler"), the respondent, in the reply to the grounds of appeal, already pointed out to the features shown in these figures (see in particular page 9, third paragraph: "the trigger mechanism is closely linked, both functionally and structurally, to the common features of the specific trigger mechanism of Figure 2b and 2c").

5.1.3 The newly submitted requests hence cannot be regarded as a direct reaction to the Board's preliminary opinion. Therefore, there are not exceptional circumstances, which have been justified with cogent reasons by the party concerned. The Board hence decided to not admit auxiliary requests 10, 11 and 11a according to Article 13(2) RPBA 2020.

6. Since none of the requests on file is either allowable or admissible, there is no reason to deviate from the opposition division's decision to revoke the patent.

Reimbursement of the appeal fee

7. The appellant's request for reimbursement of the appeal fee cannot be followed since the prerequisites of Rule 103(1)(a) EPC that the Board deems the appeal allowable are not fulfilled.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated