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Datasheet for the decision of 10 May 2023

Case Number: T 0255/22 - 3.2.03

Application Number: 11718513.2

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IPC: E04F11/17, E04F11/108, E04F11/104, E04F11/16

Language of the proceedings: EN

Title of invention:
STAIR TREAD ELEMENT, STAIR RENOVATION ORNAMENT, KIT AND METHOD

Applicant:
SIP B.V.

Opponent:
Van Eyck Shutters B.V.

Relevant legal provisions:
EPC Art. 106, 107, 111(1), 112a(1)
EPC R. 103(1)(a), 111(2), 124(1), 124(3), 139, 140
RPBA 2020 Art. 12(1)(a)

Keyword:
Admissibility of appeal - left open
Correction of error in decisions - alleged errors concern reasons given by department of first instance in written decisions
Correction of minutes of department of first instance
Reimbursement of appeal fee - (no)

Decisions cited:
G 0008/95, G 0001/97, R 0010/08, R 0004/18, T 0698/94, T 1063/02, T 2256/13, T 0613/14, T 1679/17, T 1891/20

Catchword:

No competence for the Board to correct or amend under Rule 140 EPC the reasons given by a first-instance department in the written decision, or to order such a correction or amendment (see point 2.2.1).

No competence for the Board to confirm that an "obvious mistake" within the meaning of Rule 140 EPC was made in the reasons given by a first-instance department in the written decision (see point 2.3).

No competence for the Board to correct or amend the content of the minutes of oral proceedings before a first-instance department, or to order such a correction or amendment (see point 3.3).

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Case Number: T 0255/22 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 10 May 2023

Appellant: (Opponent)	Van Eyck Shutters B.V. Oude Graaf 6 6002 NL Weert (NL)
Representative:	Algemeen Octrooi- en Merkenbureau B.V. P.O. Box 645 5600 AP Eindhoven (NL)
Respondent: (Patent Proprietor)	SIP B.V. Risseweg 17 6004 RM Weert (NL)
Representative:	Brantsandpatents bv Pauline Van Pottelsberghelaan 24 9051 Ghent (BE)
Decision under appeal:	**Communication of the Opposition Division dated 22 December 2021**

Composition of the Board:

Chairman	C. Herberhold
Members:	F. Bostedt R. Baltanás y Jorge

Summary of Facts and Submissions

I. The case concerns the appeal of the opponent (in the following the "appellant") which was filed against the communication of the opposition division dated 22 December 2021 and signed by the formalities officer ("the communication").

II. In the underlying opposition proceedings, the opposition division issued a decision maintaining the patent in amended form ("main decision", dated 30 November 2021). A separate appeal was filed by the appellant against the main decision; the appeal against the main decision is registered under case number T 236/22.

III. The communication was issued in response to the appellant's request of 14 December 2021 that the main decision as well as the minutes issued by the opposition division be corrected. The opponent (appellant) had requested before the opposition division that two mistakes in the main decision be corrected: in particular, one heading was wrong (it read "Art. 100(a) EPC (Art. 54 EPC): Inventive step" and should read "Art. 100(a) EPC (Art. 54 EPC): novelty") and one heading was missing (namely, "Art. 100(a) EPC (Art. 56 EPC): inventive step"). In addition, there was an obvious mistake in that no reasons were given regarding the novelty of the new main request. As to the minutes, the opponent (appellant) had requested the correction of several statements contained therein.

IV. In its communication, the opposition division had agreed that there was a heading (point 38 of the

decision) containing an obvious mistake (namely, the mention of Article 54 EPC in the heading "Art. 100(a) EPC (Art. 54 EPC): Inventive step") and held that this could, therefore, be corrected.

However, the alleged omission of reasons for the decision that the new main request is novel was not considered an obvious mistake under Rule 140. The text of the decision was not manifestly other than intended and correction under Rule 140 was not intended as an occasion for reviewing the substance of a decision already taken.

Therefore, the only correction that could be allowed under Rule 140 EPC, in the opinion of the opposition division, was the replacement of "Art. 54 EPC" in paragraph 38 with "Art. 56 EPC", but this did not justify introducing into the file a corrected version of the interlocutory decision.

As to the minutes, the opposition division took the view that they contained the essentials of the oral proceedings and the relevant statements of the parties, and that the opponent's oral submissions had been correctly summarised. The opposition division thus did not see a reason to correct the minutes either.

V. At the oral proceedings before the Board, the appellant made the following requests (the numbering and remarks in square brackets have been added by the Board for clarity):

1. to set aside the decision [i.e. the communication] and to remit the case to the opposition division and order an amendment of the decision of November 30, 2021

[i.e. the main decision], by the opposition division, as requested;

2. to confirm that the wording "Art. 100(a) EPC (Art. 54 EPC): inventive step" in the decision of November 30, 2021 [i.e. the main decision] is an obvious mistake under Rule 140 EPC and subsidiary requests the Board to confirm that the wording should be "Art. 100(a) EPC (Art. 54 EPC): novelty";

3. to confirm that the absence of the wording "Art. 100(a) EPC (Art. 56 EPC): inventive step" in the decision of November 30, 2021 [i.e. the main decision] is an obvious mistake under Rule 140 EPC;

4. to set aside the decision [i.e. the communication] and to remit the case to the opposition division and order an amendment of the minutes of the oral proceedings of September 9, 2021, by the opposition division, as requested;

5. to refund the appeal fee due to a substantial procedural violation under Rule 103(1) EPC;

6. to decide whether there is a limit to the extent of missing reasons in a Decision for invoking manifest intention as an argument for not correcting the Decision, and, if such a limit is present, to indicate this limit.

VI. The respondent requested that the appeal be dismissed.

VII. The appellant's arguments, where relevant for the present decision, can be summarised as follows:

(a) As to the refusal to correct the main decision

The main decision contained several obvious mistakes:

- the wording "Art. 100(a) EPC (Art. 54 EPC): Inventive step" in point 38 of the main decision should read "Art. 100(a) EPC (Art. 54 EPC): novelty";

- the main decision contained no reasons for the decision that the new main request was novel in view of D14, in spite of the fact that at the oral proceedings the opposition division had concluded that, contrary to the arguments put forward by the opponent, the new main request was novel;

- the main decision did not contain the heading "Art. 100(a) EPC (Art. 56 EPC): Inventive step", which was an obvious mistake since the subsequent points therein addressed the issue of inventive step.

The requests on appeal were not to be understood such that the appellant was asking the Board to amend the wording of the reasons in the main decision. Instead, the requests were directed to setting aside the communication and remitting the case to the opposition division to allow correction of the decision of 30 November 2021 (i.e. the main decision) by the opposition division.

The requested correction was not a review of the substance; rather, the reason for requesting correction was that there was no reasoning as to novelty in the main decision and therefore the substance was "completely lacking", which deprived the losing party of its legitimate right to challenge the reasoning on which the main decision was based. In this context,

reference was made to T 698/94.

(b) As to the refusal to correct the minutes

The minutes of the opposition division did not fulfil the requirements of Rule 124(1) EPC. Several statements noted in the minutes were actually not made by the appellant and/or were not part of the essentials of the oral proceedings (see the statement setting out the grounds of appeal, points 35 to 45, for more details). The Board can order the amendment of minutes if they manifestly and definitely differed from the actual course of the proceedings (see T 1063/02).

(c) Substantial procedural violation

The communication of the opposition division did not contain proper reasons. It merely cited the Guidelines for Examination and contained no reasoning specific to the present case. There was also a reasonable expectation that the minutes of the oral proceedings reflect and summarise in a correct manner the essence of the oral submissions. In addition, there was no reasoning as to novelty in the main decision, which constituted a substantial procedural violation.

VIII. The Board issued a communication in preparation for the oral proceedings. The Board was of the preliminary opinion that the appeal was not admissible or at least not allowable. Even if the appeal were to be admissible, it would fail on the merits since none of the appellant's requests was allowable.

IX. During the oral proceedings, the respondent essentially sided with the preliminary opinion of the Board.

Reasons for the Decision

1. *Admissibility of the appeal*

1.1 In the Board's communication in preparation for the oral proceedings, it set out its preliminary opinion that the appeal might not be admissible. The Board expressed doubts as to whether the communication, taking into account its content, was a decision open to appeal. In particular, the content of the communication in the present case, in so far as it relates to the refusal to correct the wording of the decision, did not constitute a "decision" of the opposition division within the meaning of Article 106(1) EPC. Moreover, the refusal to correct the minutes was also not a "decision" within the meaning of that provision (reference was made to the "ancillary decision" T 1891/20 of 16 May 2022, and T 613/14, R 4/18).

1.2 At the oral proceedings before the Board, only the merits of the appellant's requests were discussed. In the favour of the appellant, the Board left open the question of the admissibility of the appeal. It is not necessary to decide on the appeal's admissibility since the appeal can be dismissed for the reason alone that none of the appellant's requests is allowable.

2. *The refusal to correct the reasons of the decision under Rule 140 EPC - first, second and third request*

The appellant's first three requests (see above, point V.) relate to the refusal to correct the reasons provided in the main decision.

2.1 *Rule 140 EPC and the findings of the Enlarged Board of Appeal in G 8/95 and G 1/97*

2.1.1 The opposition division's decision to maintain the patent in amended form (i.e. the main decision) is a "decision" within the meaning of Rule 140 EPC. This decision may be corrected within the limits provided in Rule 140 EPC.

2.1.2 Rule 140 EPC allows for the correction of a decision by the deciding body ("may be corrected", "können ... berichtigt werden", "peuvent être rectifiées"). However, the deciding body cannot correct all kinds of errors; "only linguistic errors, errors of transcription and obvious mistakes" may be corrected. It follows from the wording of Rule 140 EPC ("may") that, even if such errors are identified, it is still within the discretion of the deciding body to correct the errors or to decide that the decision remains as it was issued, i.e. including the errors. If the deciding body were obliged to correct this kind of error, Rule 140 EPC would have been worded differently ("shall" be corrected, for example).

In the present case, the opposition division exercised such discretion. It acknowledged a particular obvious mistake (see above, point IV.) but did not issue a corrected version of the main decision because this obvious mistake did not justify, in the opinion of the opposition division, introducing into the file a corrected main decision. The appellant has not challenged on appeal this particular exercise of discretion (i.e. of not correcting this mistake even though it was considered obvious by the deciding body). The Board does not see a reason to interfere with the way the opposition division exercised its discretion in

this respect.

2.1.3 In G 8/95, the Enlarged Board explained the difference between an appeal against a decision (in that case the decision to grant a patent; see, however, on this issue G 1/10) and a request for the correction of a decision: the difference may be seen in the fact that in the first case the remedy is directed against the substance of the decision and in the latter case against the form in which the decision was expressed (G 8/95, Reasons 3.3). In relation to the request for correction, the Enlarged Board found that a party which requests a correction under Rule 89 EPC 1973 (Rule 140 EPC) was - like in the case of an appeal - aiming to "change" the decision. The basis of such a request was, however, not that the party had not been granted what it had requested. Rather, a request for correction was based on the allegation that there was a linguistic error, an error of transcription or a similar obvious mistake. This opportunity for corrections was a principle known in many legal systems; where a decision did not express the manifest intention of the deciding body, an obvious clerical mistake in the decision could be corrected (G 8/95, Reasons 3.2). The Enlarged Board also held that the competence to correct errors in a decision under Rule 89 EPC 1973 (Rule 140 EPC) lay with the body which had given the decision (G 8/95, Reasons 3.4).

2.1.4 The Enlarged Board also considered Rule 89 EPC 1973 (Rule 140 EPC) in G 1/97. The party had claimed that a request for review was possible under Rule 89 EPC, on the basis that a violation of fundamental procedural principles constituted an obvious mistake. However, the Enlarged Board found that a legal error, no matter whether it concerned substantive or procedural aspects, could not be corrected under the cited rule (G 1/97,

Reasons 2.(c)).

2.2 First request

2.2.1 The Board holds that it has no competence to correct or amend under Rule 140 EPC the reasons given by a first-instance department in the written decision, or to order such a correction or amendment. Therefore, the appellant's first request (see above, point V.1) must fail.

The reasons for this are essentially twofold and rely on the Enlarged Board's findings in G 8/95 referred to above.

(a) First, for a correction pursuant to Rule 140 EPC, the manifest intention of the deciding body is decisive (see G 8/95, Reasons 3.2) and the Board cannot interfere with this intention.

The reasons given in the written decision are drafted by the members of the department responsible for the decision, and by them only (see also T 2256/13, Reasons 2.2). Neither the parties nor a board of appeal may correct or amend the wording of the reasons of the written decision; only the deciding body can do so. This is in accordance with the Enlarged Board's finding that the competence to correct errors in a decision under Rule 140 EPC lies with the body which had given the decision (G 8/95, Reasons 3.4).

As pointed out in G 8/95, Reasons 3.2, the principle underlying Rule 140 EPC is that an obvious clerical mistake can be corrected by the deciding body responsible for the decision in a

situation where the decision does not express its manifest intention. It would go against this principle if the Board could correct or amend the wording of the reasons in a way which deviates from the opposition division's manifest intention. Doing so should not be within the power of a board.

Therefore, the Board cannot interfere with what the opposition division - in its view and as confirmed in its communication - has correctly written in the reasons of the decision and thus considers to express its manifest intention.

In the present case, according to the communication, there was no divergence between the reasons given in the main decision and the intention of the deciding body. On the contrary, the opposition division made it clear, by refusing the request for correction, that the decision indeed expresses what was intended (acknowledging one mistake, i.e. the erroneous reference to Article 54 EPC in the heading of point 38 of the decision). See in this context also T 1063/02, Reasons 3.3.

For the sake of completeness, the Board notes that the reasons given in a decision (in this case the main decision) may contain - from an objective standpoint - mistakes. However, these can be reviewed by the board only when dealing with an appeal against the (main) decision (see also point (b) below). Even if the board then finds the reasons given in that decision to be incorrect, the board cannot correct or amend the wording of the reasons given in the decision by invoking, for example, an "obvious mistake" in the decision

within the meaning of Rule 140 EPC. Instead, when an appeal is filed against the (main) decision, the board may eventually decide to set aside this decision of the first-instance department and then give its own decision (which contains its own reasons, Rule 102, second sentence, lit. (g) EPC).

(b) Second, the reasons given by the deciding body represent the very substance of the decision, which can be challenged by a party only in an appeal against this decision.

If there is concern as to the substance of a decision, the correct way of addressing a deficiency therein is to appeal this decision (an opportunity of which the appellant availed itself, see above, point II.). An appeal against the refusal to correct the decision under Rule 140 EPC is not the correct avenue to pursue (cf. G 8/95, Reasons 3.3).

(c) As an aside, the Board notes that, according to Article 111(1), second sentence, first alternative, EPC, a board may exercise any power within the competence of the first-instance department. However, in a situation such as in the present case, this cannot be understood to mean that the Board may correct or amend the reasoning given in the written decision of the first-instance department.

Any discretion that could be derivable from the word "may" in Article 111(1) EPC to the effect that a board is empowered to correct under Rule 140 EPC the reasons of a decision which it has not taken itself is - in view of the Enlarged Board's

findings referred to above - effectively reduced to zero in a case such as the present one.

2.2.2 The specific arguments put forward by the appellant are not convincing.

(a) The appellant argued that the requested correction was not a review of the substance; rather, the reason for requesting correction was that there was no reasoning as to novelty over D14 in the main decision and therefore the substance was "completely lacking".

However, also in such a case in which there is no reasoning on a specific issue at all, adding such reasoning would be related to the substance of the decision. Furthermore, an alleged legal error, in this case the alleged lack of reasoning in the main decision on a specific point, cannot be corrected under Rule 140 EPC (cf. G 1/97, Reasons 2.(c)). This specific error of a lack of reasoning might infringe the requirement of Rule 111(2) EPC but this can be assessed by a board only when evaluating the appeal against the (main) decision.

(b) The appellant also argued that it did not request the Board to correct the reasons. Instead, it was the appellant's request that the case be remitted and that the opposition division then correct the decision.

The Board notes that the appellant's first request in the present case was that the case be remitted to the opposition division and that an amendment of the decision be ordered "as requested" (see above, point V.1.).

If the Board ordered the opposition division to amend the decision as requested by the appellant, this would effectively mean that the Board decides on what is to be in the reasons of the opposition division's decision. For the same reasons as outlined above (point 2.2.1), this is not within the competence of the Board. In particular, it would again go against the principle set out in G 8/95, Reasons 3.2, if the Board could order the opposition division to change the wording of the reasons such that it deviates from its manifest intention.

(c) Finally, the appellant also referred to T 698/94, in which the competent board had noted that neither the minutes of the oral proceedings nor the "Summary of Facts and Submissions" of the appealed decision itself contained the slightest hint at the arguments brought forward by the parties. According to the appellant, in that case, as in the present one, the losing party was deprived of its legitimate right to challenge the reasoning on which the decision is based.

This is not convincing either. T 698/94 demonstrates that there is a possibility for a party to challenge a lack of reasoning in a decision: the filing of an appeal against this decision. In T 698/94, the competent board came to the conclusion that the de facto absence of a reasoning in the decision under appeal represented a substantial procedural violation and set aside the decision and remitted the case to the department of first instance. This also confirms that the correct way of addressing a deficiency in

the reasons provided in the decision (as part of the substance) is to appeal this decision.

2.3 Second and third requests

In its second and third requests, the appellant no longer requested that an amendment to the reasons be ordered (see above, points V.2 and V.3). Rather, the Board was requested to "confirm" that a specific wording in the main decision was an obvious mistake under Rule 140 EPC (and, as an auxiliary measure, it was asked to confirm what the wording should be, namely the one suggested by the appellant), and the Board should also "confirm" that the absence of a specific wording in the main decision was an obvious mistake under Rule 140 EPC.

However, these requests must also fail.

The Board has no competence to confirm that an "obvious mistake" within the meaning of Rule 140 EPC was made in the reasons given by a first-instance department in the written decision.

The reason for this is again that the Board cannot interfere with the manifest intention of what the opposition division has - in its view and as confirmed in its communication - correctly written in the reasons of the decision (see above, point 2.2.1(a)). Yet it is this that the Board would do if it "confirmed" the existence of obvious mistakes in the reasoning given by the opposition division.

This also applies to the request for the Board to "confirm" what the party believes the wording of the reasons should be (see the appellant's alternative in

its second request). The appellant's opinion was that the wording of the reasons should be "Art. 100(a) EPC (Art. 54 EPC): novelty" (instead of what was written in the reasons of the main decision, namely "Art. 100(a) EPC (Art. 54 EPC): Inventive step"). On this specific point, it is noted that the opposition division acknowledged that an obvious mistake was indeed made; but the opposition division said that this part of the reasons should read "Art. 100(a) EPC (Art. 56 EPC): inventive step". This is, therefore, what the deciding body - in its view - meant to write. Again, the Board cannot interfere with the opposition division's manifest intention (as to the opposition division's discretion not to correct even a mistake they consider obvious, see point 2.1.2 above).

In addition, as also set out above (see point 2.2.1(b)), as long as it concerns the substance of the decision, an appeal against the refusal to correct the decision under Rule 140 EPC is not the correct avenue to pursue.

3. *The refusal to correct the wording of the minutes - fourth request*

3.1 The appellant's fourth request (see point V.4 above) relates to the correction of the minutes: that an amendment of the minutes of the oral proceedings of 9 September 2021, by the opposition division, be ordered, as requested.

3.2 The Board preliminarily notes that there is no express legal basis for a correction of the minutes in the EPC and there are no rules in the EPC on the question of which procedure is to be followed for such a

correction.

3.2.1 In particular, the correction of the minutes falls neither under Rule 139 EPC nor under Rule 140 EPC:

The minutes are not a "document filed with the European Patent Office" within the meaning of Rule 139 EPC. The Board notes that, in R 10/08, the Enlarged Board referred to Rule 139 EPC in the context of the correction of the minutes (see Reasons 3). However, the text of Rule 139 EPC is clear in that it only refers to documents filed with the EPO, which is not the case for the minutes.

The minutes are also not a "decision" within the meaning of Rule 140 EPC. The case law of the boards of appeal is consistent in that the minutes do not constitute a decision, nor are they part of the decision announced at the oral proceedings (see T 613/14, Reasons 6.1, with further references from the case law). That the minutes are not a "decision" - within the meaning of Articles 106 and 107 EPC and of Article 112a EPC - was also confirmed by the Enlarged Board of Appeal in R 4/18, Reasons 7, 11, 13. In the same decision, the Enlarged Board confirmed that the *correction* of the minutes was not a decision, either, see R 4/18, Reasons 11. The present Board agrees with this case law.

3.2.2 In practice, the boards of appeal acknowledge that the parties must have an opportunity to alert the minutes writer to deficiencies in the minutes and thus to "request" a correction of the minutes of the department of first instance. The reason for this opportunity is that the boards rely on the content of the minutes, in particular when reviewing the procedure that led to the

decisions of the department of first instance. This is also the reason why the RPBA 2020 expressly mentions the minutes as being part of the basis of the appeal proceedings (Article 12(1)(a) RPBA 2020).

3.2.3 Thus, not only is the opportunity acknowledged but indeed also the need for parties to be able to "request" the correction of the minutes. The case law of the boards is consistent in that parties and their representatives are expected to check minutes carefully as soon as they receive them, especially to ensure that nothing is missing and that they are accurate, and to point out any deficiency promptly, since the minutes are the only means of ascertaining what actually occurred during the oral proceedings at first instance (T 1679/17, Reasons 2). For example, if, according to the minutes, an opponent withdrew several objections, and the opponent does not file a request for correction of the minutes, the board is likely to accept that the minutes are correct and that the objections were indeed withdrawn during the oral proceedings (see, for example, T 1679/17, Reasons 2.3). If the party filed a request for correction of the minutes but this request was rejected, the board could not outright accept the minutes as they were.

It is noted that the same is true for the minutes of the boards; see the case law of the Enlarged Board in petition for review proceedings summarised in Case Law of the Boards of Appeal, 10th edition, V.B.3.6.4.

3.3 The boards of appeal have no competence to correct or amend the content of the minutes of oral proceedings before a first-instance department, or to order such a correction or amendment. Therefore, the appellant's

fourth request must also fail.

3.3.1 The competence for drawing up the minutes of oral proceedings is regulated in the EPC. An employee is determined who is to be responsible for drawing up the minutes (see Rule 124(3) EPC). This employee (i.e. the minutes writer) and the employee who conducted the oral proceedings (i.e. the chairperson) authenticate the minutes with their signatures (Rule 124(3) EPC). How, and whether, the content of the minutes is amended (ex officio or in response to a party's request) lies again within the responsibility of these two persons.

3.3.2 The minutes represent what the signing employees consider to be a true representation of the essential issues discussed at the oral proceedings (see Rule 124(1) EPC). This is, to a certain extent, a subjective exercise. It is true that it cannot be ruled out that the minutes writer and the chairperson may have missed or misunderstood an oral statement made by one of the parties. If, however, the persons responsible for the drafting of the minutes confirm that the minutes correctly express what they remember from the course of the proceedings, it should not be, and indeed it is not, within the power of a board - whose members were not even present at the oral proceedings - to compel these persons to deviate from what they consider to be a correct representation of the course of the proceedings. If other participants have a different recollection of the proceedings, this will be taken into account in the appeal against the decision, in so far as it is necessary and decisive.

3.3.3 The appellant argued in this context that it was established case law that a board can order the amendment of minutes if they manifestly and definitely

differed from the actual course of the proceedings. Reference was made to T 1063/02.

The Board is not convinced that this is established case law. In T 1063/02, the board had doubts as to whether the boards of appeal were actually competent in this situation (see Reasons 4.1). In any case, as set out above, the present Board is of the opinion that a board does not have the power to order an amendment of the minutes. Even if the approach in T 1063/02 was correct, it cannot be said in the present case that the minutes "manifestly and definitely differed from the actual course of the proceedings". Rather, the opposition division did not agree with the appellant's recollection of what had been said and instead held that the minutes contained the essentials of the oral proceedings and the relevant statements of the parties, and that the opponent's oral submissions had been correctly summarised.

3.3.4 The appellant argued that the statements in the minutes did not properly represent what was said during the oral proceedings by the appellant (whose representatives had an exact recollection as they had basically read from their pleading notes). In particular, the statements recorded under point 67 of the minutes were not made by the appellant. If these statements were not corrected, they might also be used in national proceedings.

The Board agrees with the appellant that the minutes should only contain statements that were in fact made at the oral proceedings. The Board understands the appellant's argument to be essentially that no remedy exists for correcting these allegedly incorrect statements in the minutes. Indeed, the only possibility

for the appellant to have the minutes corrected is a request for correction before the opposition division. As has been indicated above, the party should indeed request such a correction, if the minutes - in the party's view - contain mistakes and the party intends to appeal the decision (see above, point 3.2.3). The same is true if statements recorded in the minutes may be relevant for national proceedings. In doing so, the party at least demonstrates that it does not agree with the minutes and it puts on record its own recollection of the events at the oral proceedings.

4. Substantial procedural violation - fifth request

The appellant requested a refund of the appeal fee due to a substantial procedural violation under Rule 103(1) EPC.

Under Rule 103(1)(a) EPC, a reimbursement may be ordered if the appeal is allowable. This is not so in the present case. For this reason alone, the request is refused.

Moreover, the Board finds that no substantial procedural violation occurred in relation to the communication. In particular, the opposition division's refusal to correct the decision and the minutes is sufficiently reasoned. In this context, it is assumed, in favour of the appellant, that such a refusal must indeed be reasoned (which under the EPC is only the case if it relates to a decision open to appeal, see Rule 111(2) EPC). The opposition division addressed all of the points raised by the opponent. The opposition division gave reasons as to why it would not make the corrections sought; in particular, it held that the text of the decision was not manifestly different from

that which was intended and that a correction under Rule 140 EPC was not an occasion for reviewing the substance of the decision. In relation to the correction of the minutes, it held that they reflected in a correct manner the essence of the oral submissions and the position taken by the opponent during the oral proceedings (in particular as to point 67 of the minutes).

The Board notes that the appellant also invoked a procedural violation in relation to the main decision, in particular a lack of reasoning. This has no bearing on the present case but may be relevant for the appeal against the main decision (see above, point II.).

5. *Sixth request*

The appellant requested that the Board decide whether there was a limit to the extent of missing reasons for invoking manifest intention as an argument for not correcting the decision, and as an auxiliary measure it requested that the Board indicate this limit if such a limit was deemed to exist.

The Board understands that the request is related to the appellant's view that the opposition division cannot invoke its "manifest intention" in a case such as the present one where it is obvious that the reasons (as to novelty over D14 in this case) are missing from the decision.

The request is rejected.

The task of a board of appeal is to decide whether the appeal can be allowed and whether the appealed decision is to be set aside. In the present case, the

appellant's specific requests which relate to the correction of the reasons provided in the main decision and the setting aside of the communication (first to third requests) are not allowable, for the reasons given above. With respect to the alleged lack of reasoning in the communication (see also point 4. above), the opposition division's argument that the appellant's request amounted to a review of the substance of the decision taken - which is not provided for by Rule 140 EPC - is sufficient. There is thus no need (and no legal basis) for the Board to decide on whether there is - in general - a limit to invoking "manifest intention".

6. Since none of the requests of the appellant is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

2. The request for reimbursement of the appeal fee is refused.

The Registrar: The Chairman:

C. Spira C. Herberhold

Decision electronically authenticated