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**Datasheet for the decision  
of 3 April 2024**

**Case Number:** T 0342/22 - 3.2.07

**Application Number:** 15002361.2

**Publication Number:** 2987716

**IPC:** B62M25/08, B62M9/122

**Language of the proceedings:** EN

**Title of invention:**

REAR DERAILLEUR

**Patent Proprietor:**

SRAM, LLC

**Opponent:**

Shimano Inc.

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 56, 83, 123(2)

RPBA 2020 Art. 12(6)

**Keyword:**

Sufficiency of disclosure - (yes)

Amendments - added subject-matter (no)

Novelty - (yes)

Inventive step - (yes)

Late-filed objection - circumstances of appeal case justify  
admittance (no)

**Decisions cited:**

T 2619/11

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0342/22 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 3 April 2024**

**Respondent:**  
(Patent Proprietor)

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
21 December 2021 concerning maintenance of the  
European Patent No. 2987716 in amended form.**

**Composition of the Board:**

<b>Chairman</b>	G. Patton
<b>Members:</b>	S. Watson
	R. Cramer

## **Summary of Facts and Submissions**

- I. Appeals were filed by both the patent proprietor and the opponent against the decision of the opposition division maintaining European patent No. 2 987 716 in amended form according to the then fifth auxiliary request (also referred to as auxiliary request I-B1 in the decision under appeal).

The opposition division found that the fifth auxiliary request fulfilled the requirements of Articles 54, 56, 83 and 123(2) EPC.

- II. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 30 January 2024, which took into account both parties statements of grounds of appeal and respective replies, as well as the opponent's submissions of 7 July 2023 and the patent proprietor's submissions of 17 May 2023 and 11 September 2023.

The opponent made further submissions with letter of 6 February 2024, and the patent proprietor replied to the board's communication with letter of 27 February 2024.

- III. Oral proceedings before the board took place on 3 April 2024.

The patent proprietor withdrew its appeal during the oral proceedings.

At the conclusion of the oral proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

IV. The final requests of the parties are as follows:

for the opponent ("appellant") that

- the decision under appeal be set aside, and
- the patent be revoked in its entirety.

for the patent proprietor ("respondent") that the appeal be dismissed.

V. The following documents are referred to in this decision:

E1: US 7,467,567 B2  
E2: US 5,480,356 A  
E3: US 6,945,888 B2  
E4: EP 2 093 141 B1  
E5: EP 1 310 423 B1  
E6: EP 1 690 784 A2  
E7: EP 1 588 934 A2  
E8: EP 0 647 558 A1  
E9: EP 1 818 253 A2  
E11: US 5,514,041 A  
A1: Wikipedia article "Drehgeber",  
21 May 2012, (<https://web.archive.org/web/20120529020558/https://de.wikipedia.org/wiki/Drehgeber>).

VI. Independent claim 1 of the main request (auxiliary request I-B1 in the decision under appeal, auxiliary request I-B1a in appeal) reads as follows (feature labelling as used in the decision under appeal and by

both parties, amendments shown with respect to claim 1 as granted):

- F1 "An electronic rear derailleur (10) for a bicycle, comprising:
- F2 a base member (1) for attachment to a frame member of the bicycle;
- F3 a movable member (5) having a cage assembly (8) attached thereto;
- F4 a linkage (92) coupling the movable member (5) to the base member (1)
- F5 and operative to permit movement of the movable member (5) relative to the base member (1);
- F6 a transmission (90) operative to move the movable member (5) relative to the base member (1),
- F7 the transmission (90) including a plurality of gears (57, 58, 59, 60, 61, 62, 32, 64) in a load path
- F8 and an encoder gear (63) receiving rotational input from one of the plurality of gears (57, 58, 59, 60, 61, 62, 32, 64) of the transmission (90); and
- F9 a motor (54) to operate the transmission (90),  
~~characterized in that~~ wherein
- F10 the encoder gear (63) is independent of the load path,
- F11 wherein the transmission (90) includes an output gear (32) and the encoder gear (63) is meshed with the output gear (32),
- F14 wherein the output gear (32) operates over an angular range,
- F15 wherein the encoder gear (63) is sized to rotate an amount approaching but not exceeding 360 degrees over the operating range of the output gear (32)."

VII. Claims 2 and 3 of the main request read as follows:

"2. The electronic rear derailleur of claim 1, further comprising an absolute encoder (77) positioned to sense the position of the encoder gear (63)."

"3. The electronic rear derailleur of claim 1, wherein the output gear (32) operates over a range of about 90 degrees and the encoder gear (63) is about 1/4 the diameter of the output gear (32)."

VIII. The arguments of the parties relevant for the decision are dealt with in detail in the reasons for the decision.

### **Reasons for the Decision**

1. Main request (auxiliary request I-B1 in the decision under appeal - auxiliary request I-B1a in appeal)

1.1 With their reply to the opponent's statement of grounds of appeal the proprietor filed *i.a.* an auxiliary request I-B1, stating that this request corresponded to the claims as upheld by the opposition division. After the opponent in their letter of 7 July 2023 pointed out that this was not the case, the proprietor with letter of 11 September 2023 filed auxiliary request I-B1a that did in fact correspond to the claims as upheld by the opposition division. The board decided to admit this request as both parties had been acting under the assumption that auxiliary request I-B1 was the version as upheld by the opposition division, and the admittance of auxiliary request I-B1a did not introduce



new issues and was therefore not detrimental to procedural efficiency. There was no reason to conclude that the proprietor had waived the right to pursue the claims as upheld by the opposition division in the appeal proceedings.

- 1.2 Main request - claim 1 - novelty (Article 54 EPC) - document E1
  
- 1.3 The opposition division found that document E1 did not disclose feature F15 as the encoder gear rotated more than 360 degrees over the operating range of the output gear 386. The opposition division reasoned that from figure 14 of document E1 it was clear that the encoder gear 382 had to rotate multiple times for one rotation of the input gear 304 (see decision under appeal, point 7.6.2.3, second paragraph).
  
- 1.4 The appellant contested this finding and argued that feature F15 did not limit the scope of the claim as it did not define the operating range of the output gear as being the full or maximum range over which the gear operated, which in any case was dependent on the input from the motor. The operating range was therefore considered to be any arbitrary operating range of the output gear.

In addition, the appellant argued that although document E1 did not explicitly disclose an incremental encoder, figure 14 appeared to show an absolute encoder which was known to operate over an operating range approaching but not exceeding 360 degrees. The required lateral movement of the connected chain guide was so small that a rotation of the encoder gear 382 of more than 360 degrees would not be possible and in addition the encoder was part of the position sensing unit 299

which must be understood as sensing the absolute position and not only changes in the position.

1.5 The board finds that there is no direct and unambiguous disclosure in document E1 of feature F15.

1.5.1 The skilled person would understand from features F14 and F15 that "the operating range" is the maximum angular range that the output gear rotates through in operation. An arbitrary selection of "an operating range" from within the gear operating range, as suggested by the appellant, would not occur to the skilled person based on their common general knowledge as the term "the operating range" is generally understood to refer to the full range of operation.

1.5.2 Document E1 shows an optical position sensing member 370 which rotates integrally with first gear 304 but at a faster rate due to gears 386 and 382 (see E1, column 5, lines 41 to 43). E1 does not mention the operating range of any of the gears in the transmission and an absolute encoder cannot be directly and unambiguously derived from figure 14.

Therefore, as document E1 does not unambiguously disclose any specific operating range for gear 386, it does not disclose that the encoder gear is sized to rotate an amount approaching but not exceeding 360 degrees over the operating range of the output gear.

E1 therefore does not disclose all features of claim 1.

1.6 The appellant has not convincingly demonstrated the incorrectness of the decision under appeal on this point.

2. Claim 1 - novelty (Article 54 EPC) - document E2
  - 2.1 The opposition division found that document E2 did not disclose feature F10 that "the encoder gear (63) is independent of the load path." (see decision under appeal, page 26, final paragraph).
  - 2.2 The respondent argued that also features F8, F11, F14 and F15 were not disclosed in document E2.
  - 2.3 The appellant argued that as there was no definition of the load path or the output gear in claim 1, that the encoder gear in document E2 could be regarded as a section of the shaft 30 or the gear connected to the shaft, the output gear was therefore the upstream gear of the epicyclic gear set 29 to this gear. The load path was considered to stop at the output gear as the load path was regarded as being arbitrarily definable. The operating range was also not defined in the claim so that any arbitrary specific operating range of the output gear which caused the encoder gear to rotate in an amount not exceeding 360 degrees could be used.
  - 2.4 The board agrees with the reasoning of the opposition division (decision under appeal, page 27, first paragraph) that the skilled person when considering the electronic rear derailleur of document E2 (see figure 3) would not arbitrarily define a load path from the motor which stops at a second-to-last gear of the epicyclic reduction gearing 29. The encoder disc 34 is on the output shaft 30 (see figure 3 and column 4, lines 15 to 30), so that even if the final gear of the epicyclic set were arbitrarily defined as the "encoder gear" of feature F8, this gear would not be independent of the load path of the plurality of gears of the

transmission and feature F10 is not disclosed in document E2.

2.5 The appellant has not convincingly demonstrated the incorrectness of the decision under appeal on this point.

3. Claim 1 - novelty (Article 54 EPC) - document E3

3.1 The opposition division found that document E3 did not disclose feature F10 that "the encoder gear (63) is independent of the load path." (see decision under appeal, page 26, final paragraph).

3.2 The appellant argued that in the transmission of E3 (as shown in figures 5 and 7), the load path can be understood as extending from gear 488 to gear 500 so that gear 500 is the output gear. Gear 504 with pivot shaft 452 and brush plate 538 form the encoder gear which meshes with output gear 500.

3.3 The board however again agrees with the reasoning of the opposition division that the skilled person would not understand the transmission of E3 (see figures 5 and 7) as having a load path which stops at gear 500. Gear 500 clearly drives gear 504 which drives the output shaft 452, so that even if gear 504 was considered to be the encoder gear it would not be independent of the load path.

3.4 Therefore, the appellant has not convincingly shown that the opposition division was incorrect on this point.

4. Claim 1 - novelty (Article 54 EPC) - document E4

- 4.1 The opposition division found that feature F10 was not disclosed in document E4 (see decision under appeal, page 26, final paragraph).
- 4.2 The appellant contended that the subject-matter of claim 1 of the main request was not new when either the digital position sensor 66 or the analogue position sensor 64 of document E4 was viewed as the encoder (see statement of grounds of appeal, pages 17 to 19).
- 4.3 In the board's view, if the potentiometer 64 is seen as the encoder, then feature F10 is not disclosed.

The appellant argued that the output gear in this case would be taken to be the penultimate gear of the gear train and the last gear would be the encoder gear.

However, as set out above with respect to documents E2 and E3, the board is of the view that the skilled person would not arbitrarily define the end of the load path at the penultimate gear, the "encoder gear" is then not independent of the load path as required by feature F10.

- 4.4 For the case that the encoder gear is considered to be the gear wheel below the shutter wheel 66a (digital position sensor), then even if, to the benefit of the appellant, the features F8 and F10 were regarded as disclosed, feature F15 would still not be disclosed.

Document E4 does not mention the operating range of the output gear or whether the encoder gear is sized to rotate an amount approaching but not exceeding 360 degrees over the range of the output gear.

4.5 Therefore document E4 either does not disclose feature F10, if the analogue position sensor 64 is regarded as the encoder, or it does not disclose feature F15 if the digital position sensor 66 is regarded as the encoder. The subject-matter of claim 1 is new with respect to this document.

5. Claim 1 - novelty (Article 54 EPC) - document E6

5.1 The opposition division found that feature F10 was not disclosed in document E6 (decision under appeal, point 7.6.2.3).

5.2 The appellant argued that feature F10 is shown in E6 (figure 4) as gear 234 is regarded as the encoder gear and gear 230 is the output gear, whereby the load path is taken to end at gear 230 so that the encoder gear is independent of the load path.

5.3 The board again is of the view that the skilled person would not consider the load path of the transmission of the electronic rear derailleur of E6 as stopping at sixth gear 230, rather than output gear 234. Therefore, even if output gear 234 were defined as the "encoder gear" it would not be independent of the load path.

5.4 Therefore, the appellant has not convincingly shown that the opposition division was incorrect on this point.

6. Main request - claim 1 - inventive step (Article 56 EPC)

6.1 In the decision under appeal, the opposition division found that the subject-matter of claim 1 of auxiliary request I-B1 was inventive with respect to the

combination of the electronic rear derailleur of document E1 and either the common general knowledge of the skilled person or any one of documents E2, E3, E4 or E6 (see decision under appeal, point 7.6.3.3).

7. *E1 and common general knowledge*

7.1 The appellant contested the opposition division's findings and argued that either feature F15 had no technical effect or, if it did, that changing the transmission ratio between two gears was a straightforward design modification.

Further, if, as argued by the respondent, document E1 was seen to disclose an incremental encoder (which rotates more than 360 degrees), then it would be obvious for the skilled person to replace an incremental encoder with an absolute encoder in order to provide a more reliable sensing unit, as only these two options are available.

7.2 The respondent put forward that the objective problem to be solved by feature F15 is to improve the measurement accuracy. The skilled person was aware from their common general knowledge that the motor in E1 would rotate at high speed, this was confirmed in document E1 which referred to higher speed, low torque motors in electronic derailleurs and gear reduction mechanisms (E1, column 1, lines 31 to 34). Document E1 taught to accelerate the motor input further to rotate the encoder gear as fast as possible to improve measurement accuracy.

7.3 The board concludes that the subject-matter of claim 1 is not obvious over a combination of E1 and common general knowledge, for the following reasons.

- 7.3.1 The appellant's argument that feature F15 has no technical effect cannot be followed.

Firstly, the board does not agree that "the operating range" in feature F15 can be interpreted as meaning any arbitrary range of movement within the maximum range of movement of the output gear (see point 1.5.1 above).

Secondly, sizing the encoder gear to rotate an amount approaching but not exceeding 360 degrees over the operating range of the output gear results in a "high amount of resolution" as noted in the contested patent (see paragraph [0081]).

- 7.3.2 The board therefore agrees with the objective technical problem posed by the respondent of improving accuracy of measurement, which the opposition division implicitly agreed with (see decision under appeal, point 7.6.3.2, second paragraph and point 7.6.3.3, first sentence).

- 7.3.3 The appellant argued that it was a straightforward solution for the skilled person, using their common general knowledge, to change the transmission ratio.

It is established case law that to determine whether the claimed invention is obvious it has to be demonstrated not only that the skilled person could change the transmission ration but also that they would be motivated to do so (see CLB, *supra*, I.D.5.).

The appellant has not shown any motivation for the skilled person faced with the above mentioned problem to change transmission ratios between gears in document E1.



7.3.4 The appellant also argued that it was a straightforward solution for the skilled person, using their common general knowledge as shown in document A1, to change an incremental encoder to an absolute encoder.

The skilled person is aware that absolute encoders are more accurate so that they are motivated to use such an encoder in E1.

The appellant argued that changing the shutter wheel of E1 to a single-turn coding disc and changing the transmission ratios in the reduction gear unit would all be obvious for the skilled person.

Alternatively it would be obvious to measure at the end of the gear set, not at the beginning. Figure 13 of E1 showed that the encoder gear was at the same height as the output gear 310, so that it would be straightforward to mesh the encoder gear 382 with the output gear 310 rather than the gear 386.

The board, however, agrees with the reasoning of the opposition division in the decision under appeal, see paragraph bridging pages 30 and 31, that it would not be obvious for the skilled person to replace the encoder of E1 with an absolute encoder as such a replacement would require a number of constructional changes to E1, including reducing the rotation range of the encoder gear.

The board also agrees with the respondent that the reference in E1, column 5, line 60 onwards, does not prompt the skilled person to make the specific changes outlined by the appellant. The passage cited by the appellant refers to broad generic changes to the

device, for example that the "size, shape, location or orientation" of components may be changed as desired. This cannot be regarded as a particular motivation to change the rear derailleur of E1 to include feature F15.

7.4 Therefore, the board agrees with the opposition division in the decision under appeal that the subject-matter of claim 1 of auxiliary request I-B1 is inventive in view of document E1 and the skilled person's common general knowledge.

8. *E1 and any one of documents E2, E3, E4 or E6*

8.1 The opposition division reasoned that documents E2, E3, E4 and E6 showed constructions which were too different to the construction of E1 for the skilled person to consider combining the teaching, and even if the skilled person were to combine the teaching of these documents they would be motivated to place the encoder gear in the load path so that other features of claim 1 would no longer be present (see decision under appeal, page 31).

8.2 According to the appellant, the skilled person combining E1 with any of the encoders taught in E2, E3, E4 or E6 would arrive at the subject-matter of claim 1.

The appellant argued that it would further be obvious for the skilled person to measure the position at the end of the transmission in E1, where all play can be included, as takes place in E2, E3, E4 and E6.

8.3 The board agrees with the opposition division that even if the skilled person were considered to be motivated to combine the teaching of the documents, they would

move the encoder from the "input" to the "output" of the transmission, as taught in documents E2, E3, E4 and E6. The resulting rear derailleurs would then have encoder gears which are not independent of the load path and feature F10 would no longer be present, as set out above (points 2.4, 3.3, 4.3 and 5.3).

8.4 The appellant has therefore not convincingly demonstrated that the opposition division was incorrect on this point.

9. Main request - claim 1 - Article 83 EPC

9.1 The appellant contested the opposition division's findings with respect to sufficiency of disclosure, decided upon by the opposition division for the patent as granted, which was the main request in opposition proceedings (see decision under appeal, point 7.1.1.3).

9.1.1 According to the appellant it was not possible for the encoder gear to be both independent of the load path and also receive rotational input from one of the plurality of gears of the transmission (features F7, F8 and F10), and there was no disclosure in the contested patent of how to size an encoder gear to rotate an amount approaching but not exceeding 360 degrees over the operating range of the output gear (feature F15).

9.2 With respect to features F7, F8 and F10 of claim 1, the board follows the reasoning of the opposition division that the skilled person is able to carry out the invention as they can produce a transmission including a plurality of gears in a load path and an encoder gear receiving rotational input from one of the plurality of gears of the transmission wherein the encoder gear is independent of the load path. The contested patent

describes such an arrangement in figures 15 and 16 as well as in paragraph [0079].

- 9.3 The board also agrees with the opposition division's reasoning that paragraph [0081] of the contested patent describes a concrete example showing how feature F15 can be carried out.

In any case, the person skilled in the art is able, based on their common general knowledge, to provide a gear sized to rotate a certain amount with respect to another gear.

10. Main request - claims 1 and 2 - Article 123(2) EPC

- 10.1 The appellant contested the opposition division's findings, that neither the two-part form of claim 1 (decided upon by the opposition division for the then main request) nor the combination of dependent claims as granted (decided upon for auxiliary request 1 in opposition proceedings) introduced subject-matter which extended beyond the content of the original application documents (see decision under appeal, page 9, fourth to sixth paragraphs and page 14, first to third paragraphs).

- 10.2 The appellant argued that the formulation of the two-part form in claim 1 had led to an extension of subject-matter.

In addition, the introduction of features from claims 3, 4 and 5 as granted into claim 1 of auxiliary request I-B1 led to an extension of subject-matter beyond the content of the application documents as the combination of features of claims 3, 4 and 5 as granted were not disclosed together with those of claim 2 as granted.

10.3 The board agrees with the findings of the opposition division on both points.

10.3.1 The original wording of claim 1 clearly requires that the encoder gear receives rotational input from one of the plurality of gears of the transmission, not that the transmission receives rotational input from one of the gears as argued by the appellant. Claim 1 as originally filed clearly refers to the transmission having a plurality of gears in a load path and an encoder gear, where the encoder gear is independent of the load path and receives rotational input from one of the plurality of gears. The introduction of the two-part form did not change the content of the claim.

The amendment to claim 1 therefore does not contravene Article 123(2) EPC.

10.4 It is correct that claims 2 and 3 as originally filed were both formulated as being dependent only on claim 1, but it is established case law that literal support for an amendment is not required, it must be assessed only whether the amendment does not go beyond what is directly and unambiguously derivable for the skilled person, taking into account the application as a whole.

The structure of the claims should not be disproportionately used to the detriment of the disclosure as a whole (see CLB, *supra*, II.E.1.3.1 and 1.3.2, in particular T 2619/11, Reasons 2.1).

10.4.1 The opposition division reasoned that the description as originally filed on page 6, line 20 onwards, disclosed that the features of claims 2 and 3 may be combined.

The appellant argued that this passage could not be considered the basis for the amendment as the transmission and motor were only said to be optional components in this part of the description and it did not mention the cage assembly which was found in claim 1 as originally filed.

However, the board follows the reasoning of the opposition division and the arguments of the respondent that claim 1 as originally filed contained the features of the transmission, motor, and cage assembly in combination with the features of claim 2 and of claim 3 as originally filed, and the passage on page 6, line 20 onward, discloses in general the combination of features of claims 2 and 3.

The passage on page 15, lines 18 to 31 of the application documents as originally filed, also discloses that the feature of an encoder gear which is sized to rotate approaching but not exceeding 360 degrees over the operating range of the output gear (claims 3, 4 and 5 as originally filed) may be implemented in conjunction with an absolute encoder (claim 2 as originally filed), therefore the skilled person directly and unambiguously derives that a rear derailleur with all these features is disclosed in the application as originally filed.

Therefore, claim 2 of the main request also fulfils the requirements of Article 123(2) EPC.

11. Main request - further objections

11.1 In the appeal proceedings, the appellant raised the following further objections to the claims of auxiliary request I-B1a:

- lack of sufficiency (Article 83 EPC) of claims 2 and 3;
- lack of novelty of claim 1 with respect to E7 or E11;
- lack of inventive step of claim 1 in view of the combination of document E1 with any one of E5, E7 or E8;
- lack of inventive step of claim 1 in view of document E7 and common general knowledge of the skilled person or documents E3, E4, E5, E6 and E8;
- lack of inventive step of claim 1 starting from E2 or E4 with common general knowledge or in combination with any one of E3 to E8;
- lack of inventive step of claim 1 starting from E3 or E6 with common general knowledge or in combination with any one of E1, E4 or E7;
- lack of inventive step starting from E11.

11.2 The board notes that these objections were raised for the first time in the appeal proceedings.

11.3 According to Article 12(6), second sentence, RPBA, a board shall not admit objections which should have been submitted during the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

11.4 The appellant argued that the set of claims of auxiliary request I-B1a had been filed at such a very late stage of the oral proceedings before the opposition division that it had not been possible to react fully to the new request. According to the

appellant, even if the request contained only a combination of features of the claims as granted it was not possible to prepare for all combinations of granted claims in advance.

- 11.5 The board notes that although the auxiliary request was indeed filed at a late stage of the the oral proceedings (see minutes of the oral proceedings before the opposition division, points 15.3 and 15.4), it consisted only of a combination of granted claims and, as argued by the respondent, the set of claims as granted consisted of a total of six claims. It therefore could reasonably be expected that the appellant was already familiar with the subject-matter and able to react to the new request.

In addition, as also argued by the respondent, the appellant did not request a postponement of the oral proceedings nor indicate that it was unable to respond fully to the new request. Therefore, it appeared that the appellant had been able to present its complete case to the opposition division.

- 11.6 Claim 1 of auxiliary request I-B1a consists of the features of claims 1, 3, 4 and 5 as granted, whereby feature F15, found by the opposition division to be the single distinguishing feature with respect to E1, corresponds to granted claim 5.

In its notice of opposition, the appellant argued only that the subject-matter of claim 5 as granted was obvious for the skilled person using their common general knowledge, In its submissions of 14 January 2021 the appellant merely referred to its arguments set out in the notice of opposition for the dependent claims.



The appellant only raised specific objections under Article 100(b) EPC to claims 1 and 5 as granted, but not to the features of claims 2 and 6 as granted, which correspond to claims 2 and 3 of the current main request (see notice of opposition, pages 5 and 6; submissions of 14 January 2021, pages 2 to 5).

At the oral proceedings before the opposition division, the appellant raised objections of lack of novelty with respect to documents E1, E2, E3, E4 and E6 (see minutes of the oral proceedings, points 16.5, 16.11, 16.15 and 16.19) as well as lack of inventive step starting from E1 in combination with common general knowledge, E3, E4 or E6 (see minutes of the oral proceedings before the opposition division, point 17.8). The appellant then confirmed that it had no further novelty and inventive step objections (minutes, points 16.22 and 17.13).

11.7 The board is of the view that the appellant could and should have raised all its objections before the opposition division. The auxiliary request, although late-filed, was a combination of the granted independent claim together with only complete dependent claims from the limited number of granted claims, and the appellant did not request that the proceedings be postponed nor indicate in any way that it was unable to present its complete case at the oral proceedings before the opposition division.

In addition, even though the request itself was late-filed, as the appellant had requested revocation of the patent in its entirety, it had also had the opportunity to put forward objections to the dependent claims with its notice of opposition and submissions of

14 January 2021, not only during the oral proceedings before the opposition division.

11.8 There are therefore no circumstances in the present case justifying the admittance of the further objections.

Accordingly, the board did not admit the appellant's further objections into the appeal proceedings (Article 12(6), second sentence, RPBA).

12. In conclusion, as the admissibly raised objections do not prejudice the maintenance of the patent in the amended form found by the opposition division to meet the requirements of the EPC, the appeal is to be dismissed.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated