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**Datasheet for the decision
of 19 June 2024**

Case Number: T 0081/23 - 3.2.07

Application Number: 09836640.4

Publication Number: 2373747

IPC: B24D11/00, C09K3/14

Language of the proceedings: EN

Title of invention:

SHAPED ABRASIVE PARTICLES WITH A SLOPING SIDEWALL

Patent Proprietor:

3M Innovative Properties Company

Opponent:

Saint-Gobain Abrasives, Inc.

Headword:

Relevant legal provisions:

EPC Art. 83, 100(c), 123(2), 54
RPBA 2020 Art. 12(6) sentence 2

Keyword:

Sufficiency of disclosure - (yes)
Grounds for opposition - amendments - added subject-matter
(yes)
Amendments - auxiliary request 0B - allowable (yes)
Novelty - auxiliary request 0B (yes)
Late-filed objections - should have been submitted in first-
instance proceedings (yes) - circumstances of appeal case
justify admittance (no) - admitted (no)

Decisions cited:

T 0182/89, T 0019/90

Catchword:



Beschwerdekammern
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Case Number: T 0081/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 19 June 2024

Appellant: 3M Innovative Properties Company
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 November 2022 concerning maintenance of the
European Patent No. 2373747 in amended form.**

Composition of the Board:

Chairman E. Mille
Members: A. Cano Palmero
A. Beckman

Summary of Facts and Submissions

- I. The patent proprietor and the opponent (appellants) lodged appeals within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 2 373 747 in amended form on the basis of the then auxiliary request 0B.
- II. An opposition was filed against the patent in its entirety and based on the grounds for opposition pursuant to Articles 100(a), (b) and (c) EPC (novelty, inventive step, sufficiency of disclosure and added subject-matter).
- III. In preparation for oral proceedings, scheduled upon the appellants' requests, the board communicated its preliminary assessment of the case to the parties by means of a communication pursuant to Article 15(1) RPBA. The board indicated that both appeals were likely to be dismissed.
- IV. In response to the communication under Article 15(1) RPBA, the patent proprietor and the opponent submitted arguments in the substance with letters dated 17 May 2024 and 23 May 2024 respectively.
- V. Oral proceedings before the board took place on 19 June 2024. At the conclusion of the proceedings the decision was announced. Further details of the proceedings can be found in the minutes thereof.

VI. The following **documents** referred to in the decision under appeal are mentioned in the present decision:

- D1:** US 3,481,723 A;
- D2:** US 6,319,108 B1;
- D3:** US 2005/0060941 A1;
- D4:** EP 0 656 319 A2;
- D5:** US 5,584,896 A;
- D6:** US 5,549,962 A;
- D12:** US 5,366,523 A;
- D15:** <https://de.wikipedia.org/wiki/Aluminiumoxid>.

VII. The opponent requested

that the decision under appeal be set aside
and
that the patent be revoked,
additionally that the case be remitted to the first
instance for inventive step considerations based on
any one of the documents D1 to D3, D5 and D6
together with the common general knowledge.

VIII. The patent proprietor requested

that the decision under appeal be set aside, and
that the patent be maintained as granted (main
request or "auxiliary request 0"),
or, in the alternative,
that the patent be maintained in amended form
according to one of the sets of claims filed as
auxiliary requests 0^(I), 0^(II) and 0^(III),
or, in the alternative,
that the opponent's appeal be dismissed, *i.e.* that
the patent be maintained in the form held by the
opposition division to meet the requirements of the
EPC (auxiliary request 0B),

or, in the alternative,
that the patent be maintained in amended form
according to one of the sets of claims filed as
auxiliary requests 0B^(I) to 7C in the order as
detailed under section A, on page 2, of their
letter dated 17 May 2024.

IX. The lines of argument of the parties relevant for the
present decision are dealt with in detail in the
reasons for the decision.

X. **Claim 1** of the **main request** (*i.e.* according to the
patent as granted) with the feature labelling used by
the parties reads as follows:

"1. Abrasive particles comprising:
1.1 shaped abrasive particles (20)
1.2 each having a sloping sidewall (22, 50, 54, 58),
1.3 each of the shaped abrasive particles (20)
comprising alpha alumina and
1.4 having a first face (24) and a second face (26)
separated by a thickness, t ,
1.5 wherein the shaped abrasive particles (20) have a
predetermined geometric shape that substantially
replicates the mold cavity used to form the shaped
abrasive particle (20),
1.6 the shaped abrasive particles (20) further
comprising either:
a draft angle α between the second face (26) and
the sloping sidewall (22, 50, 54, 58), and the
draft angle α is between 95 degrees to 130 degrees,
or
1.7 the sloping sidewall (22, 50, 54, 58) having a
radius, R , between the first face (24) and the
second face (26) and the radius, R , is between 0.5
to 2 times the thickness t ."

XI. **Claim 1** of **auxiliary request 0^(I)** reads as follows:

"Abrasive particles comprising:
shaped abrasive particles (20) each having a sloping
sidewall (22, 50, 54, 58), each of the shaped
abrasive particles (20) comprising alpha alumina
and having a first face (24) and a second face (26)
separated by a thickness, t ,
wherein the shaped abrasive particles (20) have a
predetermined geometric shape that substantially
replicates the mold cavity used to form the shaped
abrasive particle (20),
the shaped abrasive particles (20) further comprising
either:
a draft angle α between the second face (26) and the
sloping sidewall (22, 50, 54, 58), and the draft
angle α is between 95 degrees to 130 degrees, so
that the first face (24) is larger than the second
face (26), wherein the perimeter (29) of the first
face (24) and the perimeter of the second face (26)
have the same geometric shape, or
the sloping sidewall (22, 50, 54, 58) having a radius,
 R , between the first face (24) and the second face
(26) and the radius, R , is between 0.5 to 2 times
the thickness t ."

XII. **Claim 1** of **auxiliary request 0^(II)** reads as follows:

"Abrasive particles comprising:
shaped abrasive particles (20) each having a sloping
sidewall (22, 50, 54, 58), each of the shaped
abrasive particles (20) comprising alpha alumina
and having a first face (24) and a second face (26)
separated by a thickness, t , wherein the sloping

sidewall (22, 50, 54, 58) forms a perimeter (29) of the first face (24) and the second face (26), wherein the shaped abrasive particles (20) have a predetermined geometric shape that substantially replicates the mold cavity used to form the shaped abrasive particle (20), the shaped abrasive particles (20) further comprising either:
a draft angle α between the second face (26) and the sloping sidewall (22, 50, 54, 58), and the draft angle α is between 95 degrees to 130 degrees, or the sloping sidewall (22, 50, 54, 58) having a radius, R, between the first face (24) and the second face (26) and the radius, R, is between 0.5 to 2 times the thickness t."

XIII. **Claim 1** of **auxiliary request 0^(III)** reads as follows:

"Abrasive particles comprising:
shaped abrasive particles (20) each having a sloping sidewall (22, 50, 54, 58), each of the shaped abrasive particles (20) comprising alpha alumina and having a first face (24) and a second face (26) separated by a thickness, t,
wherein the shaped abrasive particles (20) have a predetermined geometric shape that substantially replicates the mold cavity used to form the shaped abrasive particle (20), wherein a mold including the mold cavity comprises a top surface, wherein the mold cavity has a bottom surface and a sloping sidewall such that the bottom surface is smaller than an opening in the top surface that provides access to the cavity, and wherein the mold cavity has a substantially uniform depth dimension,
the shaped abrasive particles (20) further comprising either:

a draft angle α between the second face (26) and the sloping sidewall (22, 50, 54, 58) of the shaped abrasive particles (20), and the draft angle α is between 95 degrees to 130 degrees, or the sloping sidewall (22, 50, 54, 58) of the shaped abrasive particles (20) having a radius, R , between the first face (24) and the second face (26) and the radius, R , is between 0.5 to 2 times the thickness t ."

XIV. Claim 1 of auxiliary request 0B (*i.e.* according to the patent as maintained by the opposition division) reads as follows:

"Abrasive particles comprising:
shaped abrasive particles (20) each having a sloping sidewall (22, 50, 54, 58), each of the shaped abrasive particles (20) comprising alpha alumina and having a first face (24) and a second face (26) separated by a thickness, t ,
wherein the shaped abrasive particles (20) are ceramic abrasive particles and have a predetermined geometric shape that substantially replicates the mold cavity used to form the shaped abrasive particle (20),
the shaped abrasive particles (20) further comprising either:
a draft angle α between the second face (26) and the sloping sidewall (22, 50, 54, 58), and the draft angle α is between 95 degrees to 130 degrees, or
the sloping sidewall (22, 50, 54, 58) having a radius, R , between the first face (24) and the second face (26) and the radius, R , is between 0.5 to 2 times the thickness t ."

XV. **Claim 8** of **auxiliary request 0B** (*i.e.* according to the patent as maintained by the opposition division) reads as follows:

"A coated abrasive article (40) comprising
the abrasive particles of claim 1 and a make coat
(44) on a first major surface (41) of a backing
(42) and
a majority of the shaped abrasive particles (20)
adhered to the make coat (44) by the sloping
sidewall (22, 50, 54, 58) and having an
orientation angle β between 50 degrees to 85
degrees, the shaped abrasive particles (20)
forming an abrasive layer, the abrasive layer
coated with a size coat (46), and wherein the
abrasive layer comprises at least 5 percent by
weight of the shaped abrasive particles (20)."

XVI. Since the wording of the claims of auxiliary requests 0B^(I) to 5C^(III) and 6 to 7C is not relevant for the present case, there is no need to reproduce it here.

Reasons for the Decision

Patent proprietor's appeal

1. *Patent as granted (main request) - Added subject-matter, Articles 100(c) and 123(2) EPC*
- 1.1 The patent proprietor contested the reasoned finding of the opposition division of point 3.1.1 of the reasons for the decision under appeal, that the omission of the feature that the shaped abrasive particles are **ceramic** abrasive particles in claim 1 as granted extended beyond the original disclosure, contrary to the requirements of Article 123(2) EPC.

- 1.1.1 In particular, the patent proprietor argued that the presence of alpha alumina as required by claim 1 as granted made clear for the skilled person that the shaped abrasive particles comprise a ceramic material and are thus to be understood as "ceramic abrasive particles" as originally filed. Moreover, the patent explicitly defined in paragraph [0014] (which corresponds to the originally filed page 4, lines 15 to 22) that the term "shaped abrasive particle" meant a ceramic abrasive particle. In sum, the omission of the feature that the shaped abrasive particles are of a ceramic nature did not extend beyond the original disclosure.
- 1.2 The board disagrees. As correctly found by the opposition division, the mere fact that the abrasive particles comprise a ceramic material such as alpha alumina does not automatically result in that the abrasive particles are ceramic abrasive particles. It follows that the subject-matter of claim 1 as granted covers also shaped abrasive particles which contain alpha alumina but could be considered as non-ceramic particles. This possibility is not deprived of technical sense and the claim itself appears to be clear in this respect, so that there is no need for the skilled person to consult the description in order to interpret the claim.
- 1.3 In sum, the patent proprietor has not convincingly demonstrated the incorrectness of the finding of the decision under appeal, that the omission of the term "ceramic" in claim 1 results in an extension beyond the application as originally filed.

2. *Auxiliary requests 0^(I), 0^(II) and 0^(III) - Added subject-matter, Article 123(2) EPC*

2.1 The deficiency with respect to added subject-matter in claim 1 of the main request was also present in claim 1 of each of auxiliary requests 0^(I), 0^(II) and 0^(III). The patent proprietor provided no further substantive arguments in relation thereto.

2.2 Consequently the board concludes that, for the same reasons as for the main request, claim 1 of none of auxiliary requests 0^(I), 0^(II) and 0^(III) meets the requirements of Article 123(2) EPC.

3. In view of the conclusions above, the patent proprietor's appeal is to be dismissed.

Opponent's appeal

4. *Patent as maintained by the opposition division (auxiliary request 0B) - Sufficiency of disclosure, Article 83 EPC*

4.1 The opponent argued that claim 1, and in particular that the feature that the shaped abrasive particles comprises

"a draft angle α between the second face (26) and the sloping sidewall (22, 50, 54, 58), and the draft angle α is between 95 degrees to 130 degrees"

was not sufficiently disclosed.

4.1.1 The patent proprietor indicated that this objection was not raised by the opponent during opposition proceedings.

- 4.1.2 The opponent contested the patent proprietor's allegation and argued that this objection had been already raised during opposition proceedings.
- 4.1.3 The board however notes that, according to the minutes of the oral proceedings before the opposition division, only the sufficiency of disclosure of the subject-matter of claim 8 was discussed (see point 4.2 of the minutes). Being asked by the chair of the opposition division, the parties expressed they had no further arguments (see point 4.2.3 of the minutes). The board understands from this course of action that the opponent did not maintain any objection on sufficiency of disclosure for the subject-matter of claim 1. The opposition division indeed did not decide on this matter.
- 4.1.4 According to Article 12(6), second sentence, RPBA, the board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.
- 4.1.5 The board is of the view that this objection should have been maintained in opposition proceedings to allow the patent proprietor to take position on it and the opposition division to decide on the matter. In the absence of any justifying circumstances submitted by the opponent, the board does not admit the above objection directed to lack of sufficiency of disclosure of the subject-matter of claim 1 into the proceedings pursuant to Article 12(6) RPBA.

- 4.2 The opponent further argued that the opposition division erred in its finding that the invention according to the subject-matter of claim 8 as maintained by the opposition division, which required that a majority (*i.e.* more than 50%) of the shaped abrasive particles to be adhered to the make coat by the sloping sidewall, was sufficiently disclosed.
- 4.2.1 In particular, the opponent held that the patent in suit failed to disclose any specific disposition method which ensured that more than 50% of the shaped abrasive particles were adhered by exactly their only sloping sidewall to the make coat. Such a disclosure, which was absent in claim 8 as granted, was necessary in order to carry out the invention, since based on the statistics far less than 50% of the particles will be adhered to the make coat by the sloping sidewall otherwise. In the opinion of the opponent, only a necessary pre-selection of very specific sidewall(s) would enable the skilled person to carry out the invention according to claim 8. Since this necessary structural limitations were absent in the patent, the invention according to claim 8 was not sufficiently disclosed.
- 4.2.2 In addition, while paragraphs [0023] and [0035] of the opposed patent taught that an upper limit for the amount of the shaped abrasive particles to be applied on the backing was mandatory for the claimed technical effects, such an upper limit was absent in claim 8, so that the skilled person could not put into practice the invention over the whole scope of the claim.
- 4.2.3 The board is not persuaded by the opponent's arguments. According to the jurisprudence of the Boards of Appeal, an objection of lack of disclosure presupposes that there are serious doubts substantiated by verifiable

facts. **The burden of proof is upon the opponent** to establish on the balance of probabilities that a person skilled in the art, using his common general knowledge, would be unable to carry out the invention (see the Case Law of the Boards of Appeal of the European Patent Office, 10th Edition, 2022, II.C.9, first two paragraphs, in particular in relation to T 19/90 and T 182/89).

4.2.4 To this point, the opponent argued that the above presented arguments were comprehensible and plausible and as such amounted to serious doubts. In addition, the skilled person, wishing to carry out the invention according to claim 8, would be confronted with an undue burden of experimentation. In consequence the burden of proof should be shifted to the patent proprietor to demonstrate that the invention could be carried out.

4.2.5 The board disagrees and rather concurs with the patent proprietor that the opponent's argument that under certain circumstances the skilled person would end up with coated abrasive articles which do not fall within the scope of claim 8 cannot amount to serious doubts that the claimed invention cannot be carried out thereby justifying a successful objection of lack of sufficiency of disclosure. Furthermore, the board is satisfied with the patent proprietor's argument that when using electrostatic coating as taught by the patent in suit, the skilled person would be able to modify such an electrostatic coating in order to increase the likelihood of the particles being attached by a predetermined sidewall. In addition, the opponent conceded that under a pre-selection of very specific sidewall(s) the invention according to claim 8 as maintained could be carried out by the skilled person. The fact that these alleged necessary features are

absent in the claim does also not result in a lack of sufficiency of disclosure.

4.2.6 Finally, with regard to the opponent's argument that claim 8 could cover coated abrasive articles that would not be in place of delivering the claimed technical effects, the board notes that even if this could be true, the skilled person would immediately rule out these non-working embodiments as not forming part of the scope of protection of claim 8.

4.2.7 In view of the above, the board concludes that the invention according to the subject-matter of claim 8 is sufficiently disclosed and therefore meets the requirements of Article 83 EPC.

5. *Patent as maintained by the opposition division (auxiliary request 0B) - Novelty, Article 54 EPC*

5.1 In point B.4.4 of its statement setting out the grounds of appeal, the opponent argued that document **D4** took away novelty of the subject-matter of claim 1 as maintained. Further, in point B.3.1.15 of its statement setting out the grounds of appeal and in point 2 of its reply to the patent proprietor's statement setting out the grounds of appeal, the opponent argued that the Rowenhorst particles of **D12** "*might even be considered novelty-destroying for claim 1 as maintained*".

5.1.1 The board notes that, as acknowledged by the opponent, the objection based on D4 was not addressed in the decision under appeal. It does not appear from the minutes of the oral proceedings before the opposition division that this objection was maintained and/or relied upon by the opponent to attack novelty of claim 1 of auxiliary request 0B. In addition, the objection

based on D12 has been raised for the first time during appeal proceedings.

5.1.2 The board again underlines that according to Article 12(6), second sentence, RPBA, the board shall not admit objections which should have been submitted, or which were no longer maintained, in the opposition proceedings, unless the circumstances of the appeal case justify their admittance.

5.1.3 The board is convinced that these objections should have been submitted and/or maintained in opposition proceedings to allow the patent proprietor to take position on them and the opposition division to decide on the respective matters. In the absence of any justifying circumstances submitted by the opponent, the board does not to admit the novelty objections based on document D4 or D12 into the proceedings pursuant to Article 12(6) RPBA.

5.2 The opponent argued that the opposition division erred in its finding (see points 4.4.2 and 4.4.3 of the reasons for the decision under appeal) that **documents D1 and D2** did not disclose the feature "*each of the shaped abrasive particles (20) comprising alpha alumina*".

5.2.1 According to the opponent, the grains disclosed in D1, Example 1 and D2, column 6, lines 54 to 61, which consist of Al_2O_3 and subjected to a firing step would inevitably result in at least a small amount of alpha alumina. This would be also confirmed by the Wikipedia article of D15 which states gamma alumina turns into alpha alumina at 800°C . According to the opponent, alpha alumina is the most stable form that could only be avoided after subjecting Al_2O_3 to a firing step with

dedicated measures; otherwise this crystal structure is inevitably achieved. The opponent further argued that, according to D15, alpha alumina is the standard material for abrasive particles and as such D1 and D2 must necessarily contain at least a minimum amount of alumina and therefore each of these documents at least implicitly anticipates feature 1.3.

5.2.2 The board disagrees. In the first place, it can be concurred with the opposition division that neither D1 nor D2 specifically refer to gamma alumina, so that the further reference of D15 that gamma alumina turns into alpha alumina lacks relevance.

5.2.3 In the second place, the board is not convinced that by firing Al_2O_3 to pyrometric cone to induce sintering as in D1 or D2 always guarantees the formation of alpha alumina, even in a minimum amount as alleged by the opponent. The board is rather of the view that crystal structure of alumina formed during a sintering process might depend on various factors, including not only the temperature, but also the heating/cooling rates among others. It follows that, in the absence of further details provided by D1 or D2, it cannot be directly and unambiguously derived from these documents that alpha alumina is necessarily present in the abrasive particles of D1 or D2.

5.2.4 In consequence of the above, the board concludes that the subject-matter of claim 1 as maintained by the opposition division is new over D1 and D2.

5.3 The opponent further disputed the reasoned finding of the opposition division summarised in point 4.4.5 of the reasons for the decision under appeal, that **document D3** disclosed the subject-matter of claim 1 as

maintained. In particular, the opposition division found that at least the feature

"the shaped abrasive particles (20) are ceramic abrasive particles and have a predetermined geometric shape that substantially replicates the mold cavity used to form the shaped abrasive particle (20)"

was not anticipated by any of these documents.

- 5.3.1 In particular, the opponent argued that the abrasive components 120 of D3 had the same function as the shaped abrasive particles of claim 1 as maintained, and as such take over novelty of feature 1.5. The opponent held that since the components 120 of D3 comprise abrasive ceramic coating which could constitute up to 90% weight (see paragraph [0048]) they could be considered as ceramic components in its whole.
- 5.3.2 The board is not persuaded by the opponent's arguments and rather follows the finding of the opposition division that the composites of D3 cannot be considered as abrasive ceramic particles and are rather formed by abrasive particles distributed in a ceramic binder. Indeed, as correctly indicated by the respondent, D3 states that the abrasive composites 120, 122 are formed by coating a slurry comprising abrasive particles dispersed in an organic binder (see paragraphs [0016], [0073] and [0076]).
- 5.3.3 The board is thus of the view that the composites 120, 122 and the abrasive particles 140 of D3 relate to different entities. The board does not follow the opponent in its view that, just because a part of the composite is ceramic (in this case the abrasive particles 140), the whole composite is to be consider

as ceramic in its entirety. In other words, the composites of document D3 cannot be the ceramic abrasive particles according to claim 1 as maintained, which can only be compared to the disclosed abrasive particles 140 of this document. Since D3 is silent on the geometric shape of the disclosed abrasive particles 140, the board concludes that feature 1.5 is not anticipated by D3, so that the subject-matter of claim 1 as maintained by the opposition division is novel over this document.

6. *Patent as maintained by the opposition division (auxiliary request 0B) - Inventive step, Article 56 EPC - Admittance of the objections, Article 12(6) RPBA*

6.1 The opponent argued that the subject-matter of claim 1 of the patent as maintained lacked inventive step starting from **D1, D2, D3, D5** or **D6** as closest prior art in combination with the common general knowledge.

6.2 The patent proprietor indicated that these attacks were not relied upon by the opponent in opposition proceedings. Indeed, in the framework of inventive step of auxiliary request 0B the decision under appeal merely dealt with an objection starting from document D5 as closest prior art in combination with the teaching of D2.

6.3 The opponent held that, with respect to the attacks on lack of inventive step starting from D5 or D6, these were already raised during opposition proceedings, namely with the notice of opposition, point III.4.2. According to the opponent, these attacks were never abandoned. Furthermore, it was apparent from the minutes of the oral proceedings before the opposition division that the opponent did not actively withdraw

these inventive step attacks. In contrast to the discussion held on Article 83 EPC, the chair of the opposition division did not ask the opponent whether there were further arguments concerning Article 56 EPC. In addition, the opponent held that the inventive step objections starting from D5 or D6 in combination with the common general knowledge were *prima facie* relevant and therefore should be admitted into the appeal proceedings.

- 6.4 With respect to the attacks based on documents D1, D2 and D3 as closest prior art in combination with the common general knowledge the opponent, referring to point 4.1.13 of its statement setting out the grounds of appeal and to its letter of 12 May 2022, page 6, point I.3, argued that these objections were based on the same thoughts as already provided and did not constitute a major amendment.
- 6.5 The board is not convinced by the reasons provided by the opponent for the following reasons. According to Article 12(6), second sentence, RPBA, as already mentioned before, the board shall not admit objections which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.
- 6.6 In the case at hand, the board notes that the objections raised in the notice of opposition or during the written procedure of the opposition proceedings were logically directed against the patent as granted (main request in appeal proceedings). The relevant question is not whether the objections against the main request were maintained or not, but rather whether these objection were raised against auxiliary request

0B. As it is apparent from the decision under appeal and the minutes of the oral proceedings before the opposition division, the only inventive step objection raised by the opponent against auxiliary request 0B was starting from document D5 as closest prior art in combination with the teaching of D2.

- 6.7 The board is of the view that the objections starting from D1, D2, D3, D5 or D6 in combination with the common general knowledge should have been submitted in opposition proceedings, at least during the oral proceedings before the opposition division, to allow the patent proprietor to take position on it and the opposition division to decide on the matter.
- 6.8 In this sense, the board notes the alleged *prima facie* relevance of the attacks is generally not *per se* a consideration that can amount to justifying circumstances for the admittance of the objections, specially considering that the main aim of appeal proceedings is that of reviewing the decisions of the administrative departments of the EPO (cf. Article 12(2) RPBA). The board therefore does not consider it appropriate that, in the present case, the opponent starts a complete fresh case in appeal with regard to auxiliary request 0B, thereby avoiding having a decision from the opposition division.
- 6.9 In the absence of any convincing justifying circumstances submitted by the opponent that could support their admittance, the board does not admit the above objections based on D1, D2, D3, D5 or D6 as closest prior art in combination with the common general knowledge into the proceedings under Article 12(6), second sentence RPBA, since they should have been raised during opposition proceedings.

7. Consequently, the opponent's request to remit the case to the first instance for inventive step considerations based on any one of the documents D1 to D3, D5 and D6 in combination with the common general knowledge is not allowed.

8. It follows from the above that the opponent has not provided convincing and/or admissible objections that could demonstrate the incorrectness of the decision under appeal that auxiliary request 0B meets the requirements of the EPC. The opponent's appeal is thus to be dismissed.

Order

For these reasons it is decided that:

Both appeals are dismissed.

The Registrar:

The Chairman:



G. Nachtigall

E. Mille

Decision electronically authenticated