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Datasheet for the decision of 22 July 2025

Case Number: T 1063/23 - 3.2.05

Application Number: 16888450.0

Publication Number: 3337666

B41J3/01, B41J3/28, B41J15/04 IPC:

Language of the proceedings: EN

Title of invention:

Corrugator control information on a box liner

Patent Proprietor:

Hewlett-Packard Development Company, L.P.

Opponent:

SCHURACK, Eduard

Relevant legal provisions:

EPC Art. 54, 111(1) RPBA 2020 Art. 11, 12(4), 12(6)

Keyword:

Novelty - main request (no) - first, second and third auxiliary requests (no)

Fourth auxiliary request - admissibly raised and maintained (yes)

Remittal (yes)

Decisions cited:

T 0410/96, T 1173/97, T 0859/17, G 0001/19



Beschwerdekammern Boards of Appeal

Chambres de recours

Boards of Appeal of the European Patent Office Richard-Reitzner-Allee 8 85540 Haar GERMANY Tel. +49 (0)89 2399-0

Case Number: T 1063/23 - 3.2.05

DECISION
of Technical Board of Appeal 3.2.05
of 22 July 2025

Appellant I: Hewlett-Packard Development Company, L.P.

(Patent Proprietor) 10300 Energy Drive Spring TX 77389 (US)

Representative: Haseltine Lake Kempner LLP

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Appellant II: SCHURACK, Eduard
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Representative: Hofstetter, Schurack & Partner

Patent- und Rechtsanwaltskanzlei

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Decision under appeal: Interlocutory decision of the Opposition

Division of the European Patent Office posted on 21 April 2023 concerning maintenance of the European Patent No. 3 337 666 in amended form

(Article 101(3)(a) EPC).

Composition of the Board:

Chairman P. Lanz
Members: M. Holz
M. Blasi

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Summary of Facts and Submissions

I. The patent proprietor (appellant I) and the opponent (appellant II) both filed an appeal against the opposition division's interlocutory decision finding that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, European patent No. 3 337 666 (the patent) as amended according to auxiliary request 2 and the invention to which it related met the requirements of the EPC.

In the decision under appeal, the opposition division concluded, *inter alia*, that neither the subject-matter of claim 1 of the main request nor that of claim 1 of auxiliary request 1 was new in view of document D16 but that the subject-matter of claim 1 of auxiliary request 2 was new in view of this document.

With its statement of grounds of appeal, appellant I filed sets of claims of a fifth and sixth auxiliary request (later renumbered as the eighth and ninth auxiliary request, respectively) and an edited version of document D16 (document D16c).

With its statement of grounds of appeal, appellant II re-submitted documents D1 to D24 which had been filed in the opposition proceedings.

II. Appellants I and II both filed a reply to the other party's statement of grounds of appeal. With its reply, appellant I filed sets of claims of third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh auxiliary requests.

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Appellant I also filed further substantive submissions by letters dated 22 January 2024, 24 October 2024 (which included an annex) and 30 April 2025.

Appellant II filed further substantive submissions by letters dated 25 July 2024, 28 February 2025 and 14 July 2025.

In a communication under Article 15(1) RPBA issued on 21 March 2025, the board provided its preliminary opinion on the case.

III. Oral proceedings before the board, which had been scheduled at the request of the parties, were held on 22 July 2025.

IV. Final requests

Appellant I requested

- that the decision under appeal be set aside and that the patent be maintained as amended on the basis of the set of claims of the main request or first auxiliary request underlying the decision under appeal, or alternatively
- that appellant II's appeal be dismissed, implying that the patent be maintained as amended according to the second auxiliary request underlying the decision under appeal, or further alternatively
- that the case be remitted to the opposition division for further prosecution, or further alternatively
- that the decision under appeal be set aside and that the patent be maintained as amended on the basis of the set of claims of one of the third to

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eleventh auxiliary requests as filed with the reply to appellant II's appeal.

Appellant II requested that the decision under appeal be set aside and that the patent be revoked.

Appellant II also requested that the case not be remitted to the opposition division.

V. Document D16 (WO 2017/051146 A1), which was submitted during the opposition proceedings, is cited in this decision.

VI. Claim versions

Claim 1 of appellant I's main request reads as follows (with feature numbering used by the board included in square brackets).

- "[1.1] A printing system (10), comprising:
- [1.2] a print engine (14);
- [1.3] a print engine controller (24)
- [1.3.1] operatively connected to the print engine (14) to print, on a single substrate web (18):
- [1.4] graphics for multiple different layouts (46, 52) of corrugated boxes to be lined with the web (18), and [1.5] machine readable images (44A-44D; 50A-50F) representing corrugator control information for making the multiple different layouts (46, 52) of boxes, characterized in that [1.5.1] the corrugator control information includes registration marks depicting positional information to be used for dynamically adjusting a position of a corrugated board and/or cutting and creasing dies for each of the different layouts (46, 52)."

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Claim 1 of appellant I's first auxiliary request differs from claim 1 of its main request in that feature 1.5.1 is replaced by the following feature 1.5.1'.

"[1.5.1'] the corrugator control information includes registration marks depicting positional information to be used for locating a corrugated board lined with the printed web relative to cutting and creasing dies by dynamically adjusting a position of the corrugated board and/or the cutting and creasing dies for each of the different layouts (46, 52)."

Claim 1 of appellant I's second auxiliary request differs from claim 1 of its first auxiliary request in that the following feature 1.5.2 is included at the end of the claim.

"[1.5.2] and in that each machine readable image representing corrugator control information includes an identification that uniquely identifies a single group of boxes to a corrugator."

Claim 1 of appellant I's third auxiliary request differs from claim 1 of its second auxiliary request in that the following feature 1.5.3 is included at the end of the claim.

"[1.5.3] and an identification which associates the single group of boxes with a corrugator plan associated with a corresponding box layout."

Claim 1 of appellant I's fourth auxiliary request reads as follows.

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"Apparatus comprising:

a printing system (10) and a corrugator,

the printing system (10), comprising:

a print engine (14);

a print engine controller (24) operatively connected to the print engine (14) to print, on a single substrate web (18):

graphics for multiple different layouts (46, 52) of corrugated boxes to be lined with the web (18), and machine readable images (44A-44D; 50A-50F) representing corrugator control information for making the multiple different layouts (46, 52) of boxes, wherein the corrugator control information includes registration marks depicting positional information to be used for locating a corrugated board lined with the printed web relative to cutting and creasing dies; and

the corrugator comprising:

cutting and creasing dies and a computer control system comprising a sensor to read the corrugator control information, wherein the control system is configured to:

use the registration marks to locate a corrugated board lined with the printed web relative to the cutting and creasing dies by dynamically adjusting a position of the corrugated board and/or the cutting and creasing dies for each of the different layouts (46, 52)."

- VII. The parties submitted the following.
 - (a) Main request novelty
 - (i) Appellant I

The subject-matter of claim 1 of the main request was new in view of document D16. The opposition division's conclusion was incorrect for the following reasons.

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- Document D16 claimed priority from two applications, only one of which, GB 1516772.9, had a filing date earlier than the filing date of the application on which the patent is based. The "second aspect" introduced on page 5, line 10, of document D16, as well as Figure 16 onwards and the associated description, contained subject-matter not present in the priority application. This issue had previously been raised in point 6.29 of appellant I's reply to the notice of opposition.
- The opposition division had made an impermissible "patchwork" of disclosures from document D16, combining the first and third aspects with subjectmatter taken from the description of the background and an embodiment relating to a reel map. The opposition division had referred to page 1, line 11, of document D16, which related to the background of the invention. It had further referred to the digital printer on page 21, which was described with reference to Figure 4, 5, 6 or 7. The next reference was to page 1, line 4, then to Figures 4, 5, 6 and 9. The corrugator control information was allegedly found in Figure 9. However, according to document D16, page 31, lines 24 and 25, in cases where the reel map was used, the printed liner needed not be read to synchronise with a cutter unless an error occurred. The purpose of the reel map was to show the full content of a liner reel.
- Document D16 was silent in relation to any control of cutting and creasing dies using marks (see feature 1.5.1). A cutting blade or knife did not constitute a cutting and creasing die.

The claimed printing system and the printed data were technical, as was apparent from paragraph [0017] of the patent. The "Guidelines for Examination in the European

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Patent Office", March 2024, F-IV, 3.9.1, and decisions T 410/96, T 859/17, T 1173/97 and G 1/19 were relevant. Features 1.4 to 1.5.1 therefore had to be taken into account for the question of novelty. In view of features 1.3 to 1.5.1, systems which were not configured to print information to be used for locating a corrugated board lined with printed web relative to a cutting and creasing die did not anticipate the claimed subject-matter. The information markers disclosed in document D16 were not adapted or suitable for use by a corrugator as further defined in feature 1.5.1.

(ii) Appellant II

The subject-matter of claim 1 of the main request was not new in view of document D16. The issue of priority regarding document D16 had not been raised in the opposition proceedings and should not be admitted in the appeal proceedings. Appellant I's counter-objection regarding an allegedly impermissible "patchwork" of disclosures from document D16 could and should have been raised in the opposition proceedings and should not be admitted in the appeal proceedings. Features 1.3 and 1.3.1 merely required that the printing system be suitable for printing on a substrate web. This was also the case for the printing system disclosed in document D16. This claim interpretation was consistent with paragraph [0018] and Figure 2 of the patent. These passages described that the printing system merely printed the image data previously received from a CAD program, for example. This only required the printing system to be suitable for printing the received data. It did not require any specific adaptation or configuration of the printing system; it could be carried out by any common printing system or indeed by the printing system disclosed in document D16.

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(b) First, second and third auxiliary requests novelty

(i) Appellant I

The subject-matter of claim 1 of each of the first, second and third auxiliary requests was new in view of document D16. Claim 1 of the first auxiliary request defined that the adjustment must be made in relation to cutting and creasing dies, which required the presence of cutting and creasing dies. However, these were not disclosed in document D16. Feature 1.5.2 of claim 1 of the second and third auxiliary requests implied that a single group of boxes was identified. Different sets of boxes may be associated with different cutting and creasing dies. Feature 1.5.2 had the technical effect of providing fast and flexible printing, allowing a quick and accurate cutting and creasing process.

(ii) Appellant II

The subject-matter of claim 1 of the first, second and third auxiliary requests was not new in view of document D16 for the same reasons as those set out above with respect to claim 1 of the main request. Moreover, the third auxiliary request should not be admitted.

- (c) Fourth auxiliary request admittance
 - (i) Appellant I

The set of claims of the fourth auxiliary request had been filed with a letter dated 9 December 2022. It had thus been admissibly raised in the opposition

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proceedings and should therefore form part of the appeal proceedings.

(ii) Appellant II

The set of claims of the fourth auxiliary request had been filed in the opposition proceedings, but not every request filed in the opposition proceedings automatically formed part of the appeal proceedings, as was apparent from Article 12(4) RPBA. Moreover, the fourth auxiliary request did not comply with the provisions of the EPC also for reasons other than novelty in view of document D16.

(d) Remittal of the case to the opposition division for further prosecution

(i) Appellant I

The independent claims of the fourth auxiliary request differed substantially from the independent claims of the higher-ranking requests. Thus, the board would have to consider issues which had not been decided upon by the opposition division. Since the primary object of the appeal proceedings was to review the decision under appeal in a judicial manner, the case should be remitted to the opposition division for further prosecution.

(ii) Appellant II

The case should not be remitted to the opposition division for reasons of procedural economy and in order not to prolong the overall proceedings.

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Reasons for the Decision

1. Main request - novelty (Article 54 EPC)

The set of claims of appellant I's main request is identical to that of the main request underlying the decision under appeal, i.e. the main request filed by letter dated 9 December 2022. In the decision under appeal, the opposition division concluded that the subject-matter of claim 1 of the main request was not new in view of document D16 (see point 12 of the Reasons for the decision).

Appellant I submitted that the opposition division's conclusion was incorrect for the following reasons.

- (a) Document D16 claimed priority from two applications, only one of which, GB 1516772.9, had a filing date earlier than the filing date of the application on which the patent was based. The "second aspect" introduced on page 5, line 10, of document D16, as well as Figure 16 onwards and the associated description, contained subject-matter not present in the priority application.
- (b) The opposition division had made an impermissible "patchwork" of disclosures from document D16, combining the first and third aspects with subjectmatter taken from the description of the background and an embodiment relating to a reel map.
- (c) Document D16 was silent in relation to any control of cutting and creasing dies using marks (see feature 1.5.1). A cutting blade or knife did not constitute a cutting and creasing die.

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1.1 Validity of the claimed priority (see point (a) above)- admittance (Article 12 RPBA)

Appellant II submitted that the issue of priority regarding document D16 had not been raised in the opposition proceedings and should not be admitted in the appeal proceedings.

Document D16 was filed with the notice of opposition. On page 26 of its notice of opposition, appellant II submitted that the subject-matter of claim 1 as granted was not new in view of this document.

Appellant II argued that the validity of the claimed priority regarding the "second aspect" introduced on page 5, line 10, of D16, as well as Figure 16 onwards and the associated description, had not been called into question in the opposition proceedings. In this regard, appellant I referred to point 6.29 of its reply to the notice of opposition.

However, the cited passage does not refer to the abovementioned passages of document D16, but instead generally states that

"E16 (which is prior art under Article 54(3) EPC, to the extent that it is entitled to priority from GB1516772.9) discloses [...]".

Since the issue of validity of the claimed priority as set out in point (a) above was raised for the first time in appellant I's statement of grounds of appeal, Article 12(4) and (6) RPBA are pertinent.

As the objection of a lack of novelty in view of document D16 was raised in the notice of opposition,

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the issue of whether or not the relevant passages of that document were prior art could and should have been raised in the opposition proceedings.

Moreover, the opposition division's reasoning (see, in particular, point 12.3.1 of the Reasons for the decision under appeal) is not based on the passages of document D16 that are not considered to be prior art by appellant I.

In light of the considerations set out above, the board decided not to admit appellant I's submissions on an alleged lack of validity of the claimed priority (see point (a) above) in the appeal proceedings under Article 12(4) and (6) RPBA.

1.2 Alleged combination of features disclosed in different contexts in document D16 (see point (b) above) - admittance (Article 12 RPBA) and merits

Appellant I submitted that the opposition division had made an impermissible "patchwork" of disclosures from document D16. Appellant II is of the opinion that this issue could and should have been raised in the opposition proceedings.

However, appellant II has not demonstrated that the specific passages of document D16 cited in point 12.3.1 of the Reasons for the decision under appeal were previously cited in combination with respect to novelty. Thus, appellant I could not have raised the above issue in the opposition proceedings. The board considers the submissions by appellant I to be a direct reaction to the Reasons for the decision under appeal. The board therefore decided to admit these submissions

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(see point (b) above) in the appeal proceedings in accordance with Article 12(4) RPBA.

Appellant I submitted that the opposition division had referred to page 1, line 11, of document D16, which related to the background of the invention. It had further referred to the digital printer on page 21, which was described with reference to Figure 4, 5, 6 or 7. The next reference was to page 1, line 4, then to Figures 4, 5, 6 and 9. The corrugator control information was then allegedly found in Figure 9.

In point 12.3.1 of the Reasons for the decision under appeal, the opposition division referred to page 1, line 11, of document D16 regarding the application of a printed image. This passage relates to "common" systems, i.e. prior-art systems. However, it is uncontested that a printed image is also applied in the embodiments disclosed in document D16.

The opposition division referred to page 1, line 4, of document D16 with respect to a corrugator process control. It is unambiguously derivable from the beginning of the paragraph ("The present invention relates to [...]") that this passage refers to the invention disclosed in document D16, i.e. the embodiments discussed in the document. Appellant I did not contest that the embodiments disclosed in document D16 involve a corrugator process control.

It is also evident from the opposition division's reference to Figures 4, 5 and 6 of document D16 that it considered all these figures to disclose the use of a digital printer and the fact that the graphics are for multiple different layouts of corrugated boxes.

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Appellant I referred to page 31, lines 24 and 25, of document D16 regarding the interpretation of Figure 9. However, the cited passage does not refer to the embodiment of Figure 9 but to Figures 11 to 13. This passage is therefore not suitable for demonstrating that the opposition division's conclusion in view of Figure 9 is incorrect.

The corrugator control information for making the multiple different layouts of boxes is not only disclosed in the context of the "third aspect" of the invention on page 16, line 14, of document D16. As explained by the opposition division, a QR code is also shown in Figure 9 of document D16.

However, even if appellant I's view that the opposition division had combined features of the first and third aspects of the invention disclosed in document D16 were to be accepted, appellant I's conclusion is not convincing. The "first aspect" of the invention in document D16 is directed to a corrugated sheet processing apparatus (see page 4, lines 5 and 6, of document D16). The "third aspect" of the invention relates to a roll of printed sheet media (see page 15, lines 13 and 14, of document D16). Page 15, lines 26 to 28, of document D16 relates to the "third aspect" and discloses that with the data from the marker, "the apparatus of the first aspect of the invention can provide its inventive function". This refers to the same data that, according to page 16, line 14, of document D16, can be a QR code. Hence, there is a direct pointer linking the relevant features of the first and third aspects of the invention disclosed in document D16.

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1.3 Feature 1.5.1 (see point (c) above)

Appellant II took the view that the feature "a print engine controller (24) operatively connected to the print engine to print, on a single substrate web [...]" (see features 1.3 and 1.3.1) merely required that the printing system be suitable for printing on a substrate web. Appellant I disagreed and submitted that systems which were not actually configured to print information to be used for locating a corrugated board lined with printed web relative to a cutting and creasing die did not anticipate the claimed subjectmatter.

Appellant I referred to the "Guidelines for Examination in the European Patent Office", March 2024, F-IV, 3.9.1. The board is not bound by these Guidelines, however. Moreover, the above-mentioned feature of claim 1 does not explicitly define "means for [...]", nor one of the other expressions ("adapted to", "configured to") considered in the above-mentioned Guidelines. Similarly, points 5, 6 and 10 of the Reasons for decision T 410/96 relate to the interpretation of the expression "means for". Points 2.1 and 2.2 of the Reasons for decision T 859/17 relate to the interpretation of the expression "adapted to". Neither expression is used in feature 1.3 or feature 1.3.1. Decisions T 410/96 and T 859/17 are thus not relevant to the interpretation of the abovementioned features of claim 1 of the main request.

The wording of the claims should typically be given its broadest technically sensible meaning (see also "Case Law of the Boards of Appeal of the European Patent Office", eleventh edition, July 2025, II.A.6.1). In the case at hand, the broadest technically sensible meaning

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of the above wording implies that the printing system must be suitable for printing on a substrate web. It is uncontested that this interpretation is consistent with the description of the patent, in particular Figure 2 and paragraph [0018].

It is also uncontested that the printing system disclosed in document D16 is suitable for printing on a substrate web graphics and machine readable images as further defined in features 1.4 to 1.5.1. Even assuming that document D16 did not disclose that the described printing system prints such graphics and machine readable images or is specifically adapted for this, it is implicit that the printing system is suitable for printing such graphics and machine readable images, for example, by receiving appropriate image data.

For this reason alone, the subject-matter of claim 1 of the main request is not new within the meaning of Article 54 EPC in view of document D16.

Appellant I submitted that the printing system and the printed data were technical, and referred to paragraph [0017] of the patent as well as the abovementioned decisions and decisions T 1173/97 and G 1/19. Features 1.4 to 1.5.1 therefore had to be taken into account for the question of novelty.

It is uncontested that the claimed printing system has a technical character. The printed data, however, are not part of the claimed printing system. The graphics and the machine readable images defined in features 1.4 to 1.5.1 are linked to the claimed printing system only by features 1.3 and 1.3.1. The issue at hand therefore hinges on the question of how the skilled person would have understood features 1.3 and 1.3.1. For the reasons

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set out above, the skilled person would have understood that the printing system must be suitable for printing on a substrate web. Since the printing system disclosed in document D16 is suitable for this purpose, the question of whether the graphics and machine readable images defined in features 1.4 to 1.5.1 themselves have a technical character can remain unanswered. Even assuming that they did, these features would only require the printing system to be suitable for printing the graphics and machine readable images.

Moreover, the printed data do not limit the claimed printing system as such. Whether or not the machine readable images represent corrugator control information (see feature 1.5) depends on the interpretation of the machine readable images, for example, by the corrugator. However, the corrugator is not part of the claimed printing system. Features 1.5 and 1.5.1 therefore do not define features of the claimed printing system as such. This also holds true under the assumption that these features have a technical character. They are not technical features of the printing system as such.

Appellant I also submitted that the information markers disclosed in document D16 were not suitable for use by a corrugator as further defined in feature 1.5.1.

However, for the reasons set out above, the printing system of document D16 is suitable for printing the graphics and machine readable images defined in features 1.4 to 1.5.1. Whether or not document D16 discloses that the printing system prints these graphics and machine readable images and that the corrugator uses the printed data as defined in

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feature 1.5.1 is not relevant to the issue at hand, i.e. the issue of whether the claimed printing system is novel. For the same reasons, the question of whether or not document D16 discloses cutting and creasing dies can remain unanswered.

1.4 Summary on novelty in view of document D16

The subject-matter of claim 1 of the main request is not new within the meaning of Article 54 EPC in view of document D16.

- 2. First, second and third auxiliary requests novelty (Article 54 EPC)
- 2.1 In claim 1 of the first, second and third auxiliary requests, the content of the corrugator control information and the machine readable images are further defined.

The considerations set out above with respect to claim 1 of the main request also apply to claim 1 of each of the first, second and third auxiliary requests. The printing system disclosed in document D16 is also suitable for printing the machine readable images specified in these claims. Moreover, the further details of the machine readable images specified in these claims do not impose additional technical limitations on the claimed printing system as such. Whether or not the machine readable images include an identification that uniquely identifies a single group of boxes to a corrugator (see feature 1.5.2) or an identification which associates the single group of boxes with a corrugator plan associated with a corresponding box layout (see feature 1.5.3) depends on

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the interpretation of the machine readable medium, for example, by the corrugator, which, however, is not part of the claimed printing system.

The subject-matter of claim 1 of the first, second and third auxiliary requests is thus not new within the meaning of Article 54 EPC in view of document D16.

2.2 As an auxiliary request ranking higher than its third auxiliary request, appellant I requested the remittal of the case to the opposition division for further prosecution.

However, since claim 1 of the third auxiliary request merely defines the machine readable images in more detail, the same lines of argument as those set out above with respect to claim 1 of the main request are pertinent. Appellant I did not provide any reasons why the board's considerations regarding novelty with respect to claim 1 of the main request would not also apply to claim 1 of the third auxiliary request. In view of procedural economy, the board therefore considered it appropriate to decide on the third auxiliary request itself. The board was not able to identify any special reasons for a remittal at this stage of the proceedings, i.e. before deciding on the third auxiliary request.

Accordingly, the board, exercising its discretion under Article 111(1) EPC and Article 11 RPBA, decided not to remit the case to the opposition proceedings at this stage of the proceedings but to consider the novelty of the subject-matter of claim 1 of the third auxiliary request in view of document D16.

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- 2.3 Moreover, while appellant II had requested that the third auxiliary request not be admitted in the appeal proceedings, the board, by proceeding in such a way that it considered the novelty of the subject-matter of this claim request, admitted this request for reasons of procedural economy, in order to be able to take a decision on the merits of this request.
- 3. Fourth auxiliary request admittance (Article 12 RPBA)

Appellant II requested that appellant I's fourth auxiliary request not be admitted in the proceedings.

It is uncontested that the set of claims of the fourth auxiliary request was filed with appellant I's letter dated 9 December 2022 (then as the third auxiliary request), i.e. before the final date for making written submissions in accordance with Rule 116 EPC. The fourth auxiliary request was thus admissibly raised and maintained in the opposition proceedings within the meaning of Article 12(4) RPBA. This was not contested by the parties at the oral proceedings before the board.

The fourth auxiliary request is thus part of the appeal proceedings.

4. Remittal of the case to the opposition division for further prosecution

Appellant I was in favour of a remittal to the opposition division, while appellant II requested that the case not be remitted for reasons of procedural economy.

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Claim 1 of the fourth auxiliary request differs substantially from the independent claims of the higher-ranking claim requests as it is directed to an apparatus comprising a printing system and a corrugator. The independent claims of the fourth auxiliary request were not examined or decided upon by the opposition division. Appellant II raised objections against these claims based on other provisions of the EPC and on prior-art documents other than document D16. As set out in Article 12(2) RPBA, the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner. In the case at hand, this primary object outweighs appellant II's concerns regarding procedural economy and the overall length of the proceedings.

The board has thus concluded that the case should be remitted to the opposition division for further prosecution (Article 111(1) EPC and Article 11 RPBA).

5. Conclusions

Neither the subject-matter of claim 1 of the main request nor that of claim 1 of each of the first, second and third auxiliary requests is new. The decision under appeal therefore has to be set aside. For the reasons set out above, the board remits the case to the opposition division for further prosecution.

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Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



N. Schneider

P. Lanz

Decision electronically authenticated