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**Datasheet for the decision  
of 30 June 2025**

**Case Number:** T 2027/23 - 3.5.05

**Application Number:** 14173886.4

**Publication Number:** 2960746

**IPC:** G05G9/047, A62C27/00, E06C5/32,  
E06C5/04

**Language of the proceedings:** EN

**Title of invention:**

Control system and method for controlling the movement of an  
aerial apparatus

**Patent Proprietor:**

IVECO MAGIRUS AG

**Opponent:**

Rosenbauer International AG

**Headword:**

Turnable ladder/IVECO

**Relevant legal provisions:**

EPC Art. 54, 100(a), 112(1)(a), 113(1), 125

EPC R. 103(1)(a)

RPBA 2020 Art. 12(6), 13(2), 21

**Keywords:**

Claim construction - description and drawings "consulted" and "referred to" for defining the skilled reader of a claim: narrow claim interpretation not accepted

Errors in the opposition division's fact-finding process - (no)

Public prior use as valid state of the art - (yes): public availability sufficiently proven

Novelty - main request and 3rd to 6th auxiliary requests (no)

Admittance of non-admitted claim requests - 1st and 2nd auxiliary requests (no): no error in the use of discretion + no *prima facie* allowability

Admittance of claim requests filed after Art. 15(1) RPBA communication - 7th and 8th auxiliary requests (no): no "exceptional circumstances"

**Decisions cited:**

G 0001/24, T 1418/17, T 0042/19, T 1138/20, T 1924/20, T 2463/22, T 0733/23, T 1465/23, T 1999/23

UPC\_CoA\_335/2023, UPC\_CFI\_278/2023, UPC\_CFI\_230/2024

UK Court of Appeal, *European Central Bank v DSS* [2008] EWCA Civ 192

German Federal Court of Justice (BGH), decision of 7 September 2004 - *Bodenseitige Vereinzelungseinrichtung*

US Court of Appeals of the Federal Circuit (CAFC) *Renishaw PLC v Marpass SPA*, 158 F.3d 1243, 1249 (1998)

Japanese Supreme Court, decision of 8 March 1991 - "Ra-Lipase"

**Catchword:**

A claim should not be interpreted, based on features set out in embodiments of an invention, as having a meaning *narrower* than the wording of the claim as understood by the person skilled in the art. In cases of discrepancy between the claim language and the description, it falls upon the patentee to remedy this incongruence by amending the claim. It is not the task of the Boards of Appeal to reach such alignment by way of interpretative somersaults (see points 3.5.6 and 3.5.8 of the Reasons).



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**Case Number:** T 2027/23 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 30 June 2025**

**Appellant:** IVECO MAGIRUS AG  
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**Representative:** Burger, Hannes  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 20 October 2023  
revoking European patent No. 2960746 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** N. H. Uhlmann  
C. Heath  
E. Konak  
F. Bostedt

## Summary of Facts and Submissions

- I. The patent proprietor (appellant) appealed against the opposition division's decision to revoke the present European patent under Articles 100(a) and 54 EPC.
- II. The following documents are referred to in this decision:
- D9:** Metz: "Bedienungsanweisung zur METZ-Drehleiter DLK 23-12 (DL 30-37)";
  - D10:** Affidavit of the commander of the fire brigade Tauberbischofsheim Michael Noe, including annexes;
  - D10a:** Corrected affidavit of the commander of the fire brigade of Tauberbischofsheim Michael Noe, including annexes;
  - D11:** Registration documents ("Fahrzeugschein"; "Fahrzeugbrief");
  - D13 to D27:** vehicle photographs;
  - D33:** Internet website: "Drehleiterservice Taubertal - Startseite".
- III. In response to a summons to oral proceedings before the board, the opponent (respondent) indicated that it would not be attending those oral proceedings.
- IV. Oral proceedings before the board were held on 30 June 2025. The parties' final requests were as follows:
- The appellant requested that the decision under appeal be set aside and that the opposition be rejected (**main request**). As an auxiliary measure,

the appellant requested that the patent be maintained according to one of the **first to sixth auxiliary requests**, all as filed with the statement of grounds of appeal, or **seventh or eighth auxiliary request** filed with letter dated 1 April 2025. Furthermore, it requested that the appeal fee be reimbursed and that the case be referred to the Enlarged Board of Appeal under Article 21 RPBA.

- The respondent requested in writing that the appeal be dismissed.

At the end of those oral proceedings, the board's decision was announced.

V. Claim 1 of the **main request** (patent as granted) reads as follows (board's labelling):

- (a) "Control system (10) for controlling the movement of an aerial apparatus, in particular for controlling a turnable ladder of a firefighting vehicle, comprising
- (b) a manually operable input device
- (c) that is deflectable in at least one spatial direction by a deflecting force
- (d) an[*sic*] processing unit (14) for converting the amount of deflection of the input device into a corresponding speed signal and
- (e) an actuating unit (16) for moving the aerial apparatus with a speed corresponding to the speed signal,
- characterized by
- (f) determining means (18, 20) for determining a possible maximum speed and

(g) restricting means (22) for counteracting or limiting the deflection of the input device according to the determined possible maximum speed."

VI. Claim 1 of the **first auxiliary request** differs from claim 1 of the main request in that feature (d) was modified as follows (board's labelling and emphasis):

(d1) "a processing unit (14) for converting the amount of deflection of the input device into a corresponding electric speed signal";

and feature (f) was modified as follows (board's labelling and emphasis):

(f1) "determining means (18, 20) for determining a real time updated possible maximum speed".

VII. Claim 1 of the **second auxiliary request** differs from claim 1 of the main request in that feature (d) was modified as set out above and feature (f) was modified as follows (board's labelling and emphasis):

(f2) "determining means (18, 20) for determining a possible maximum speed, wherein said determining means (18, 20) comprise sensors (18) and a calculation unit (20) for calculating said possible maximum speed from sensor data measured by the sensors (18)".

VIII. Claim 1 of the **third auxiliary request** is based on claim 1 of the main request. The following feature has been added to claim 1 (board's labelling):

(h) "wherein the determining means (18) comprise at least one of the following: speed sensors, acceleration sensors, load sensors, deflection sensors, and distance sensors for determining a distance to an object".

IX. Claim 1 of the **fourth auxiliary request** is based on claim 1 of the third auxiliary request. The following feature has been added to claim 1 (board's labelling and emphasis):

(i) "and the determining means (18, 20) is provided for determining a possible maximum speed on the basis of measured sensor data and predetermined data related to construction parameters of the aerial apparatus to be controlled".

X. Claim 1 of the **fifth auxiliary request** is based on claim 1 of the third auxiliary request. The following feature has been added to claim 1 (board's labelling and emphasis):

(j) "the restricting means is provided to apply a restoring force according to the determined possible maximum speed to the input device acting to restore the input device against the deflecting force".

XI. Claim 1 of the **sixth auxiliary request** is based on claim 1 of the third auxiliary request to which features (i) and (j) have been added.

XII. Claim 1 of the **seventh auxiliary request** is based on claim 1 of the first auxiliary request. Feature (d1)



has been modified as follows (board's labelling and emphasis):

(d7) "an processing unit (14) for sensing the direction and the amount of deflection of the manually operable input device and converting the amount of deflection of the input device into a corresponding electric speed signal".

XIII. Claim 1 of the **eighth auxiliary request** is based on claim 1 of the second auxiliary request and includes feature (d7).

### **Reasons for the Decision**

1. The patent in suit concerns a control system for controlling the movement of an "aerial apparatus", in particular for controlling a "turnable ladder of a firefighting vehicle". The deflection of a (joystick-like) "input device" is converted into a "speed signal" and the ladder is moved with a corresponding speed. A "possible maximum speed" is then determined and the deflection of the input device is limited "according to the determined possible maximum speed".
2. A *public prior-use vehicle*, as evidenced by documents **D9, D10, D10a, D11, D13 to D27** and **D33**, and used by the fire brigade in Tauberbischofsheim was referred to in the course of the opposition proceedings. The vehicle comprises a "turnable ladder" and a "control system" therefor.

**3. Main request - claim 1 - Article 54 EPC**

3.1 The board confirms the finding in the impugned decision that the subject-matter of claim 1 is not new in view of the public prior-use vehicle (Article 54 EPC).

3.2 Review of fact finding

3.2.1 The appellant has challenged the findings of the opposition division regarding the public prior-use vehicle.

3.2.2 In that regard, the board notes that, on appeal, the burden is on the party challenging a fact to demonstrate that the first-instance department erred in its finding of fact. In doing so, the party must specifically point to each alleged error in the department's findings of fact or in its evaluation of the evidence and set out the reasons why this is considered erroneous. Only if the party succeeds in discharging this burden and demonstrating such an error will the board establish the facts on its own if this is necessary for reaching a decision (see **T 1138/20**, Reasons 1.2.5). The case law of the Boards of Appeal has identified a non-exhaustive list of typical situations where a finding of fact may be overruled, namely (i) failure to take into account essential points, (ii) relying, for the conclusion, on irrelevant subject-matter, or (iii) violation of the laws of thought, for instance in the form of logical errors and contradictions in its reasoning (**T 1418/17**, Reasons 1.3; see also **T 42/19**, Reasons 3.2 and **T 1138/20**, Reasons 1.2.5). The appellant, however, has not demonstrated any of the above.

### 3.3 Witness hearing

- 3.3.1 The appellant requested that the testimony of *Mr. Wieser* should be disregarded in its entirety, because it was not credible and consequently the witness' credibility should be re-assessed and some statements (cf. the top of page 4 of the statement of grounds of appeal) in the decision under appeal (Reasons 2.1.3) should be disregarded.
- 3.3.2 The board, first of all, notes that according to the appealed decision, the witness' credibility was not questioned by the proprietor (Reasons 2.1.2). Lack of credibility can thus not be an argument for discarding the witness' statement.
- 3.3.3 The appellant further highlighted the fact that the information provided by the witness was handed to him by other people and was based on documents collected many years after the sale.
- 3.3.4 The board considers that this was correctly recognised by the opposition division. It was precisely for this reason that the opposition division considered the probative value of the testimony to be limited. The opposition division therefore prudently based its decision not only on *Mr. Wieser's* testimony, but also on *Mr. Noe's* affidavit (**D10a**) that confirmed, independently from *Mr. Wieser's* testimony, that
- the "Feuerwehr Tauberbischofsheim", in 1987, received from the company "Metz" a vehicle with a turnable-ladder mounting and the corresponding

operation manual **D9**, without confidentiality obligations;

- the photos **D13 to D27** depict this vehicle;
- evidence **D11** depicts the vehicle's registration certificate ("Fahrzeugschein").

3.3.5 Finally, the mere fact that other witnesses could have been offered does not call into question the credibility of the witness.

3.3.6 Consequently, the appellant's request (cf. point 3.3.1 above) cannot be acceded to.

#### 3.4 Public prior-use vehicle

3.4.1 The appellant argued that there was insufficient evidence that the vehicle inspected in the course of the oral proceedings before the opposition division was the one sold to the fire brigade in 1987 and that the manual **D9** referred to this vehicle. Furthermore, it argued that features of the vehicle (e.g. the vehicle's "supportive feet"), during its public use, would not have been visible and thus not disclosed to the public. Overall, the appellant requested that the opposition division's findings based on the inspection be disregarded. The appellant in this regard advanced a number of arguments, namely that (1) the term "*Drehleiter*" did not refer to a *vehicle* but to a *turnable ladder* only; (2) it was not certain whether the ladder had not been replaced at some point in time; (3) the vehicle might be a different one; (4) the use was not public due to an obligation of secrecy; and (5)

the opposition division applied the wrong standard of proof.

- 3.4.2 As to the first point, it is certainly correct that the German word "*Drehleiter*" can mean only the *turnable ladder* and not necessarily the *vehicle* including the ladder. Yet such linguistic interpretation is contradicted by the actual use of the word that shows without doubt that in the relevant circles of firefighters, the term is used as a *pars pro toto* for the whole vehicle. After all, document **D33** clearly refers to the entire *vehicle* (cf. "*Drehleiter [...] fahren durfte*" (i.e. was allowed to drive the turnable ladder)). The respondent further pointed to manual **D9**, in which the vehicle was similarly referred to as "*Drehleiter*". Furthermore, the dictionaries cited by the appellant merely provide general definitions of the term "*Drehleiter*", which are not applicable to the specific technical field of firefighting vehicles. The appellant did not address this point any further during the oral proceedings before the board.
- 3.4.3 As to the second point, the opposition division based its conclusion that the "ladder" was not replaced at some point in time not only on the *optical appearance* but also on the *year of manufacturing* (i.e. 1987) indicated on the plate attached to the ladder.
- 3.4.4 As to the third point, Mr. Noe confirms in his affidavit **D10a** that documents D9 and D11 refer to the vehicle sold in 1987. It is not apparent how the allegedly missing serial numbers might in any way contradict this confirmation.

3.4.5 As to the fourth point, and as correctly argued by the respondent, the appellant merely "insisted" that features were not disclosed to the public, without providing any substantive arguments in this regard. The board considers that the appellant has thus failed to demonstrate that the opposition division's conclusion set out in Reasons 2.4.2 was incorrect.

3.4.6 To prove an obligation of secrecy, the appellant further referred to the copyright notice on pages 2 and 4 of document **D9**, which reads in relevant part:

*"Das Urheberrecht an dieser Beschreibung und sämtlichen Anlagen verbleibt uns. Sie sind dem Empfänger nur zum persönlichen Gebrauch anvertraut.*

*Ohne unsere schriftliche Genehmigung dürfen sie nicht kopiert oder vervielfältigt werden, auch nicht dritten Personen, insbesondere Wettbewerbern mitgeteilt, oder zugänglich gemacht werden."*

From this notice, the appellant drew the conclusion that D9 was not made available to the public.

In that regard, the board first notes that copyright notices can be found in almost all published books without the readers of such books being thereby bound to secrecy. Be this as it may, the appellant's point fails already because manual **D9** was made available to the staff of the fire brigade who are certainly members of the public. The fact that these members of the public should not make the manual available to competitors does not change the fact that at least some members of the public have already taken notice. It is not necessary for a document, contrary to what the appellant seems to argue, to be made available to all

and sundry for it to be considered "publicly available". Instead, it is sufficient for the document to be made available to some (or even one) member of the public. In the case at issue, this was undoubtedly so.

3.4.7 With regard to the fifth point concerning the applicable standard of proof, the board notes that in the case at issue the evidence does not lie exclusively within the sphere of the respondent. Indeed, the vehicle was received by the fire brigade and was in the brigade's possession and was later sold to a third party. Even if the board had been minded to apply the standard of "up to the hilt" or "beyond reasonable doubt" in cases where evidence was in the exclusive possession of the respondent, there would be no place for such application under the factual circumstances of this case. In any event, the present board, in a previous decision (see **T 1138/20**, Reasons 1.2.1), held that regardless of the specific circumstances of the case, only one standard of proof should apply, namely that the deciding body, taking into account the circumstances of the case and the relevant evidence before it, at the end of the day, should be convinced that the alleged fact had indeed occurred (as confirmed in **T 733/23**, Reasons 3.2, but see also **T 2463/22**, Reasons 4.5.10 and 4.5.12 in that regard).

3.4.8 This also means that it is sufficient if an opposition division - as in the present case - has established the facts and is thus convinced that the alleged facts indeed occurred. The fact that the opposition division does not explicitly state the "degree" of conviction (e.g. that it is "convinced beyond reasonable doubt") to which it has examined the factual allegations does not in itself constitute an error and is not decisive

when the Board of Appeal reviews the findings of fact. Instead, what is decisive is that the opposition division, in considering the evidence on file, must give reasons in its decision on how it ultimately arrived at its finding of fact, in particular if there is contradictory evidence on file (see **T 1138/20**, Reasons 1.2.3). In the case at issue, the opposition division has done this with a great amount of diligence, and its thorough fact-finding and analysis should be commended.

3.4.9 With regard to the "supportive feed", the board notes that, according to the decision under appeal (see page 9, second bullet point), *"the 'certain length' at which the bolt is actuated is determined by sensing forces acting on the supportive feet of the vehicle"*. This observation was not contested by the appellant.

3.4.10 For the above reasons, the appellant has failed to demonstrate that the opposition division erred in its findings of fact as regards the prior-use vehicle. Thus, the board sees no reason to overturn the opposition division's finding that this vehicle, as inspected, and the corresponding documents **D9 to D11** and **D13 to D27** are indeed state of the art within the meaning of Article 54(2) EPC.

### 3.5 Claim interpretation

3.5.1 The appellant took issue with the interpretation of the terms "processing unit" (cf. feature (d)), "speed signal" (cf. features (d) and (e)) and "determining means for determining a possible maximum speed" (cf. feature (f)) and has invited the board to undertake an interpretation of these terms in light of decision **G 1/24**. According to the appellant, "consulting" the



description and the drawings meant that the definitions of a claim feature provided in the patent description (and the drawings) should be read into a claim.

3.5.2 The board does not agree. Rather, from decision **G 1/24**, the board can identify three major takeaways:

- First, the wording of the claims forms the "basis" for their interpretation and, for the purpose of interpreting the claims, the description and the drawings should always be "consulted" or "referred to". **G 1/24** is, however, silent as to the very purpose of such "consultation" or "reference", as also confirmed by the appellant.

In particular, it cannot be inferred from this decision whether the description and the drawings should be "consulted" for the purpose of, for example, deriving "explanatory aids" to claim interpretation (see e.g. UPC\_CoA\_335/2023, second headnote), confirming the ordinary meaning of a claim feature, determining the *function* or the *purpose* of a claim feature, or simply defining the technically skilled reader of a claim (see e.g. **T 1924/20**, Reasons 2.7), etc.

- Second, discrepancies in claim interpretation practice between national courts, the UPC and the Boards of Appeal are undesirable and should thus be avoided.
- Third, it is up to a patentee to remedy discrepancies between the description and the

claims. In other words, patentees are the masters of their fate.

3.5.3 The appellant also contended that the Order of **G 1/24** was to be understood such that a feature of the claim must be interpreted in a more limited manner **based on features set out in the embodiments of the present invention** as disclosed in the patent description.

3.5.4 Yet, the board finds no authority for interpreting a claim more narrowly than the wording of the claim as understood by the person skilled in the art would allow. This is for several reasons.

(a) First, because "consulting the description" does not imply any specific result of such consultation: A consultation of two conflicting authorities does not *a priori* determine who is master. Decision **G 1/24** does not, as the appellant seems to suggest, require the Boards to give the description preference over the wording of the claim. To the contrary, according to the Order of **G 1/24**, "*the claims are the starting point and the basis for assessing the patentability of an invention*", and the present board would like to add that, in line with UPC\_CoA\_335/2023, second headnote, the claims are the "decisive basis".

(b) Second, such interpretation would contradict the well-established jurisprudence of the Boards of Appeal, which was essentially confirmed in decision **G 1/24**, Reasons 10 (see e.g. also **T 1999/23**, Reasons 5.6).

(c) Third, such an interpretation would directly contradict the second takeaway from decision **G 1/24**, namely a harmonised claim interpretation between national courts or the UPC and the Boards of Appeal. For a long time, it has been considered unsatisfactory that patentees could get away with different claim interpretations for validity, on the one hand, and for infringement on the other. As *Jacob LJ* has observed in UK Court of Appeal, *European Central Bank v DSS* [2008] EWCA Civ 192 at n 81, "*Professor Franzosi likens a patentee to an Angora cat. When validity is challenged, the patentee says his patent is very small: The cat with its fur smoothed down, cuddly and sleepy. But when the patentee goes on the attack, the fur bristles, the cat is twice its size with teeth bared and eyes ablaze*". The problem *Professor Franzosi* describes would become relevant if the board were to interpret a claim below the wording of the claim as understood by the person skilled in the art in order to find it patentable, while an infringement court would interpret the claim literally when determining infringement.

3.5.5 Without any claim to completeness, the board also notes the following judicial precedents in this regard:

- The UPC Central Division Paris in a decision of 30 April 2025, UPC\_CFI\_230/2024 (first headnote), held that

*"a broad, general term used in the main claim is not to be limited to an understanding derived from the more specific or narrower features disclosed in a dependant claim or in the description."*

(however, contrary to UPC\_CFI\_278/2023 of 30 April 2025 from the Local Division Hamburg where a claim feature was interpreted in a *restricted* manner on the basis of an explicit definition set out in the patent description).

- The **German Federal Court of Justice**, decision of 7 September 2004 - *Bodenseitige Vereinzelungs-einrichtung* (GRUR 2004, 1023, English version in 36 IIC 971 (2005)) held that

*"An example embodiment does not as a general rule permit a restrictive interpretation of a patent claim that specifies the invention in general".*

3.5.6 Given the above precedents, the board concludes that, in order to do justice to the second takeaway from decision **G 1/24** (see point 3.5.2 above) and align the judicial practice of the Boards of Appeal with that of the national courts and the UPC, a claim should not be interpreted, based on features set out in embodiments of an invention, as having a meaning *narrower* than the wording of the claim as understood by the person skilled in the art.

3.5.7 Only as an aside, the board notes that the above findings also correspond to court practice outside Europe:

- The **US Court of Appeals of the Federal Circuit (CAFC)** in *Renishaw PLC v Marpass SPA*, 158 F.3d 1243, 1249 (1998) held that

*"Absent a special and particular definition created by the patent applicant, terms in a claim are to be given their ordinary and accustomed meaning. [...]"*

*Thus, when a claim term is expressed in general descriptive words, we will not ordinarily limit the term to a numerical range that may appear in the written description or in other claims. [...] Nor may we, in the broader situation, add a narrowing modifier before an otherwise general term that stands unmodified in a claim."*

- The **Japanese Supreme Court**, decision of 8 March 1991 - "Ra-Lipase" (45-3 Minshu 123; German translation in GRUR Int. 1994, 632; English version in Heath/Furuta (eds.), Japanese Patent Law, Cases and Comments, Kluwer Law 2019, 369 held that

*"In order to determine inventive step, a claim that in itself is clear cannot be interpreted more restrictedly by referring to the working examples in the description."*

- 3.5.8 The above methods of claim interpretation are also consistent with the third takeaway from decision **G 1/24** that, in cases of discrepancy between the claim language and the description, it falls upon the patentee to remedy this incongruence by amending the claim. It is not the task of the Boards of Appeal to reach such alignment by way of interpretative somersaults.
- 3.5.9 The board applied the above takeaways from **G 1/24** to the case at issue as follows:
- 3.5.10 As a first step, the board has "consulted" and "referred to" the present patent description and drawings to define the technically skilled reader from whose perspective or view point a claim is to be interpreted (see also **T 1465/23**, Reasons 2.4). In view

of, for example, paragraphs [0001] to [0004] of the present patent description, the technical field of that skilled reader relates to "control systems for aerial apparatuses such as turnable ladders of firefighting vehicles".

3.5.11 As to **feature (d)**, the appellant submitted a definition of "processing unit" from the *Collins dictionary*: "*the part of a computer that performs logical and arithmetical operations*". In that regard, the board considers that this definition does not make sense in the field of the present invention. Indeed, the claimed "control system" does not include any computer. Furthermore, it is not appropriate to interpret the broad term "processing unit" in a more restricted way, based on the present description, which, incidentally, does not include a specific definition. The board agrees with the respondent that the "processing unit" is defined by its function - to be suitable to "convert the amount of deflection of the input device into a corresponding speed signal" (cf. page 2, lines 4 to 8 of the description of the application as filed). Whether or not the "amount" and the "signal" are *electrical* values is however not defined in present claim 1, and neither does the description include any information regarding the nature of the "amount".

3.5.12 As to **features (d) and (e)**, the skilled reader would interpret the term "speed signal" as referring to any information about the speed. Whether this information is represented by an *electrical* value or a *mechanical* value is not specified in present claim 1. Also the definition from the *Merriam-Webster dictionary* referred to by the appellant does not set out that a "signal" must necessarily be an "electric signal". Furthermore, the original description mentions only once, within a

preferred embodiment at page 7, line 11, an "electric speed signal", while the claimed general term "speed signal" is referred to more than ten times throughout the present description. Also the passage at page 4, line 9 to page 5, line 3 does not relate to any *electrical* control. This passage, moreover, does not represent any general teaching of the invention, *inter alia*, because it includes two distinct examples. Lastly, the "actuating unit" using the "speed signal" may well comprise "driving units" which do not involve "electric motors" (cf. page 7, lines 18 and 19).

- 3.5.13 Furthermore, the passage at page 2, lines 9 to 23 pertains to a description of some prior-art systems and their disadvantages. It does, however, not include any information about or details of the claimed **features (d) to (f)**. Thus, it cannot have any impact on the interpretation of those features.
- 3.5.14 With regard to the "determining means" according to **feature (f)**, the board agrees with the decision under appeal and with the respondent that this feature does not require that the respective "determining" step takes place "in real time". Also the present description as filed does not consistently teach that this step is performed "in real time" (cf. page 4, line 1: "can be updated in real time" and page 10, lines 10 and 11: "can be adapted dynamically in real time"). A singular reference to a determination "in real time" (cf. page 9, lines 16 to 19) within the description of a preferred embodiment cannot form a basis for interpreting the general term "determining means" in a more restricted manner.

3.5.15 The appellant's further argument that features (f) and (g) should be interpreted as a "closed control loop" is not based on the actual claim wording or the present description. In fact, the application documents do not refer to a "loop" or any kind of repetitive processing.

### 3.6 Novelty assessment

3.6.1 It is common ground that the prior-use vehicle discloses features (a) to (c) and (e) of present claim 1.

3.6.2 With regard to **feature (d)** and in view of the claim interpretation set out above, the board endorses the finding in the impugned decision that feature (d), i.e. the use of a processing unit to convert a deflection amount to a speed signal, is already disclosed by the prior-use vehicle.

3.6.3 According to the contested decision, the prior-use vehicle also discloses **feature (f)**, i.e. the use of a determining means for determining a possible maximum speed, irrespective of a broader or narrower interpretation of this feature. The appellant's sole argument that a broad interpretation is incorrect cannot negate the opposition division's finding in that respect.

3.6.4 The prior-use vehicle likewise discloses **feature (g)**, i.e. the use of a respective restricting means. In that context, it is uncontested that the position of the lever ("*Betätigungshebel*") and the rocker ("*Wippe*") in the deceleration block ("*Verlangsamungsblock*") of that vehicle corresponds to the speed of movement of the ladder. When **the position of the rocker is such that**



**the adjusting screw reaches the bolt**, the deflection of the input device is counteracted. This position thus determines the "possible maximum speed". Furthermore, claim 1 does not exclude that some of the functions mentioned in features (f) and (g) are in fact performed by the *same* element of the prior-use vehicle.

- 3.6.5 For these reasons, the board confirms the finding in the decision under appeal that the ground for opposition under Article 100(a) EPC in conjunction with Article 54 EPC prejudices the maintenance of the patent as granted.

#### **4. First and second auxiliary requests - admittance**

- 4.1 The first and second auxiliary requests were first filed on the second day of the oral proceedings before the opposition division. They were not admitted into the opposition proceedings under Rule 116(2) EPC.
- 4.2 According to Article 12(6), first sentence, RPBA, the board shall not admit requests which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.
- 4.3 The appellant argued that these auxiliary requests should have been admitted into the proceedings, i.e. that the decision not to admit them suffered from an error in the use of discretion.

4.4 The board is not convinced and considers that the non-admittance decision of the opposition division does not suffer from any error in the use of discretion for various reasons:

- According to the appellant, the technical features of the inspected vehicle and the content of the witness testimony only came to light at the end of the first day of the first-instance hearing. That said, the appellant did not refer to any specific feature of the vehicle or aspect of the testimony which were not known from the written phase of the opposition proceedings and which were of relevance with regard to the amendments made to claim 1. In particular with regard to the introduced limitations "electric" and "real time", it was clear from the notice of opposition that the prior-use vehicle employed a *mechanical* control system. Neither the notice of opposition nor the opposition division's preliminary opinion suggested that the prior-use vehicle would provide any determination in "real time". That the "supporting feet" and its function towards providing a "real time update" in the prior-use vehicle was discussed only during the inspection could hardly be seen as a reason for including such limitation in claim 1.
- Further, the opposition division's preliminary opinion clearly stated that "if proven, the alleged prior use would constitute highly relevant prior art that could prejudice the maintenance of the disputed patent" (see the opposition division's communication dated 9 December 2019, point 9.7.13) and that document D9 disclosed the subject-matter of claim 1 as granted. The further statement made in the preliminary opinion that it was unclear from

the evidence then on file what technical features the vehicle possesses does not give the appellant a *carte blanche* to submit claims with amendments taken from the description in a very late phase of the opposition proceedings, and have them admitted.

- In addition, it is plain from the minutes of the first-instance oral proceedings that the matter of admittance of the first and second auxiliary requests was in fact discussed in the course of those oral proceedings. Thus, no violation of Article 113(1) EPC is apparent.
  
- Finally, the appellant argued that, for the actual situation at the oral proceedings before the opposition division (including an inspection and witness hearing), no clear guidance existed in the EPC or the EPO Guidelines. Hence national law had to be considered under Article 125 EPC, e.g. the law and jurisprudence of Italy and France. While the board is aware that national law has indeed been applied by way of Article 125 EPC in regard of *procedural* questions, this has been done where indeed the EPC and the principles developed under its jurisprudence gave no sufficient guidance. The board, however, does not regard the hearing of witnesses or the physical inspection of evidence as situations that cannot be dealt with under the current procedural provisions.

4.5 With respect to the numerous further arguments brought forward by the appellant, the board considers that all judicial systems need to balance the interests of all parties in being properly heard with the general interest in *procedural efficiency* when dealing with the

admittance of late-filed claim requests, irrespective of the numerous postponements of the first-instance oral proceedings in the case at issue, essentially due to the "Covid situation". The board also notes the limited guidance that national rules of civil procedure may provide with regard to the *ex-officio* powers under Article 114(1) EPC.

Consequently, the fact that admissibility with respect to the first and second auxiliary requests was for the first time raised by the opposition division does not indicate any partiality on its part, but is based on its inherent powers under Article 114(1) EPC. Furthermore, it is not an error in the exercise of discretion that an opposition division did not carry out any *prima facie* allowability assessment for auxiliary requests filed on the second and last day of the first-instance oral proceedings with amendments taken from the description. Rather, when not admitting these auxiliary requests into the proceedings for being late filed, the opposition division acted in accordance with the established procedural provisions under the EPC. The appellant has not shown that these provisions are out of alignment with "procedural law generally recognised in the Contracting States" within the meaning of Article 125 EPC, nor that the case at issue presented a situation where there was a *lacuna* in the EPC provisions, nor that the laws of France and Italy could be said to represent principles "generally recognised in the Contracting States".

- 4.6 The appellant also justified the late-filing of auxiliary requests by a new claim interpretation adopted by the opposition division. However, the claim interpretation adopted by the division did not change substantially during the first-instance oral

proceedings. Indeed, the opposition division objected to the novelty of the subject-matter of claim 1 already in its preliminary opinion.

- 4.7 In view of the above observations, the board also holds that no procedural violation took place in the opposition proceedings, let alone a *substantial* one. Hence, the appeal fee cannot be reimbursed under Rule 103(1)(a) EPC and the board sees no reason that would justify the admittance of the first and second auxiliary requests once the opposition division, in correctly exercising its discretion, did not admit them.
- 4.8 For these reasons, the board did not admit the first and second auxiliary requests into the appeal proceedings (Article 12(6), first sentence, RPBA).
- 4.9 For the sake of completeness, the board also addresses the *prima facie* allowability of the two claim requests. Here, the board notes that, according to page 7, lines 7 to 11 of the description as originally filed (i.e. the basis given by the appellant for amended feature (d1) in both claim requests), the "processing unit" performs two functions, namely **sensing** the direction and the amount of deflection and **converting** it into a "**corresponding** electric speed signal". It is plain that the "electric speed signal" is "corresponding" to the "sensed" values. Hence, the two functions are closely interrelated and there is no basis for claiming the "converting" step without the "sensing" step. While it is correct that some "sensing" must be performed before a "converting" step could take place, claim 1 cannot be considered to imply that specifically the "processing unit" performs "sensing".

Consequently, claim 1 of the first and second auxiliary requests, *prima facie*, does not comply with Article 123(2) EPC.

**5. Third to sixth auxiliary requests - claim 1 - Article 54 EPC**

5.1 The third to sixth auxiliary requests further comprise **features (h), (i) and (j)** respectively (see points VIII to X above).

5.2 The board endorses the finding in the decision under appeal that the *prior-use vehicle* also discloses those features.

5.2.1 As to **feature (h)**, the appellant referred to page 8, lines 10 to 19 of the description as filed, which allegedly led to an understanding of the claimed "determining means" being completely different from the prior-use disclosure.

This argument is not convincing, because this passage simply includes the wording of feature (h) and refers to a further, *optional* "calculation unit".

5.2.2 As to **feature (i)**, the appellant argued that the meaning of the term "data" used in feature (i) was not limited to factual information (as stated in the impugned decision, Reasons 7.6) but was rather based on a number of definitions from dictionaries.

The board agrees that the meaning of "data" is not limited to "factual information". However, "data" is a very broad term and the skilled reader would indeed see "factual information" as *one* of the meaningful

interpretations thereof. Certainly, the "sensor data", the "predetermined data" and the "determining means" as claimed in feature (i) are not limited to data represented in electrical form or to electrical "determining means".

- 5.2.3 As to **feature (j)**, the appellant argued that the term "according to" used in feature (j) meant that the intensity of the "restoring force" was set as a function of the "determined possible maximum speed".

In that regard, the board notes that claim 1 does not refer to the *intensity* of the "restoring force". In the present context, the expression "according to" merely means that the "restoring force", with any intensity, is applied in line with the "determined possible maximum speed", e.g. when the *actual* speed is the same as the "determined possible maximum speed". Further, the passage at page 4, line 9 to page 5, line 3 of the original description includes two alternative examples. It is not apparent why the skilled reader should interpret feature (j) as being limited to only one of those examples, thereby excluding the other. In addition, the appellant argued that, in the prior-use vehicle, a "position" could not be measured. However, claim 1 does not refer to any "position".

- 5.3 Consequently, present claim 1 of each of the above auxiliary requests does not comply with Article 54 EPC and those auxiliary requests are therefore not allowable, either.

**6. Seventh and eighth auxiliary requests - admittance**

- 6.1 These auxiliary requests were filed *after* the notification of the board's communication under Article 15(1) RPBA. Thus, their admittance falls under the provision of Article 13(2) RPBA.
- 6.2 The appellant argued that the amendments made in these claim requests were a reaction to the objection under Article 123(2) EPC regarding the first and second auxiliary requests newly raised by the board in its communication under Article 15(1) RPBA. Hence, there were "exceptional circumstances" within the meaning of Article 13(2) RPBA justifying their admittance.
- 6.3 The board fails to see these "exceptional circumstances". The first and second auxiliary requests were not admitted into the appeal proceedings on grounds that were *unrelated* to any added-matter objection. As explained above, these claim requests were not admitted by the board under Article 12(6), first sentence, RPBA because the opposition division did not err when not admitting these requests into the proceedings as late-filed (irrespective of their contents). Hence, the seventh and eighth auxiliary requests address an objection to the first and second auxiliary requests that was never made and on which the non-admittance decision was not based. Consequently, the seventh and eighth auxiliary requests do not remedy a defect that led to non-admittance of the first and second auxiliary requests and thus cannot be a legitimate reaction thereto.
- 6.4 For these reasons, the board did not admit the seventh and eighth auxiliary requests into the appeal proceedings (Article 13(2) RPBA).



**7. Request for a referral to the Enlarged Board of Appeal under Article 112(1)(a) EPC and Article 21 RPBA.**

7.1 The appellant argued that the present board deviated from the interpretation of the EPC contained in decision **G 1/24** of the Enlarged Board of Appeal within the meaning of Article 21 RPBA by not considering the description and the drawings of the opposed patent when interpreting the claims of the patent. It did, however, not submit any specific question to be referred to the Enlarged Board.

7.2 As is clear from, *inter alia*, point 3.5 above, the board has taken on board all pointers of decision **G 1/24** when interpreting the patent claim at issue and therefore did justice to rather than deviated from the interpretation of the EPC given in **G 1/24**. Hence, there is no room for a referral to the Enlarged Board under Article 112(1)(a) EPC and Article 21 RPBA.

## Order

### For these reasons it is decided that:

1. The request for a referral to the Enlarged Board of Appeal is refused.
2. The appeal is dismissed.

The Registrar:

The Chair:



S. Lichtenvort

K. Bengi-Akyürek

Decision electronically authenticated