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**Datasheet for the decision
of 18 January 2011**

Case Number: T 0023/10 - 3.3.02

Application Number: 02007397.9

Publication Number: 1232745

IPC: A61K 9/00

Language of the proceedings: EN

Title of invention:

Powder for use in dry powder inhalers

Patentee:

Vectura Limited

Opponent:

Norton Healthcare Limited

Headword:

Admission of requests filed with the statement of grounds of appeal

Relevant legal provisions:

EPC Art. 100(c), 108, third sentence, 113, 123(2)

EPC R. 99(2)

RPBA Art. 12(2)(4)

Relevant legal provisions (EPC 1973):

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Keyword:

"Admissibility of the appeal - statement of grounds of appeal
- assessment of the appeal as a whole"

"New claim requests filed with the statement of grounds of
appeal - admission into proceedings - procedure proper to an
administrative court"

Decisions cited:

G 0008/91, G 0001/97, G 0010/91, T 0220/83, T 0213/85,
T 0382/96, T 0717/01, T 0269/02, T 0240/04, T 1763/06,
T 0509/07, T 1685/07, T 1705/07, T 0356/08

Catchword:

A patentee withholding claim requests in opposition proceedings is precluded, under Article 12(4) RPBA, from having those requests admitted on appeal, since the patentee would otherwise be permitted to disadvantage the adverse parties by conducting appeal proceedings contrary to its actions before the opposition division.



Case Number: T 0023/10 - 3.3.02

D E C I S I O N
of the Technical Board of Appeal 3.3.02
of 18 January 2011

Appellant: Vectura Limited
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Respondent: Norton Healthcare Limited
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Representative: Gillard, Richard Edward
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 27 November 2009
revoking European patent No. 1232745 pursuant
to Article 101(2) and 101(3)(b) EPC.

Composition of the Board:

Chairman: U. Oswald
Members: A. Lindner
L. Bühler

Summary of Facts and Submissions

- I. European patent No. 1 232 745 based on application No. 02 007 397.9 was granted on the basis of a set of 42 claims.
- II. Independent claims 1 and 29 and dependent claim 11 read as follows:
- "1. A powder for use in a dry powder inhaler, the powder including active particles, carrier particles for carrying active particles and particles of additive material attached to the surfaces of the carrier particles, wherein the additive material is for promoting the release of the active particles from the carrier particles on actuation of the inhaler, the additive material comprising a surface active material and including a combination of materials, wherein substantially all of the carrier particles have an aerodynamic diameter which lies between 20µm and 1000µm and the mass median aerodynamic diameter of the additive particles is not more than 10µm.
11. A powder according to claim 7 or 8, wherein the additive material comprises magnesium stearate in an amount that forms less than 1.5% by weight.
29. A method of producing a powder according to any one of claims 1 to 28, said method including the steps of mixing carrier particles of a size suitable for use in a dry powder inhaler with particles of additive material which become attached to the surfaces of the carrier particles, and mixing the resultant particles with active particles such that the active particles

adhere to the surfaces of the carrier particles and/or the additive particles, wherein the additive material comprises a surface active material and includes a combination of materials, and wherein substantially all of the carrier particles have an aerodynamic diameter which lies between 20µm and 1000µm and the mass median aerodynamic diameter of the additive particles is not more than 10µm."

III. Two oppositions were filed against the granted patent. The patent was opposed under Article 100(a) EPC for lack of novelty and inventive step, under Article 100(b) EPC for insufficiency of disclosure and under Article 100(c) EPC for amendments giving rise to subject-matter extending beyond the content of both the application as originally filed and the earlier application as filed (Articles 76 and 123(2) EPC).

IV. In the decision pronounced on 27 October 2009, the opposition division revoked the patent in suit. Its principal findings in the reasons for the decision posted on 27 November 2009 were as follows: in connection with the ground for opposition according to Article 100(c) EPC, it was held that claims 1 and 29 of the main request (= claims as granted) did not contain subject-matter that extended beyond the content of the original and parent applications. Regarding dependent claim 11, the opposition division concluded that there was no direct and unambiguous disclosure in the parent and original applications of a powder comprising a combination of additives, one of them being less than 1.5% Mg-stearate. In view of the fact that said dependent claim was present in all requests on file,

- this finding applied *mutatis mutandis* to auxiliary requests 1 - 7 filed with a letter dated 26 August 2009.
- V. The patentee (appellant) lodged an appeal against that decision.
- VI. With the statement of the grounds of appeal dated 25 March 2010, the appellant filed a main request and 15 auxiliary requests. In each of the auxiliary requests 8 to 15, dependent claim 11 as granted was deleted.
- VII. In his reply to the statement of the grounds of appeal of 10 August 2010, the respondent (opponent 02 in opposition proceedings) raised objections as to the admissibility of the appeal. Furthermore, it requested that the case not be remitted to the opposition division for further prosecution. The respondent argued that the appellant had deliberately sought to prolong the proceedings by refusing to file amended claims during opposition proceedings and then seeking remittal. This was considered to be an abuse of proceedings. If the board decided to remit the case to the first instance, an apportionment of the costs incurred for preparing and attending additional oral proceedings was requested according to Article 104 EPC.
- VIII. With a letter dated 6 August 2010, GLAXO Group Limited (opponent 01 in opposition proceedings) withdrew its opposition.
- IX. In the annex to the summons to oral proceedings, the board gave its preliminary opinion in connection with the ground of opposition according to Article 100(c)

EPC. It held that the subject-matter of claims 1 and 11 of the main request did not appear to meet the requirements of Articles 76 and 123(2) EPC, respectively.

X. With a letter dated 16 December 2010, the appellant withdrew the main request and auxiliary requests 1 to 7.

XI. Oral proceedings took place on 18 January 2011.

XII. Requested by the board, the respondent clarified its procedural requests and the order in which they should be addressed to be as follows: The respondent requested dismissal of the appeal as inadmissible, or, in the alternative, non-admission of auxiliary requests 8 to 15 into proceedings, or, in the alternative, refusal of the appellant's request for remittal of the case to the department of first instance for further prosecution, or, in the alternative, an order apportioning the costs of the subsequent opposition proceedings.

XIII. As regards the admissibility of the appeal and of auxiliary requests 8 to 15, the appellant essentially argued as follows:

The appeal was admissible because the statement of the grounds of appeal commented on all the points dealt with in the decision under appeal. As an appeal concerned the review of the grounds on which the first instance decision is based, it was not necessary to discuss further grounds not mentioned in said decision.

Regarding the admissibility of auxiliary requests 8 to 15, there was no evidence for an abuse of procedure.

In this context, reference was made to decision T 269/02 (unpublished), which held that it was necessary to study the decision in writing before amendments could be made. It was the patentee's right not to be pushed into making amendments it did not want to make. The patentee did not want to delete dependent claim 11 as granted because of the commercial interest in the subject-matter claimed therein. Deletion of this claim in auxiliary request 8 to 15 was a reaction to the board's preliminary opinion, which deviated from the contested decision as far as claim 1 was concerned. Claim 11 had been deleted with a view to reducing the number of points to be discussed at the oral proceedings.

XIV. As regards the admissibility of the appeal and of auxiliary request 8 to 15, the respondent essentially argued as follows:

The appellant had requested in the statement of the grounds of appeal that the decision of the opposition division be set aside and that the patent be maintained as granted or on the basis of any one of auxiliary requests 1 to 15. However, the appellant had not substantiated this request for maintenance as required by Article 12(2) RPBA, since it had not argued on priority entitlement, sufficiency, novelty or inventive step but had confined its reasoning to objections based on Article 123(2) EPC. In view of this insufficient substantiation, the appeal was not admissible.

Regarding the admissibility of auxiliary requests 8 to 15, the appellant had been deliberately seeking to prolong the procedure by refusing to file amended

claims during opposition proceedings, in which claim 11 as granted was deleted. Decision T 269/02, which related to objections under Article 123(2) EPC in connection with a complex independent claim, did not apply to the present case which only concerned a dependent claim. Such a dependent claim could have easily been deleted.

- XV. At the end of oral proceedings, the appellant stated that it did not intend to submit further requests and wished to put on the record in the minutes that
- the appellant believed that its auxiliary requests 8 to 15 were admissible and should have been admitted into the appeal proceedings;
 - by not admitting auxiliary requests 8 to 15 into appeal proceedings, the appellant had been deprived of its right to be heard and thus a fundamental violation of Article 113 EPC had occurred.

- XVI. The appellant requested that the decision under appeal be set aside and the patent maintained on the basis of auxiliary requests 8 to 15 filed with the statement of grounds of appeal on 29 March 2010.

The respondent requested that the appeal be rejected as inadmissible or, subsidiarily, to be dismissed.

Reasons for the Decision

1. *Admissibility of the appeal*

- 1.1 The question with regard to admissibility to be decided here is whether the grounds presented in the statement of the grounds of appeal are sufficient to comply with Article 108, third sentence, EPC together with Rule 99(2) EPC and Article 12(2) RPBA.

- 1.2 When appealing a decision revoking its patent, the patentee has, according to the established case law, two choices in order to comply with the requirements of aforementioned provisions. Firstly, it may maintain its requests rejected by the opposition division and give reasons as to why the decision taken by the opposition division was incorrect. In this instance, the appeal is adequately substantiated if the grounds of appeal specify the legal and/or factual reasons which constitute the basis of its challenge to the validity of the decision (T 220/83, OJ EPO 1986, 249, Reasons point 4, T 213/85, OJ EPO 1987, 482, Reasons point 3). Alternatively, the patentee may deal with the grounds of the decision of the first instance by filing claim sets which deprive the contested decision of its basis and submitting reasons for the patentability of such claim sets. In this event, an appeal is considered to be sufficiently substantiated even though it is not specified in the statement of grounds of appeal that and why the contested decision is deemed to be unsound or invalid, provided that the subject of the proceedings has changed due to the filing of altered claim sets and the statement of grounds sets out in detail why the raised grounds for opposition do not prejudice the maintenance of the patent according to these new claim sets (T 717/01 of 14 January 2003, Reasons point 2.1).

1.3 In the present case, the appellant chose to pursue both courses of action. On the one hand, the appellant maintained with its statement of grounds of appeal the requests considered by the opposition division (main request and auxiliary requests 1 to 7) and provided reasons as to why the opposition division's finding regarding Article 100(c) EPC should be set aside. On the other hand, the appellant filed auxiliary requests 8 to 15. Dependent claim 11 which the opposition division had considered to be unallowable had been deleted from these requests. Thus, these claim sets were intended to deprive the contested decision of its basis.

1.4 As regards the appellant's attempt to contest the decision revoking the patent, it was sufficient for the statement of grounds of appeal to take issue with the ground for revocation upon which the decision was based, viz. Article 100(c) EPC, given that the board would have to set aside the disputed decision to which said ground gave rise if it found the ground to be invalid. Thus, the appellant was under no obligation to deal with grounds for opposition other than the one considered and decided on by the opposition division. As regards substance, the statement of grounds clearly addressed the reasoning of the decision under Article 100(c) EPC. It provided legal and factual reasons as to why the disputed decision should be set aside. The submissions made explicit reference to relevant passages of the decision under appeal and of pertinent documents. No substantial deficiency in the chain of reasoning is apparent. Therefore, the submissions relating to the main request and auxiliary requests 1 to 7 presented a complete case meeting the

admissibility requirements of Article 108, third sentence, EPC.

- 1.5 Regarding auxiliary requests 8 to 15, the appellant did not set out in its statement of grounds of appeal why the grounds for opposition in the proceedings did not prejudice the maintenance of the patent according to the new claim sets. Whether or not sufficient grounds relating to auxiliary requests 8 to 15 have been submitted is however immaterial for the purposes of the admissibility of the appeal, because an appeal can only be assessed as a whole. In other words, if the admissibility requirements of Article 108, third sentence, EPC are fulfilled in respect of at least one request, let alone of several requests as is the case of the main request and auxiliary requests 1 to 7, the appeal as a whole will be admissible (T 509/07 of 30 September 2009, Reasons point 1.4, T 1763/06 of 15 September 2009, Reasons point 1.2). The fact that the appellant, in the course of appeal proceedings, withdrew the main request and auxiliary requests 1 to 7 and thereby abandoned its refutation of the reasoning of the impugned decision under Article 100(c) EPC has no bearing on the assessment of the admissibility of the appeal as filed. The admissibility requirements of Article 108, third sentence, EPC concerning the appeal filed by the patentee were met within the time limit for filing the statement of grounds of appeal at least as far as the main request and auxiliary requests 1 to 7 were concerned. As a consequence, the appeal of the patentee is admissible.

2. *Admission of auxiliary requests 8 to 15 into appeal proceedings*

2.1 In its response to the statement of grounds of appeal, the respondent argued that the appellant could and should have presented during opposition proceedings amended requests in which the contested claim 11 of the previous main request was deleted. The appellant had been invited by the opposition division to submit new sets of claims addressing its objections under Article 100(c) together with Article 123(2) EPC regarding dependent claim 11. The appellant had however deliberately refused to file amended claims which the opposition division could have considered as regards the other grounds of opposition raised by the opponents. In the respondent's view, the appellant had thereby implicitly waived any rights to have his case heard by two instances. Moreover, the respondent believed that the appellant had deliberately sought to prolong proceedings by refusing to file amended claims in opposition proceedings and requesting remittal for consideration of outstanding issues in opposition appeal proceedings. The filing of amended claims in appeal proceedings was thus considered to be an abuse of proceedings. Although these arguments were intertwined with the respondent's request relating to remittal, they pertained, upon an objective reading, to the admission into proceedings of auxiliary requests 8 to 15.

2.2 According to the principles developed by the Enlarged Board of Appeal, the appeal procedure is a judicial procedure, separate from the preceding purely administrative opposition procedure, in which an

administrative decision of an opposition division is reviewed by a judicial authority (G 1/97, OJ EPO 2000, 322, Reasons point 5c, G 8/91, OJ EPO 1993, 346, Reasons point 7). As a consequence, the function of the opposition appeal procedure is mainly to give the losing party an opportunity to challenge the administrative decision against it and to obtain a judicial ruling on whether this decision is correct (G 10/91, OJ EPO 1993, 420, Reasons point 18). Since the purpose of the appeal is not to conduct the case anew, the issues to be dealt with on appeal are determined by the dispute underlying the opposition proceedings. While this does not preclude new submissions (requests, facts or evidence), their admission is restricted and hinges on the procedural stage at which the submissions are made (T 356/08 of 7 July 2009, Reasons point 2.1.1, T 1685/07 of 4 August 2010, Reasons point 6.4; both decisions cite Brigitte Günzel, The treatment of late submissions in proceedings before the boards of appeal of the European Patent Office, Special edition OJ EPO 2/2007, 30, No. 5).

- 2.3 A patentee who has lost before an opposition division thus has the right to have the rejected requests reconsidered by the competent board of appeal. If however the patentee wants other requests to be considered, admission of these requests into the proceedings implies the discretion of the appeal board. This discretion has to be exercised appropriately which requires the appeal board to consider and weigh up the relevant factors having regard to the particular circumstances of each case (Brigitte Günzel, loc. cit., No. 4.1 and 4.2). Examples of factors to be taken into

consideration by the boards of appeal when exercising their discretion are the state of the file, the complexity of the new submissions, and the general interest in the appeal proceedings being conducted in an effective and reliable manner.

- 2.4 The procedural principles developed in the case law regarding the treatment of new submissions in appeal proceedings have been codified at least in part in the Rules of Procedure of the Boards of Appeal (OJ EPO 2007, Special edition No. 3, 115). Article 12(4) RPBA is of relevance in the present case. According to this provision, an appeal board can hold inadmissible facts, evidence or requests that could have been presented in the opposition proceedings. The boards of appeal thus retain discretion, as a review instance, to refuse new material including requests (claim sets) not submitted during opposition proceedings (T 240/04 of 13 December 2007, Reasons point 16.2, T 1705/07 of 10 June 2010, Reasons point 8.4). The discretion given to the boards of appeal pursuant Article 12(4) RPBA serves the purpose of ensuring fair and reliable conduct of judicial proceedings. By requiring all parties to complete their relevant submissions during opposition proceedings, the moment in time when the parties' case has to be complete is not determined by the procedural strategy chosen by the parties. According to Article 12(4) RPBA, admission of auxiliary requests 8 to 15 into proceedings hinges on the question whether a party to appeal proceedings was in a position to make its submission earlier, and whether it could have been expected to do so under the circumstances.

2.5 Point 34 of the opposition division's minutes of the oral proceedings of 27 October 2009 show that the appellant, after the chairman had announced that the subject-matter of claim 11 did not meet the requirements of Article 123(2) EPC and that this conclusion would apply *mutatis mutandis* to all requests, was asked whether he had any further requests. After an interruption (evidently for consideration of new requests), the appellant announced that it had no further requests. These facts were confirmed by the respondent in its reply to the statements of grounds and not contested by the appellant. The appellant thus was given the opportunity to file amended requests but did not avail himself of this option.

2.6 The appellant advanced as the reason for its conduct of the proceedings that it had been necessary to study the decision in writing before amendments could have been made. The appellant referred to decision T 269/02 of 20 July 2005.

This decision however is not to the point: the reasoning to which the appellant referred is concerned with a request for apportionment of costs pursuant to Article 104(1) EPC, which implies considerations proper to this provision. Moreover, while this request turned on the issue of whether the claim sets on appeal could have been submitted during opposition proceedings, the facts underlying the decision are distinct from the present case: two features of an independent claim which had been deleted in the granting procedure were objected to on the ground of Article 100(c) together with Article 123(2) EPC. At oral proceedings before the opposition division, this issue was first discussed

with the parties, although the opposition division, in the communication accompanying the summons to oral proceedings, had not mentioned that deletion of these features would possibly be a point which needed to be discussed for the purposes of the decision to be taken. At the end of the debate, the chairman directly announced that the requests before the opposition division did not meet the requirements of Article 100(c) together with Article 123(2) EPC. The appellant was not given the opportunity to consider and file amended requests as in the present case. In its decision, the opposition division found the deletion of only one of the features to be an inadmissible broadening of the claims. This finding was not made known to the patentee during oral proceedings. Under these circumstances, the board of appeal held that the patentee could not have anticipated that the deletion of the features objected to would prejudice, in whole or in part, the maintenance of the European patent in opposition proceedings. The dispute dealt with in decision T 269/02 is thus different from the present case.

Besides, the appellant gave no explanation as to why it had needed to study the decision of the opposition division in writing in order to be able to decide on the formulation of appropriate requests. As the respondent pointed out, the objections regarding dependent claim 11 were no surprise to the appellant and did not involve complex issues that justified the need to await the decision of the opposition division. The deletion of dependent claim 11 in all requests under consideration was a straightforward amendment suitable to address the opposition division's

objections that had been made known to the appellant. Thus, the board cannot accept that the appellant could not have been expected to submit amended requests because their drafting required difficult technical considerations.

- 2.7 The appellant further argued that it was its right not to be pushed into making amendments it did not want to make. The patentee did not want to delete dependent claim 11 as granted because of the commercial interest in the subject-matter claimed therein.

According to the principle of party disposition, it is the patentee's sole right and responsibility to define the subject-matter of the patent in opposition proceedings. The board therefore concurs with the appellant's position that it is the patentee's right to decide whether or not to file amended claim sets. The principle of party disposition is however counterbalanced by the general interest in the proceedings being conducted in an effective and reliable manner. Moreover, the extent to which a party may have its case examined depends on whether the proceedings are before an administrative or judicial authority (points 2.2 to 2.4). Therefore, the principle of party disposition cannot give rise to a right of the appellant to have requests automatically admitted at any stage of opposition and opposition appeal proceedings.

Like any party to opposition proceedings, the patentee is under an obligation to conduct them with due care. In order to render the procedure transparent, fair, and effective and in order to achieve legal certainty,

Article 12(4) RPBA requires all parties to complete their relevant submissions during opposition proceedings (point 2.4). The appellant, in the present case, was thus under the procedural obligation to file its claim requests at that stage of proceedings, unless there were compelling reasons for being given an opportunity to amend the claims at a later stage. The appellant has not presented any good reason in this regard.

Concerning the appellant's alleged commercial interests in the embodiment of dependent claim 11, the board notes that the appellant could have maintained the requests which the opposition division had found to be unallowable and could have submitted new claim sets in addition to these requests. It would then have been incumbent on the opposition division to give a reasoned decision on all requests found unallowable. The appellant would thus have preserved its right for judicial review and could still have evaluated the commercial interest on appeal without delaying the proceedings.

- 2.8 No other reason has been advanced that could satisfy the board that the appellant has conducted its proceedings with the required diligence. On the contrary, the appellant, when seeking remittal on the basis of new claim sets on appeal, acted in a manner inconsistent with its prior conduct: during opposition proceedings, the appellant chose not to file claim sets in which dependent claim 11 was deleted. Since the wording of the claims constitutes the basis on which maintenance of the patent is judged, the appellant, by retaining such claim requests, deliberately limited the

dispute before the opposition division and prevented the opposition division from considering other grounds for opposition than Article 100(c) EPC. On appeal, the appellant, on the basis of new claim sets which it had previously chosen not to submit, requested that the case be remitted to the opposition division for consideration of outstanding issues which the appellant had previously prevented from being considered.

To admit auxiliary requests 8 to 15 into the proceedings would allow the appellant to take advantage of its inconsistent conduct of the proceedings: the appellant could complete its case on appeal and thus extend the scope of discussion as determined by the decision under appeal. Since the appeal board cannot be expected, as a review instance, to deal with all the outstanding issues after the amendment of the appellant's case, admission of auxiliary requests 8 to 15 into the proceedings would give the appellant the opportunity to compel the board to remit the case (cf. T 240/04 of 13 December 2007, Reasons point 16.3). This would disadvantage the respondents who could have reasonably expected that the requests considered by the opposition division would form the substantial basis for appeal proceedings. Moreover, the respondents would be forced to either accept remittal and prolongation of proceedings or, in the alternative, to abandon the option of having the case considered by the opposition division, in which case the respondents would need to convince the board to exercise the powers within the competence of the opposition division under Article 111(1) EPC. Admission of auxiliary requests 8 to 15 into proceedings would thus be contrary to a reliable and fair conduct of proceedings.

When exercising its discretion under Article 12(4) RPBA, the board is required to prevent the use of the appeal procedure in a way which runs counter to the interest in a fair and reliable conduct of judicial proceedings. A patentee withholding claim requests in opposition proceedings should thus be precluded from having those requests admitted on appeal, since the patentee would otherwise be permitted to disadvantage the adverse parties by conducting appeal proceedings contrary to its actions before the opposition division. In view of the foregoing, the board concurs with point 8.7 of the Reasons of decision T 1705/07 of 10 June 2010 which refers to the principle "*nemo auditur propriam turpitudinem allegans*".

- 2.9 To the appellant's improper conduct of proceedings must be added, in the present case, its failure to substantiate its new claim requests as required. Although this is not crucial to the present decision, the board notes that where sufficient grounds within the meaning of Article 108, third sentence, EPC have not been furnished in relation to a new claim request, the board could not admit these requests for that reason alone (see T 382/96 of 7 July 1999, Reasons point 5.5, T 509/07 of 30 September 2009, Reasons points 2.1 to 2.3).
- 2.10 In conclusion, the board, having regard to the facts and arguments presented to it, decided to make use of its discretionary powers according to Article 12(4) RPBA not to admit auxiliary requests 8 to 15 into the proceedings. Since no other requests were submitted, the appeal is to be dismissed.

3. *Right to be heard*

3.1 Before the debate was closed at the end of oral proceedings, the appellant contended that its right to be heard had been denied and a fundamental violation of Article 113 EPC had occurred.

3.2 The appellant argued that the board's decision to refuse to admit auxiliary requests 8 to 15 into the proceedings had deprived it of an opportunity to have the substance of these claim requests considered by the board or, in case of remittal, by the opposition division. As reasoned above (points 2.2 to 2.4), there is no right to automatic admission of new claim requests submitted with the grounds of appeal. Article 12(4) RPBA clearly sets out the power of the appeal board not to admit claim requests which could have been filed during opposition proceedings. Thus, there is only discretion, which may or may not be exercised in a party's favour. However, if there is no right to have new claim sets admitted into appeal proceedings, there is also no right to have the substance of these claim requests considered. Therefore, no right to be heard can have been denied. Moreover, the appellant has not argued that the board exercised its discretion according to the wrong principles, or without taking into account the right principles, or in an unreasonable way. Therefore, there is no question of a denial of the right to be heard and no fundamental procedural defect.

3.3 For completeness, the board notes that the admission of auxiliary claim requests 8 to 15 was debated during

oral proceedings. In this debate, the appellant was not limited in its pleadings for their admission. The appellant was given the opportunity to explain why it had not been in a position and could not have been expected to file these claim requests during opposition proceedings. It had the possibility to put forward possible exceptional circumstances to justify the way in which it had conducted the proceedings. The appellant thus had an adequate opportunity to submit arguments regarding the procedural issues on which the board based its decision to refuse admission of auxiliary requests 8 to 15. In conclusion, there was also no denial of the right to be heard in arriving at the decision.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

N. Maslin

U. Oswald