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**Datasheet for the decision  
of 1 October 2015**

**Case Number:** T 2037/11 - 3.4.02

**Application Number:** 02806572.0

**Publication Number:** 1500010

**IPC:** G01N21/27, G01J3/46

**Language of the proceedings:** EN

**Title of invention:**

A METHOD FOR DIGITAL COLOR GRADING OF GEMS AND COMMUNICATION  
THEREOF

**Applicant:**

Sevdermish, Menahem

**Headword:**

**Relevant legal provisions:**

EPC 1973 Art. 52(2)(c), 52(2)(d), 54(1), 56  
RPBA Art. 13(1), 13(3)

**Keyword:**

Inventive step - mixture of technical and non-technical  
features - main request (no)  
Novelty - first auxiliary request (no)  
Late-filed auxiliary requests - admitted (no) -  
fresh case (second to fifth auxiliary request)

**Decisions cited:**

T 1173/97, T 0641/00, T 1567/05

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 2037/11 - 3.4.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.4.02**  
**of 1 October 2015**

**Appellant:** Sevdermish, Menahem  
(Applicant) 26 Leib Yaffe street  
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**Representative:** Dennemeyer & Associates S.A.  
55, rue des Bruyères  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 26 May 2011  
refusing European patent application  
No. 02806572.0 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairwoman** T. Karamanli  
**Members:** A. Hornung  
H. von Gronau

## Summary of Facts and Submissions

- I. The applicant (appellant) appealed against the decision of the examining division refusing European patent application No. 02806572.0 under Article 97(2) EPC. The examining division found that the application based on the claims according to the sole main request did not fulfil the requirements of Articles 123(2), 84, 54 and 56 EPC.
  
- II. The board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to a summons to oral proceedings dated 3 March 2015. In this communication the board *inter alia* expressed the preliminary view that the subject-matter of claims 1 and 14 of the sole request then on file lacked inventive step over the disclosure of document D2 in combination with common general knowledge. In this context, the board noted that the claimed apparatus seemed to differ from the apparatus of D2 in the feature "*the displayed image is an image representing the physical aspect of the gem having the selected shape, hue, tone and saturation*". However, in the board's preliminary opinion, no inventive step could be based on this feature because it seemed to fall within the field of presentations of information mentioned in Article 52(2)(d) EPC.
  
- III. With a letter of reply dated 31 August 2015, the appellant filed claims according to a new main request and new first and second auxiliary requests, all replacing the previous sole request. The appellant submitted observations on the issues raised in the board's communication.
  
- IV. Oral proceedings were held on 1 October 2015.

In the course of the oral proceedings the appellant withdrew the main and first auxiliary requests, both filed with the letter dated 31 August 2015.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request filed at the oral proceedings of 1 October 2015, or one of the first auxiliary request filed at the oral proceedings of 1 October 2015, second auxiliary request filed with the letter dated 31 August 2015, and third to fifth auxiliary requests filed at the oral proceedings of 1 October 2015.

V. The present decision refers to the following document:  
D2: WO 01/91011.

VI. Claims of the requests

(i) Independent claim 1 according to the main request reads as follows:

"1. Apparatus for color grading a particular gem, comprising a data processor (DP) including a database (DB), and a display screen (30), characterized in that:

said database (DB) has stored therein data representing a number of different gem shapes, various hues for each gem shape, various tones for each hue, and various saturations for each hue;

said screen (30) includes a field (22) for displaying an image of a selected gem shape having a selected hue of a selected tone and a selected saturation; and

said data processor (DP) is programmed:

a) to enable a user to select from said database (DB) a gem shape matching the shape of the gem to be graded;

b) to enable the user to select from said database (DB) a particular hue, a particular tone, and a particular saturation matching the hue, tone and saturation of the gem to be graded;

c) to display in said field (22) of the screen (30) an image of a gem, said image combining the shape, hue, tone and saturation selected, said image being for comparison; the selected image thereby identifying the gem shape, the hue, the tone, and the saturation selected for display in said field (22) of the screen (30) as matching the shape, hue, tone and saturation of the particular gem being graded, to thereby enable the user to produce a precise description of the shape, hue, tone and saturation of the particular gem being graded, and to communicate said precise description to another person."

(ii) Independent claim 1 according to the first auxiliary request reads as follows:

"1. Apparatus for color grading a particular gem, comprising a data processor (DP) including a database (DB), and a display screen (30), characterized in that:

said database (DB) has stored therein data representing a number of different gem shapes, various hues for each gem shape, various tones for each hue, and various saturations for each hue;

said screen (30) includes a field (22) for displaying an image of a selected gem shape having a selected hue of a selected tone and a selected saturation; and

said data processor (DP) is programmed:

- a) to enable a user to select from said database (DB) a gem shape matching the shape of the gem to be graded;
- b) to enable the user to select from said database (DB) a particular hue, a particular tone, and a particular saturation matching the hue, tone and saturation of the gem to be graded;

said image combining the shape, hue, tone and saturation selected, said image being for comparison; the selected image thereby identifying the gem shape, the hue, the tone, and the saturation selected for display in said field (22) of the screen (30) as matching the shape, hue, tone and saturation of the particular gem being graded, to thereby enable the user to produce a precise description of the shape, hue, tone and saturation of the particular gem being graded, said precise description comprising an alphanumeric code to communicate to another person."

(iii) Independent claim 1 according to the second auxiliary request differs from claim 1 of the first auxiliary request essentially in that feature (b) reads as follows:

"b) to enable the user to select from said database (DB) a particular hue, a particular tone, and a particular saturation best matching the hue, tone and saturation of the gem to be graded, wherein the image shape has a plurality of facets, color being pasted into a facet from that of a real corresponding facet;"

(iv) Independent claim 1 according to the third auxiliary request differs from claim 1 of the main request in that features (a) and (b) read as follows:

"a) to provide a user with a sequence of shapes to enable the user to select from said database (DB) a gem shape matching the shape of the gem to be graded;

b) to provide the user with a sequence of hues to enable the user to select from said database (DB) a particular hue matching the hue of the gem to be graded, and then to provide a sequence of tone/saturation combinations to enable said user to select a particular tone/saturation combination matching the tone and saturation of the gem to be graded;"

(v) Independent claim 1 according to the fourth auxiliary request reads as follows:

"1. Apparatus for color grading a particular gem, comprising a data processor (DP) including a database (DB), and a display screen (30), characterized in that:

said database (DB) has stored therein data representing a number of different gem shapes, various hues for each gem shape, various tones for each hue, and various saturations for each hue;

said screen (30) includes a field (22) for displaying an image of a selected gem shape having a selected hue of a selected tone and a selected saturation; and

said data processor (DP) is programmed:

a) to provide a user with a series of shapes to enable the user to select from said database (DB) a gem shape matching the shape of the gem to be graded;

b) to provide the user with a sequence of hues to enable the user to select from said database (DB) a particular hue matching the hue of the gem to be graded, and then providing



a sequence of tone/saturation combinations to enable said user to select a particular tone/saturation combination matching the tone and saturation of the gem to be graded;

said image combining the shape, hue, tone and saturation selected, said image being for comparison; the selected image thereby identifying the gem shape, the hue, the tone, and the saturation selected for display in said field (22) of the screen (30) as matching the shape, hue, tone and saturation of the particular gem being graded, to thereby enable the user to produce a precise description of the shape, hue, tone and saturation of the particular gem being graded, said precise description comprising an alphanumeric code to communicate said shape, hue tone and saturation combination to another person."

(vi) Independent claim 1 according to the fifth auxiliary request differs from claim 1 of the fourth auxiliary request essentially in that feature (a) reads as follows:

"a) to provide a user with a series of shapes to enable the user to select from said database (DB) a gem shape matching the shape of the gem to be graded, wherein the image shape has a plurality of facets, color being pasted into a facet from that of a real corresponding facet;"

## **Reasons for the Decision**

### 1. Main request - Inventive step

The subject-matter of claim 1 is obvious in view of the disclosure of D2 (Article 56 EPC 1973) for the following reasons.

- 1.1 D2, with respect to figure 2, discloses an apparatus for color grading a particular gem comprising a data processor (155) including a database (page 5, lines 20-22) and a display screen (150) wherein:
- the database has stored therein data representing a number of gem shapes, hues, tones and saturations (see *D2, figures 10C and 10I, showing screen fields with pull-down menus (275, 284, 285, 286) which provide data options representing different gem shapes, hues (286), tones (284) and saturations (285)),*
  - the screen (250) includes a field for displaying an image of a selected gem shape having a selected hue of a selected tone and a selected saturation (see *D2, figure 9, showing such a screen; see also D2, page 22, lines 27 to 30; the respective feature of the present claim does not require the effective display of an image of a gem, but merely a screen which is suitable for displaying the image of a gem),*
  - the data processor is programmed
    - (a) to enable a user to select from said database a gem shape best matching the shape of the gem to be graded (see *D2, figure 10D, showing a bead-faceted shape; page 23, lines 4-14),*
    - (b) to enable a user to select from said database a particular hue, tone and saturation matching the hue, tone and saturation of the gem to be graded (see *D2, figure 10I; page 23, lines 15-16),*
    - (c) to display in the screen field a text describing a gem, the description of the gem combining the shape, hue, tone and saturation selected and being for comparison

*(see D2, figure 14, showing an exemplary report (325), the report including a complete description of the gem and being suitable for comparison, for instance, with any other gem; page 24, lines 25-26),*

the selected description thereby identifying the gem shape, the hue, the tone and the saturation selected for display in said field of the screen as matching the shape, the hue, the tone and the saturation of the particular gem being graded (*this feature is effectively a repetition of features a) and b) above*),

to enable the user to produce a precise description of the shape, hue, tone saturation of the gem being graded and to communicate said precise description to another person (*see D2, figure 14; page 24, lines 25-26 disclosing the generation of a report (325), including a complete description (326) of the item, which clearly can be transmitted to another person*).

1.2 It follows that the claimed apparatus differs from the apparatus of D2 in that:

- a representation of the gem is displayed on the screen in the form of an image showing the visual aspect of the gem having the selected shape, hue, tone and saturation, whereas in D2 a representation of the gem is displayed in the form of the corresponding alphanumeric description.

1.3 The only distinguishing feature of claim 1 does not contribute to an inventive step.

1.3.1 The only distinguishing feature of claim 1 is about *what* a user sees on the display screen: either a photo-like image, according to claim 1, or a descriptive text, according to D2,

of the same gem. While it is true that the user will not see the same item on the screen, this distinction, based on the content of the information per se, does not imply that the distinguishing feature has a technical effect. Actually, whether a gem having a particular shape, hue, tone and saturation is represented by a photo-like image or a descriptive text is merely a choice between two different ways of presenting information and, according to Article 52(2)(d) and (3) EPC, the presentation of information as such is not regarded as an invention within the meaning of Article 52(1) EPC.

- 1.3.2 The effect of this difference in representation is that the the gem is displayed as an image which can be visually compared with a gem to be graded by a user's eyes and brain, without involving other specific expertise about describing gems. However, this is not a technical effect, because it occurs only in the brain of a user comparing gem features. Moreover, the outcome of this comparison, i.e. the degree of similarity between the displayed image and the real gem, is not processed further other than by the user's brain.
- 1.3.3 Technical aspects with respect to the claimed apparatus, relating to the question about *how* the image representation is provided, need not to be considered, since D2 discloses a database and a screen which generally are suitable for displaying an image of a gem. Technical considerations going beyond those related to general means for representing an image are not necessary. Claim 1 does not specify any special technical requirements for the database or the screen either.
- 1.3.4 Since the distinguishing feature does not have a technical effect, the person skilled in the art, starting from D2 as closest prior art, is not confronted with a technical problem.

1.3.5 Claim 1 specifies additional attributes (i) and (ii) of the displayed image:

(i) "the image combines the shape, hue, tone and saturation selected",

(ii) "the image is for comparison".

Image attribute (i) attempts to define more precisely the exact content of the displayed image: all four gem parameters are displayed in a single image. However, displaying an image with all four parameters of a gem, instead of one to three gem parameters, does not require further technical means. Following decision T 1567/05, Reasons, point 3.5, which states that "Article 52(2)(d) EPC does not distinguish between different kinds of information" and that "therefore, the presentation (as such) of any information must be regarded as a non-invention", the present board is of the view that image attribute (i) does not provide a technical effect and, hence, cannot contribute to an inventive step of the claimed subject-matter.

Image attribute (ii) refers to the comparison between the gem to be graded and the displayed image which, in the present application, is a visual comparison, executed entirely by the user's eyes and brain without involving any technical means. Therefore, image attribute (ii) has no technical character. In fact, it addresses a purely mental act, mentioned in Article 52(2)(c) EPC and which is also not regarded as an invention within the meaning of Article 52(1) EPC (Article 52(3) EPC).

1.3.6 It follows that the only distinguishing feature of present claim 1 is not a technical feature within the meaning of Rule 43(1) EPC and that, therefore, it cannot support the presence of an inventive step (cf. Case Law of the Boards of Appeal of

the European Patent Office, 7th edition 2013, I.A.2.6 and I.D.9.1; T 1567/05, Reasons, point 3.4; T 641/00, Headnote, point 1).

#### 1.4 Counter-arguments from the appellant

##### *Differences between claim 1 and the prior art*

- 1.4.1 The appellant referred to figures 7 to 9 of the present application and argued that these figures showed a plurality of images of different gem shapes, hues, tones and saturations, whereas D2, figure 10I, merely disclosed a menu list for each of these parameters. As a consequence, in D2 the user himself had to provide information about the gem's shape, hue, tone and saturation to the computer. In the present invention, however, this information about the gem was already present on the computer screen: the user simply selected the image which matched the shape and colour appearance of the gem to be graded. The present invention had the effect of facilitating the colour grading of a gem by breaking down the gem parameters into a plurality of characteristics, namely shape, hue, tone and saturation, creating an objective reference for each characteristic, namely the set of images stored in the database and displayed on the screen, and enabling the user to visually compare an image of the gem to be graded with an image of the gem selected in the database. Concerning the last step about the visual comparison, the appellant specifically referred to figure 2, in combination with page 18, lines 1 to 4, of the application showing the computer screen displaying an image of the real gem to be graded (field C1) and an image of the final result of the user's selection of an image from the database (field C2). The appellant concluded that the whole concept of the present invention was different from that of D2 and that, therefore, the claimed apparatus differed from

the apparatus of D2 by the combination of features (a) to (c) of claim 1.

The board, as explained in point 1.1 above, cannot see how features (a) to (c) of claim 1 differ from the prior art, except that in claim 1 the displayed item on the screen is an image representing the visual aspect of the gem having the selected shape, hue, tone and saturation. In particular, the board cannot identify any reference to an image of a gem in features (a) and (b) of claim 1. Therefore, selecting gem parameters from a menu list, as disclosed in D2, falls under the wording of features (a) and (b) of claim 1. Claim 1 also does not define the display of an image of the real gem to be graded. Therefore, in the board's view, there is no difference with the prior art which is based on such a displayed image of the gem to be graded. Finally, whether the whole concept of the present invention, which is allegedly different from that of D2, has an effect on the inventive step of claim 1 must be assessed on the basis of the wording of claim 1. The board, however, does not find any features in claim 1 which would correspond to the allegedly different concept of the present invention.

*Non-obviousness of the claimed apparatus*

- 1.4.2 The appellant argued that the invention fulfilled a "long felt need" and achieved "commercial success", which represented evidence of the non-obviousness of the claimed apparatus.

In the opinion of the board, these aspects, under certain circumstances, may be pointers to non-obviousness of the claimed subject-matter, but only as secondary indicia and in support of other more fundamental, technical reasons pointing to the presence of inventive step. This is not the case with present claim 1.

*Technical character of a computer program*

- 1.4.3 The appellant argued that the "image of a gem" comprised a combination of technical aspects, namely the shape, hue, tone and saturation of the gem, the database and the data processor for processing the gem parameters. The appellant specifically referred to page 4, lines 21 to 23, disclosing that "the user's choice in the comparison process, as well as the final best visual match, are translated by the computer to an alphanumeric code representing hue-tone-saturation-cut variables". He also referred to page 15, line 2, disclosing a "gradual build-up of a gem image in field 22 on screen 30".

The board does not find this argument convincing, because a computer program has a technical character, within the meaning of Rule 43(1) EPC, only if it causes, when it is run on the computer, a "further technical effect" which goes beyond the "normal" physical interactions between program (software) and computer (hardware)" (cf. Case Law of the Boards of Appeal of the European Patent Office, 7th edition 2013, I.A.2.4.3; T 1173/97, Headnote). The passages in the present application, referred to by the appellant, disclose details about how the computer is to be programmed to display a coloured image of a gem. Even though these details may be regarded as comprising technical considerations, they do not amount to "further technical effects" going beyond the effect of electrical currents circulating in the computer disclosed in document D2. The effect of the present programming of the data processor is simply that the user sees a coloured image of a gem on a computer screen. However, as explained in point 1.3 above, this effect amounts to the presentation of information which does not involve a technical effect on which inventive step can be based.

2. First auxiliary request - Novelty



The subject-matter of claim 1 is not new in view of the disclosure of D2 (Article 54(1) EPC 1973) for the following reasons.

- 2.1 Present claim 1 differs from claim 1 of the main request only in that
- the feature "to display in said field (22) of the screen (30) an image of a gem" has been deleted and in that
  - the feature "said precise description comprising an alphanumeric code" has been added.

As explained in point 1.1 above, D2 discloses all features of claim 1 of the main request, except the feature of displaying an image of the gem. By deleting this feature from present claim 1, the only feature which distinguishes claim 1 of the main request from D2 has been deleted.

As also explained in point 1.1 above, D2 discloses the generation of a report including a complete description of the item. The text used in the report of D2 is an assembly of alphanumeric codes falling under the wording of the added feature.

Therefore, the claimed subject-matter is anticipated by D2.

- 2.2 The appellant did not add any further arguments to those already given with respect to the main request.

3. Second auxiliary request - Admissibility

The board, exercising its discretion under Article 13 RPBA, did not admit the second auxiliary request into the appeal proceedings for the following reasons.

3.1 According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal may be admitted and considered at the board's discretion, which is to be exercised in view of *inter alia* the complexity of the new subject-matter, the current state of the proceedings and the need for procedural economy. According to Article 13(3) RPBA, amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the board cannot reasonably be expected to deal with without adjournment of the oral proceedings.

3.2 With the letter of reply dated 31 August 2015 to the board's communication under Article 15(1) RPBA, the appellant filed the amended claims according to the second auxiliary request. Hence, they constitute an amendment to the appellant's case within the meaning of Article 13(1) RPBA and consequently may be admitted and considered at the board's discretion.

3.3 Claim 1 has been amended *inter alia* by adding the feature "wherein the image shape has a plurality of facets, color being pasted into a facet from that of a real corresponding facet".

The appellant argued that the basis for the amended feature was to be found in the description as originally filed, on page 10, line 14 to page 11, line 6, in combination with figures 1A, 1B and 2, and that in view of these passages and especially the figures the skilled person had no problem understanding the meaning of the amended feature. The appellant submitted that the amended claims were filed in response to the board's communication.

3.4 In the board's view, however, the amendment raises complex new issues for the reasons as follows:

- The passage on page 10, line 14 to page 11, line 6, cited by the appellant as disclosing the added feature is part of the description of a more general method for designing the database of the claimed apparatus (see page 9, line 1 to page 11, line 6). Therefore, it would have been necessary to assess whether the extraction of a single feature from the general context of the design method has a sufficient basis in the original application (Article 123(2) EPC).
  
- The added feature raises issues of clarity (Article 84 EPC 1973), such as to which "image shape" the amended feature refers. A further question which arises is how the selection of a matching colour by the user in feature (b) of claim 1 and the subsequent colour pasting are related to one another, especially in view of the fact that, according to the description, the pasting of colour into facets is part of the creation of the initial database which is unrelated to the selection of a matching colour by the user. Finally, it is obscure from the wording of the claim to which facet the terms "real" and "corresponding" in the expression "a real corresponding facet" refer.

It follows that admitting the request would have led to a debate on these new issues at a late stage in the proceedings, which would also not have been conducive to procedural economy.

- 3.5 It is also to be noted that the added feature has not been claimed before in any of the independent or dependent claims but is allegedly taken from the description as originally filed. Under these circumstances the board cannot automatically assume that this feature was searched. Thus, if the board were to admit the amended claims into the proceedings, it might be unable to assess inventive step

because an additional search for relevant prior art would first have to be performed. The board might have to remit the case to the department of first instance for further prosecution (including a search). This course of action would be contrary to procedural economy and the provisions of Article 13(3) RPBA.

3.6 The board sees no justification for filing the second auxiliary request only with the letter dated 31 August 2015 replying to the board's communication under Article 15(1) RPBA. The board does not consider the amendment introduced in claim 1 of the second auxiliary request as a response to the board's objections raised in its communication. In particular, the board's objection of lack of novelty and/or inventive step in view of D2 was not raised for the first time in appeal proceedings, since a similar objection had already been raised in the appealed decision. Hence, the second auxiliary request could have been filed at an earlier stage of the appeal proceedings.

#### 4. Third auxiliary request - Admissibility

The board, exercising its discretion under Article 13 RPBA, did not admit the third auxiliary request into the appeal proceedings for the following reasons.

4.1 The appellant filed the amended claims according to the third auxiliary request at the oral proceedings before the board. Hence, they constitute an amendment to the appellant's case within the meaning of Article 13(1) RPBA and consequently may be admitted and considered at the board's discretion.

4.2 Compared with claim 1 of the main request, claim 1 of the third auxiliary request has been amended essentially by adding the feature that the user is provided with a *sequence* of shapes, hues and tone/saturation combinations.

The appellant's representative argued that filing the third auxiliary request only during oral proceedings was due to difficulties in contacting the appellant or its Israeli patent attorney during the period just before the oral proceedings. The appellant cited several figures and a long list of text passages in the original application documents, which allegedly formed the general basis for the amendments, for instance, page 14, steps B and C; page 11, line 9 to page 12, line 24; page 4, lines 7 to 8; etc. The appellant further argued, in favour of inventive step of the claimed subject-matter, that in D2 the user had to choose the gem parameters from separate menu lists, whereas in claim 1 as amended the user was presented with a sequence of shapes, hues and tone/saturation combinations which facilitated the selection of the best matching shape, hue, tone and saturation.

4.3 The board, however, does not find these arguments convincing for the following reasons:

- The third auxiliary request was filed only during oral proceedings before the board. The board sees no justification for such a late filing.

The summons to oral proceedings, together with the board's communication, were issued on 3 March 2015. After that, the board issued no further communication dealing with the merits of the case. Therefore, the board takes the view that the third auxiliary request could have at least been filed in reaction to the summons and thus before the oral proceedings. In view of the fact that the summons were notified to the appellant's representative at least six months before the date for oral proceedings, any difficulties the representative faced in contacting the appellant or the

Israeli patent attorney during the period just before the oral proceedings do not justify the late filing.

- In view of the long list of passages cited by the appellant as a basis for the amended feature, assessing whether the amendment had a sufficient basis in the original application documents would have required an examination that would have been too complex to be carried out at the oral proceedings. For instance, it would have been necessary to assess whether there was a basis in the original application documents for the expressions "sequence of shapes" and "tone/saturation combination", since such a basis is not immediately apparent in the application documents. An adjournment of the oral proceedings would thus have been necessary. However, this course of action would have been contrary to procedural economy and the provisions of Article 13(3) RPBA.
  
- The basis for the amendment of claim 1 is allegedly to be found in the description as originally filed. But this feature has not been claimed before in any independent or dependent claim. Under these circumstances the board cannot automatically assume that this feature was searched. Thus, if the board were to admit the amended claims into the proceedings, it might be unable to assess inventive step, even in the light of the appellant's arguments in support of the existence of inventive step, because an additional search for relevant prior art would first have to be performed. The board might have to remit the case to the department of first instance for further prosecution (including a search). This course of action would be contrary to procedural economy and the provisions of Article 13(3) RPBA.

5. Fourth and fifth auxiliary requests - Admissibility

Claim 1 of the fourth and fifth auxiliary requests, filed during oral proceedings, comprises the same feature as claim 1 of the third auxiliary request, i.e. the user is provided with a *sequence, or series*, of shapes, hues and tone/saturation combinations. The appellant did not add any further arguments to those already given with respect to the third auxiliary request.

The board, exercising its discretion under Article 13 RPBA, did not admit the fourth and fifth auxiliary requests into the proceedings for the reasons given in point 4.3 above.

6. In view of the above the board sees no reason to set aside the contested decision.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairwoman:



M. Kiehl

T. Karamanli

Decision electronically authenticated