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

Case Number: T 0487/13 - 3.2.03

Application Number: 06101017.9

Publication Number: 1690772

IPC: A47C13/00, B25H3/00, B62B1/14,
B62B3/16, B62B5/08

Language of the proceedings: EN

Title of invention:
Wheeled bucket

Patent Proprietor:
KETER PLASTIC LTD.

Opponent:
PLAST MECCANICA S.P.A.

Headword:

Relevant legal provisions:
EPC Art. 100(a), 54, 56, 69(1), 84, 113(1)
EPC R. 103(1)(a)

Keyword:

Novelty - main request (yes)
Inventive step - main request (yes)
Right to be heard - violation (yes)
Reimbursement of appeal fee - (no)

Decisions cited:

T 0272/08, T 0840/07

Catchword:



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Case Number: T 0487/13 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 1 December 2015

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 3 December 2012
revoking European patent No. 1690772 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Ashley
Members: V. Bouyssy
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. European patent No 1 690 772 (in the following: "the patent") concerns a nestable wheeled bucket.
- II. The patent as a whole was opposed on the grounds of Article 100(a) EPC for lack of novelty and lack of inventive step.
- III. In the oral proceedings, the Opposition Division revoked the patent under Article 101(3) (b) EPC.
- IV. This decision was appealed by the patent proprietor (in the following referred to as "the appellant").
- V. The Board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) in preparation of the oral proceedings, indicating to the parties its preliminary opinion of the case.
- VI. Oral proceedings before the Board were held on 1 December 2015.
- VII. Requests

The appellant requested that the decision under appeal be set aside or, alternatively, that the patent be maintained in amended form on the basis of one of auxiliary requests 1 and 3 to 8 as filed with the statement of the grounds of appeal (letter dated 15 April 2013) and auxiliary request 2 as filed with the letter dated 18 November 2013. In addition, the appellant requested that the appeal fee be reimbursed.

The opponent (in the following referred to as "the respondent") requested that the appeal be dismissed.

VIII. Claims - Main request

Claim 1 as granted is directed to the following subject-matter (the feature breakdown has been introduced by the appellant and used by both parties):

- 1 A bucket comprising:
 - 2.1 (a) generally vertical sidewalls and
 - 2.2 a bottom portion,
 - 2.3 defining together a bucket interior;
 - 3 (b) a back face,
 - 3.1 constituting one of said sidewalls,
 - 3.2 extending substantially above the height of the bucket interior; and
- characterized in that
- 4 said bucket is adapted for nested stacking and
 - 5 the bucket comprises at least two wheels
 - 5.1 mounted to the bucket at the back face about an axis at a bottom area thereof.

Dependent claims 2 to 19 define preferred embodiments of the bucket according to claim 1.

IX. Cited prior art

The parties referred, among other prior art documents, to the following patent publications, which had already been filed in the opposition proceedings and are cited in the decision under appeal:

- D8: US 5 758 886 A
- D9: US 3 346 271 A
- D10: US 2001/0045371 A1

X. The written and oral arguments of the parties, insofar as relevant for the present decision, can be summarised as follows:

a) Main request - Novelty

Appellant's case:

Contrary to the Opposition Division's view, D10 does not take away the novelty of the subject-matter of claim 1. The waste receptacle of D10 is a wheelie bin, not a bucket (feature (1)). In addition, it neither comprises a generally vertical back face (features (2.1) and (3)), nor extends this back face substantially above the height of the bucket interior so that it can be grasped without having to stoop (feature (3.2)).

D9 discloses a shopping cart which can be used as a wheelbarrow. This cart is not a bucket (feature (1)) and it does not comprise a generally vertical back face extending substantially above the height of the bucket interior so that it can be grasped without having to stoop (features (2.1), (3) and (3.2)).

Respondent's case:

The subject-matter of claim 1 is not novel in light of either D10 or D9.

It follows from feature (1) of claim 1 that the claimed subject-matter is a "bucket". Since no specific definition of the term "bucket" is given in the patent, it can be read broadly to cover any cart, bin, container or receptacle that fulfills the functions of the claimed invention, i.e. that can be used as a cart and is

suitable for the light- to medium-duty transport of items, for instance when engaged in outdoor activities, such as gardening, on a construction site, or car washing, or in indoor activities, such as laundry or cleaning of floors and walls (see paragraphs 1, 2, 13 of the patent). This understanding is confirmed by the description and drawings. It is apparent from the drawings that the claimed device is not shaped as a conventional bucket. It follows from paragraph 31 that the shape of the claimed device is not limited to the ones illustrated in the drawings of the patent, and that it may be provided in different sizes for different applications.

D10 discloses a portable waste receptacle which realises the same technical functions as the claimed device (see paragraphs 2, 4 and 9). In particular, it is not only adapted to hold liquids and solids and to be pulled and pushed by a user thanks to the wheels, but it can also be lifted to be stacked (Figure 8, paragraphs 21 and 26). This receptacle thus forms a "bucket" in the broad sense of feature (1) of claim 1. The bottom 15, the front wall 12, the rear wall 13 and the opposing sidewalls 14a and 14b anticipate features (2.1) to (2.3). The receptacle is nestable as required by feature (4) (Figure 9). The rear wall 13 anticipates features (3) and (3.1). Its extension above the height of the interior 19 is a substantial extension within the meaning of feature (3.2). The two wheels 24 and the axle 22 anticipate features (5) and (5.1).

D9 discloses a cart which realises the same technical functions as the device of claim 1: it is adapted to be used in yards and gardens for transporting cut grass, leaves, plants and soil (column 1, lines 35 to 37); it comprises a pair of rear wheels 18 and a front wheel 22

so that it can be easily pushed and pulled by a user; it can be lifted by a user for emptying (see handholes 15 and 16 and column 2, lines 24 and 26) as well as for nested stacking (Figure 2). The cart of D9 thus forms a bucket as broadly defined in feature (1) of claim 1. The sidewalls 12, the front end portion 13 and the rear end portion 14 of the cart are generally vertical sidewalls within the meaning of features (2.1) to (2.4). The rear end portion 14 anticipates features (3) and (3.1). Its extension above the cart interior, which is defined by the front end portion 13, is a substantial extension within the meaning of feature (3.2). Nested stacking as required in feature (4) is shown in Figure 2. The two wheels 18 and the axle 19 anticipate features (5) and (5.1).

b) Main request - Inventive step

Respondent's case:

Figure 2 of D8 shows a container 16 in the form of a bucket, which comprises all the features recited in the preamble of claim 1. In particular, the back face 20 of bucket 16 extends substantially above the height of the bucket interior, which is defined by the sidewall having the lowest height, i.e. by the front face 26. In addition, it is apparent from Figures 1 and 2 that, once the covers 18 are removed, the buckets 16 can be stacked in a nested manner, as required in feature (4).

Thus, the bucket of claim 1 differs from that shown in Figure 2 of D8 only in that it comprises wheels as defined in features (5) and (5.1).

The technical effect of this difference is that the bucket can be pushed or pulled by a user and that it may

be pivoted about the wheels between a first position, wherein the back face is disposed vertically, and a second position, wherein the back face is disposed horizontally (paragraph 21 of the patent). In this regard, D8 discloses that bucket 16 can be mounted on a wheeled frame 12 to be easily pushed, pulled and pivoted by a user. This provides the same technical effects as the claimed bucket.

Therefore, the objective technical problem is simply to provide an alternative solution to that disclosed in D8 for improving the manoeuvrability of the bucket, so that it can be pushed or pulled by a user and that it can be pivoted between a first position, wherein the back face is disposed vertically, and a second position, wherein the back face is disposed horizontally.

An alternative solution to this problem is disclosed in D10. The receptacle shown in Figures 1, 3 and 4 comprises two wheels 24 attached to the ends of an axle 22, which is mounted to the receptacle in the lower section 16 of its rear wall 13. The wheels are substantially within outer recesses 18 of the receptacle and do not extend laterally past its sidewalls 14a and 14b. This construction facilitates manoeuvrability while allowing unencumbered stacking of the receptacles in a minimum of space (Figure 8). This teaching of D10 could be easily applied to the bucket 16 shown in Figure 2 of D8. In particular, bucket 16 comprises a notch 44 in its bottom and a skilled person would obviously arrange an axis in this notch and then attach two wheels to the ends of this axis. By doing so, he would inevitably arrive at a nestable wheeled bucket as defined in claim 1.

Alternatively, another solution to the objective problem is provided in D9. In Figures 1 and 3, the cart is provided adjacent its rear wall 14 with a pair of wheels 18 which rotate on an axle 19 mounted and secured in bosses 20 formed on the bottom 11. The wheels 18 are arranged within recesses 25 of the cart, so that it can nest completely within another cart of the same construction (Figure 2). Thus, when combining D8 with D9, the skilled person would inevitably attach the wheels to the bucket in the claimed manner and thus obtain a nestable wheeled bucket according to claim 1.

Therefore, the claimed subject-matter lacks an inventive step in the light of D8 in combination with either D10 or D9.

Appellant's case:

The bucket of claim 1 differs from bucket 16 in Figure 2 of D8 in that

- its back face extends substantially above the height of the bucket interior so that it can be grasped without having to stoop (feature (3.2)),
- it is adapted for nested stacking (feature (4)) and it comprises at least two wheels mounted to the bucket at the back face about an axis at a bottom area thereof (features (5) and (5.1)).

Thanks to all these distinguishing features, the bucket is adapted for a plurality of indoor and outdoor uses and it is more practical to navigate, use and store. The objective technical problem may therefore lie in the provision of a bucket enabling different usages and being more practical with regard to usage, navigation and storage.

The claimed invention to this problem is not rendered obvious by D8, D9 and D10.

Firstly, it would not be obvious for the skilled person to modify the teaching of D8 into the direction of the claimed solution. D8 is concerned with the problem of providing a container transportation system to transport easily and safely water to a plurality of horses in remote locations. D8 solves this problem by providing a single frame equipped with wheels for moving a plurality of filled buckets at a time, wherein the buckets are placed one upon the others (Figure 1). For this purpose, the bottom of each bucket 16 is provided with a notch 44 to engage securely the frame 12, as well as with an indentation 38 to fit over the handle 36 of the cover 18 of an adjacent bucket 16. Starting from D8, the skilled person has no motivation to add wheels to each and every bucket. In particular, there is no reason to transport each and every bucket individually by means of its own wheels, instead of using frame 12, which is already at hand.

Secondly, when seeking to improve the bucket of D8, the skilled person would not consider the teaching of either D9 and D10 since these two documents do not concern buckets. In the event that the skilled person were to consider D9 and/or D10 and in particular the wheels as disclosed therein, he would not consider integrating such wheels in the bucket of D8. Indeed, the wheels would create pivot points between stacked buckets 19 and so jeopardise the stability of the stack of buckets during transport, in particular by increasing the likelihood of buckets 16 toppling while tilting or wheeling the frame 12. Hence, the provision of wheels would require a further adaptation of the design of the bucket 16 and/or of its cover 18, which is not obvious.

All this would hinder the skilled person from combining the teaching of D8 with that of D9 or D10. Finally, even if these teachings were combined, the added wheels would extend laterally beyond the sidewalls of the bucket and it would not longer be nestable, as required by feature (4).

c) Reimbursement of the appeal fee

Appellant's case:

The appeal fee should be reimbursed because there has been a substantial procedural violation by the Opposition Division.

In the opposition proceedings, the respondent (then opponent) filed D10 along with three other prior art documents and 19 pages of new arguments with a letter dated 18 September 2012; this was in response to the summons to oral proceedings on 6 November 2012. The appellant received this new submission on 1 October 2012 and, owing to public holidays, had only 2 days left to study it and prepare a reply before the final date for making written submissions in preparation for the oral proceedings. By letter of 5 October 2012, the appellant thus requested postponement of the oral proceedings on the ground that it was unable to address the newly raised objections of lack of novelty and inventive step in view of D10.

In the oral proceedings on 6 November 2012, the Opposition Division decided to admit late-filed document D10. In response, the appellant filed new auxiliary requests 4 to 6. The Chairman of the Opposition Division asked the respondent whether he was surprised by the new amendments, which were based on the description but not

on the granted claims. The respondent's representative answered that he was indeed taken by surprise. The Opposition Division then decided not to admit these requests into the proceedings because neither the Opposition Division nor the respondent could reasonably be expected to familiarise itself with the new amendments in the time available. By doing so, the Opposition Division breached the appellant's right to be heard, contrary to Article 113(1) EPC.

Respondent's case:

D10 was submitted before the final date indicated in the summons under Rule 116(1) EPC for making written submissions in preparation for the oral proceedings. The appellant had ample time to study it, evaluate its technical relevance and submit amendments. In the oral proceedings, after the Opposition Division decided to admit D10 into the proceedings, the appellant filed new auxiliary requests 4 to 6. The Opposition Division decided to not admit these auxiliary requests because they were not clearly allowable. In so doing, the Opposition Division exercised its discretion according to the correct criteria and did not breach the appellant's right to be heard.

Reasons for the Decision

1. Main request - Novelty over D10
 - 1.1 D10 discloses a portable waste receptacle which can be used as a dustpan to facilitate the clean-up of trash and debris (paragraphs 2 and 9 to 12).
 - 1.2 The parties dispute whether or not this waste receptacle forms a "bucket" in the sense of feature (1) of claim 1.
 - 1.3 In the context of claim 1, the term "bucket" itself is clear and, in the absence of any other specific indication of the claim, it can only be given its normal, everyday meaning. Buckets have well-defined structural and functional features and they exist in different shapes and sizes, with or without handles, for a variety of applications.
 - 1.4 This understanding of the text of claim 1 is confirmed in the description of the patent. The invention starts from conventional buckets (paragraphs 2, 3 and 6), for instance as disclosed in D8 (paragraph 6). As any conventional bucket, the bucket of the invention can be stored by nested stacking when empty (paragraph 12 and Figure 2), it can hold liquids and solids (paragraph 13) and it can be lifted and carried by a person when filled (paragraph 20 and Figure 5). The drawings all show a bucket-like container provided with wheels and an upwardly extending portion of a certain height.
 - 1.5 A claim should on its own clearly define the subject-matter for which protection is sought (Article 84 EPC). Since claim 1 itself imparts a clear and credible teaching to the skilled reader, there is no reason for

consulting the description and the drawings of the patent to give the term "bucket" a different meaning. In particular, the appellant is incorrect in stating that the description and drawings should be used to interpret the claim wording, in accordance with Article 69(1) EPC and its Protocol: these legal provisions are intended to assist judicial bodies seeking to determine the extent of protection of a European patent in national infringement proceedings, not to interpret a granted claim for assessing novelty or inventive step in opposition proceedings before the EPO when the claim is itself clear. Thus, even though it follows from the description and drawings of the patent that the bucket, beyond the well-known functionalities of a conventional bucket, can be used as a cart, a scoop, a shovel, a toilet, a seat and/or a stool (paragraphs 1, 13, 19, 20 and 27 with Figures 3, 4, 6 and 16), these further functionalities cannot be read into claim 1. Conversely, the mere fact that it follows from the description and drawings that the bucket of the invention can be used as a cart (paragraph 1), and that it can have different shapes and sizes for different applications (paragraph 31), cannot be used to give the clear term "bucket" used in claim 1 the broader meaning of a cart or a wheeled receptacle in any shape and size.

- 1.6 The waste receptacle shown in Figure 1 of D10 is a wheelie bin which can be used as a dustpan, but it is neither shaped like a bucket nor is it suitable for being used as a bucket. In particular, its size is such that, when filled with liquids or solids, it could not be manually lifted and carried by a person.
- 1.7 Therefore, D10 fails to disclose feature (1) of claim 1 and the subject-matter of claim 1 is novel over D10.

1.8 There is thus no need to discuss whether or not the receptacle of D10 comprises features (3.1) and (3.2) of claim 1, as disputed by the parties.

2. Main request - Novelty over D9

2.1 D9 discloses a cart in the form of a shopping trolley for carrying groceries and other produce from the cashier to the customer's automobile (column 1, lines 30 to 34 and Figure 1), which can also be used as a wheelbarrow in yards and gardens to transport cut grass, leaves, plants, soil and the like from one place to another (lines 34 to 37). These applications indicate that the cart is of a bulky nature.

2.2 The cart shown in Figure 1 of D9 is not shaped like a bucket. In addition, it is apparent that it cannot be used as a bucket, since it is neither able to hold liquids (see apertures 17) nor to be lifted and carried by a person when filled. D9 does teach that this cart may be lifted for emptying, by grasping the front handhole 16 and the two rear handholes 15 (column 2, lines 23 to 26). The bulky nature of the cart and the presence of three handholds indicate that, compared to a conventional bucket, such an operation could not be carried out easily.

2.3 Therefore, the subject-matter of claim 1 is novel over D9, and there is no need to discuss whether or not the cart of D9 discloses features (3.1) and (3.2) of claim 1, as disputed by the parties.

3. Main request - Inventive step

- 3.1 The parties agree that the container 16 shown in Figure 2 of D8 is a bucket forming the most promising and most relevant starting point for the assessment of inventive step (see also paragraph 6 in the patent specification). The Board shares this view.
- 3.2 The bucket 16 shown in Figure 2 of D8 comprises sidewalls, which are substantially or approximately vertical and thus "generally vertical", and a bottom portion, which together define a bucket interior, as required by features (1) to (2.4) of claim 1. The back face 20 of the bucket constitutes one of these substantially vertical sidewalls. This anticipates features (3) and (3.1) of claim 1. The bucket 16 does not comprise wheels as required by feature (5) and (5.1) of claim 1.
- 3.3 It is apparent from Figures 1 to 4 of D8 that buckets 16 could be nested empty inside each other for storage and transport, as required by feature (4) of claim 1, even though such a nested stacking is not expressly mentioned in D8.
- 3.4 The back face 20 of bucket 16 extends significantly above the height of the bucket interior, as defined by the front 26 of bucket 16. This anticipates feature (3.2) of claim 1. Contrary to the appellant's opinion, it cannot be read into this feature that the extending portion is of such a height as to allow a user to grasp it without having to stoop, as taught in paragraphs 19 and 20 of the patent specification. Firstly, this height feature cannot be derived from the claim language itself, and the description cannot be used to read this feature into feature (3.2), which in itself is clear (see point 1.5 above). Secondly, the height feature is not essential to the invention. It is presented only as

an optional feature in paragraph 19 (see "preferably", column 4, line 29). It also follows from paragraph 24 and Figures 7a and 7b that the upwardly extending portion 22 may be arrested in any intermediate position between a fully retracted position, when the bucket is stored, and a fully extended position, when a user can grasp portion 22 without having to stoop. It is thus not inevitable that the extending portion as defined in claim 1 must be of such a height that a user does not have to stoop.

- 3.5 In conclusion, the subject-matter of D1 differs from bucket 16 in Figure 2 of D8 only in that it comprises at least two wheels mounted to the bucket at its back face about an axis at a bottom area thereof (features (5) and (5.1)).
- 3.6 This distinguishing feature facilitates manoeuvring of the bucket. The objective technical problem is thus how to improve the manoeuvrability of the bucket of D8, while allowing it to be nested for storage and transport.
- 3.7 The claimed solution to this problem is not part of common general knowledge, and is neither disclosed nor suggested in the cited prior art.
- 3.8 D8 already discloses a solution to the technical problem: it teaches the stacking of buckets 16 on a movable frame having a pair of wheels; this enables the buckets to be transported easily and safely substantial distances, see Figure 1 and column 2, line 64 to column 3, line 1 and column 4, lines 35 to 41. The frame 12 shown in Figures 1 and 4 of D8 is a hand truck with two wheels 62 attached to an axle 46. For the skilled person it would be straightforward to apply this solution, i.e.

create a wheeled frame for transporting several buckets. However, he would not obtain a wheeled bucket having distinguishing feature (5.1) of claim 1 and one which has the ability to nest, as required in feature (4) of the claim.

3.9 In the event that the skilled person was not satisfied with the solution disclosed in D8, he might consider D9 and D10. Indeed, these two documents are concerned with containers and they both disclose the provision of wheels near the bottom of the container to improve its manoeuvrability (D9, column 2, lines 36 to 36 and D10, paragraph 33). However, it is not straightforward to combine the teaching of D8 with that of either D9 or D10 for the following reasons.

3.10 It is the gist of D8 that the container units 14 as disclosed therein be filled directly at the source of water, grain or the like, and then stacked on the movable frame 12 for transport to remote locations (column 1, lines 34 to 67). Each of the container units 14 includes a container, i.e. bucket 16, and a removable cover 18. The units 14 are configured in such a manner that, when placed upon the movable frame, they become securely locked into position not only while the movable frame is in its upright position, but also during the tilting of the frame during movement thereof. In order to prevent movement of the stacked units 14 during transportation, the bottom of each bucket 16 has a locking notch 44 to secure the bucket onto the movable frame 12 and, in addition, the bottom of each bucket 16 is designed to nest within the cover 18 of an adjacent bucket 16 and it has a locking indentation 38 for securing the handle 36 of this cover 18 (column 2, lines 10 to 13; column 3, lines 50 to 53; column 4, lines 13 to 17).

- 3.11 The skilled person gains no information from either D9 or D10 as to how a pair of wheels can be integrated into the bucket of D8 while meeting all the requirements of D8, i.e. the ability to mount the units 14 on the ladder, one upon the other, in a straight and upright position, and to securely hold them in position even during tilting and movement of frame 12. If wheels were provided at a bottom portion of bucket 16, they would inevitably create pivot points between the bottom of the bucket and the cover 18 of an adjacent bucket and so jeopardise the stability of the stack of units 14 when tilting and wheeling the frame 12. In addition, contrary to the respondent's view, the skilled person would not arrange a wheel axis in notch 44 since it is already used to lock the bucket onto the axle 46 of frame 12. Therefore, if bucket 16 were to be provided with integrated wheels, further modifications of the bucket and/or its cover would be necessary to meet the requirements of D8 with respect to stackability and stability during transport, and these modifications cannot be regarded as obvious modifications.
- 3.12 Be all that as it may, even if the necessary modifications were made to enable the transport of wheeled buckets in a stack, it is not obvious that the modified buckets could still be nested empty inside each other, as required by feature (4) of claim 1, since this is not a requirement of D8. Instead, D8 only requires that the bottom of bucket 16 be capable of nesting within the cover 18 of an adjacent bucket 16 (column 2, lines 12 and 13 and Figures 1 and 4).
- 3.13 In conclusion, the subject-matter of claim 1 involves an inventive step when starting from D8.

- 3.14 The above reasoning applies to the subject-matter of the dependent claims.
4. For the reasons set out above, the cited grounds for opposition according to Article 100(a) EPC, namely that of lack of novelty and of lack of inventive step, do not prejudice the maintenance of the patent as granted.
5. In light of this conclusion there is no need to consider auxiliary requests 1 to 8 of the appellant.
6. Breach of right to be heard - Article 113(1) EPC
- 6.1 It is fundamental to the principle of the right to be heard, which is inextricably linked to the principle of fair and equal treatment of the parties, that a patent proprietor, when confronted with new objections, should be given not only the opportunity to present its comments, but also the opportunity to react thereto by amending the claims in order to overcome the objections (see the EPO Guidelines for Examination, 2015, E-V, 2.2, situation (a)).
- 6.2 By deciding not to admit auxiliary requests 4 to 6 directly after late-filed document D10 was admitted into the proceedings, the Opposition Division did not respect this fundamental right of the appellant and thus committed a substantial procedural violation. Indeed, since these new requests were filed in direct response to a change in the subject of the proceedings, they were submitted in due time and the Opposition Division had no discretion to disregard them (Article 114(2) EPC).
- 6.3 Having admitted D10 into the proceedings, auxiliary requests 4 to 6 should also have been admitted and then the respondent should have been granted the opportunity

to familiarise itself with the new requests and prepare its comments, possibly by interrupting the oral proceedings or, if this was not sufficient, by adjourning them (see EPO Guidelines for Examination, 2015, E-II, 8.6).

7. Reimbursement of the appeal fee

- 7.1 Pursuant to Rule 103(1)(a) EPC the appeal fee is reimbursed under three requirements: (1) the appeal is allowed, (2) a substantial procedural violation occurred (3) which renders the reimbursement equitable.

According to the established case law of the boards of appeal, the reimbursement is not equitable if there is no causal link between the substantial procedural violation and the filing of the appeal (see the Case Law of the Boards of Appeal of the EPO, 7th edition, September 2013, IV.E.8.5.1, in particular T 272/08 of 8 May 2007 and T 840/07 of 14 September 2011).

In the case at hand the substantial procedural violation did not concern the refusal of the request to maintain the patent as granted, which was the appellant's main request before the Board. Indeed, the appellant had anyway to lodge an appeal irrespectively of the substantial procedural violation.

Since the appellant's main request was allowed, auxiliary requests 4 to 6 became superfluous and, accordingly, the substantial procedural violation regarding these requests had no effect. In other words, the appeal was caused by the decision refusing the maintenance of the patent as granted, which was not affected by the substantial procedural violation and the

substantial procedural violation concerned requests which did not become part of appeal.

The situation would have been different if the Board had not maintained the patent as granted, so that the substantial procedural violation might have played a role, provided one of the non-admitted requests had been allowed.

- 7.2 The Board concludes that, in the absence of any causal link between the substantial procedural violation and the filing of the appeal, the reimbursement of the appeal fee is not equitable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The request for reimbursement of the appeal fee is dismissed.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated