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**Datasheet for the decision
of 5 October 2016**

Case Number: T 0711/13 - 3.2.05

Application Number: 08003712.0

Publication Number: 2039520

IPC: B41J2/175

Language of the proceedings: EN

Title of invention:

Ink cartridge, set of ink cartridges, and ink cartridge
determination system

Patent Proprietor:

Brother Kogyo Kabushiki Kaisha

Opponent:

Pelikan Hardcopy Production AG

Relevant legal provisions:

EPC 1973 Art. 100(c)
EPC Art. 123(2)
RPBA Art. 13(1)

Keyword:

Amendments (main request and auxiliary requests 1 to 7) -
extension beyond the content of the application as filed (yes)
Late-filed auxiliary requests 7a to 7f not admitted - prima
facie not allowable
Late-filed auxiliary request 7g - admitted (yes)

Decisions cited:

G 0007/91, G 0008/91, G 0009/92, G 0004/93, T 0461/05



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0711/13 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 5 October 2016

Appellant: Brother Kogyo Kabushiki Kaisha
(Patent Proprietor) 15-1 Naeshiro-cho,
Mizuho-ku
Nagoya-shi, Aichi-ken 467-8561 (JP)

Representative: Prüfer & Partner mbB
Patentanwälte Rechtsanwälte
Sohnckestraße 12
81479 München (DE)

Respondent: Pelikan Hardcopy Production AG
(Opponent) Gewerbestrasse 9
8132 Egg (CH)

Representative: Eugen Popp
Meissner Bolte Patentanwälte
Rechtsanwälte Partnerschaft mbB
Widenmayerstraße 47
80538 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 January 2013 concerning maintenance of the
European Patent No. 2 039 520 in amended form.

Composition of the Board:

Chairman M. Pooch
Members: S. Bridge
J. Geschwind

Summary of Facts and Submissions

- I. An opposition was filed against the patent as a whole based on Article 100(a) EPC 1973 (lack of novelty and lack of inventive step), Article 100(b) EPC 1973 (the invention is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art) and Article 100(c) EPC 1973 (added subject-matter extends beyond the content of the application as filed).
- II. The opposition division considered that the subject-matter of the main request's claim 1 is disclosed in a manner sufficiently clear and complete to be carried out by the skilled person to solve the problem posed (Article 100(b) EPC 1973). However, the patent as granted (main request) and auxiliary requests 1 to 7 contained subject-matter which extended beyond the content of the application as filed contrary to Article 100(c) EPC 1973 in combination with Article 123(2) EPC.
- III. The appeal was lodged against the interlocutory decision of the opposition division stating that the European patent No.2 039 520 as amended according to auxiliary request 8 meets the requirements of the EPC.
- IV. Oral proceedings were held before the board of appeal on 5 October 2016.
- V. The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted (main request), or in the alternative, in amended form according to auxiliary requests 1 to 7 and 9 filed with the statement of the grounds of appeal, or auxiliary requests 7a to 7h and 8 filed with letter of 5 September 2016.

- VI. The respondent (opponent) requested that the appeal be dismissed.
- VII. The following feature labelling of claim 1 as granted (main request) was used in the contested decision:
- 1.1 An ink cartridge (10, 10') configured to be mounted in a cartridge mounting portion (276), comprising:
 - 1.2 a main body (20);
 - 1.3 a front wall (161);
 - 1.4 a first signal blocking portion (191)
 - 1.4.1 projecting from the front wall (161) away from the front wall (161)
 - 1.4.2 configured to selectively prevent a first signal from the cartridge mounting portion (276) from passing therethrough or to alter a path of the first signal; and
 - 1.5 a second signal blocking portion (189, 199)
 - 1.5.1 projecting from the front wall (161) in a direction (30) of insertion of the ink cartridge (10) into the cartridge mounting portion (276)
 - 1.5.2 configured to selectively prevent a second signal from the cartridge mounting portion (276) from passing therethrough or to alter a path of the second signal,
 - 1.6 wherein the second signal blocking portion (189, 199) has a thickness determinative of whether the second signal blocking portion (189, 199) prevents the second signal from passing therethrough or alters the path of the second signal at a time that the first signal blocking portion (191) initially prevents the first signal from passing therethrough or alters the path of the first signal.

- VIII. Amended claim 1 according to auxiliary requests 1 to 5 has the text "*of the ink cartridge (10, 10')*" appended to feature 1.3 of granted claim 1 which thus reads:
1.3' "*a front wall (161) of the ink cartridge (10, 10')*"
and identically includes features 1.4.1 and 1.5.1 of granted claim 1.
- IX. Amended claim 1 according to auxiliary request 6 identically includes features 1.3, 1.4.1 and 1.5.1 of granted claim 1 but is worded as a use claim since feature 1.1 of granted claim 1 is prefixed by "*Use of*" to read:
1.1' "*Use of an ink cartridge (10, 10') configured to be mounted in a cartridge mounting portion (276), comprising:*".
- X. Amended claim 1 according to auxiliary requests 7, 7a to 7g concern "*an ink cartridge determination system ...*" and is considered below as follows:

Amended claim 1 according to auxiliary requests 7, 7a to 7c identically includes features 1.3, 1.4.1 and 1.5.1 of granted claim 1.

Amended claim 1 according to auxiliary request 7d identically includes feature 1.5.1 of granted claim 1, but features 1.3 and 1.4.1 of granted claim 1 are amended to respectively read:
1.3' "*a member (21) having a front wall (161) facing the front face (41);*"
1.4.1' "*projecting from [sic] away from the face (41) facing the front wall (161)*".

Amended claim 1 according to auxiliary request 7e identically includes features 1.4.1 and 1.5.1 of granted claim 1 as well as feature 1.3'' of claim 1 according to auxiliary request 7d.

Amended claim 1 according to auxiliary request 7f identically includes feature 1.4.1 and 1.5.1 of granted claim 1 and feature 1.3 of granted claim 1 has been further amended to read:

1.3''' *"a member (21) having a front wall (161) facing the front face (41) of the main body;"*.

XI. Amended claim 1 according to auxiliary request 7g reads (with added labelling of selected features):

"1. An ink cartridge determination system, comprising:
An ink cartridge (10') configured to be mounted in a cartridge mounting portion (276), comprising:

a main body (20);

1.3'''' a movable member (21) having a front wall (161) facing a front face (41) of the main body (20);
a first signal blocking portion (191)
as a rib portion and a pair of grooves (192) formed on opposite sides of the first signal blocking portion (189),

1.4.1 the first signal blocking portion projecting from the front wall (161) away from the front wall (161)

and positioned at a distal end of the top wall (163) configured to selectively prevent a first signal from the cartridge mounting portion (276) from passing therethrough or to alter a path of the first signal; and

a second signal blocking portion (189, 199) bridged over a cutout (187) in the vertical direction on the front wall (161), ends of the second signal blocking portion in a width

direction and the cutout (187) forming rectangular openings in sidewalls (165, 166), respectively,

- 1.5.1 the second signal blocking portion projecting from the front wall (161) in a direction (30) of insertion of the ink cartridge (10) into the cartridge mounting portion (276) configured to selectively prevent a second signal from the cartridge mounting portion (276) from passing therethrough or to alter a path of the second signal,

wherein the second signal blocking portion (189, 199) has a thickness such that the second signal blocking portion (189, 199) prevents the second signal from passing therethrough or alters the path of the second signal at a time that the first signal blocking portion (191) initially prevents the first signal from passing therethrough or alters the path of the first signal;
or

an ink cartridge (10,) configured to be mounted in a cartridge mounting portion (276), comprising:

a main body (20);

- 1.3'''' a movable member (21) having a front wall (161) facing a front face (41) of the main body (20);

a first signal blocking portion (191) as a rib portion and a pair of grooves (192) formed on opposite sides of the first signal blocking portion (189),

- 1.4.1 the first signal blocking portion projecting from the front wall (161) away from the front wall (161) and positioned at a distal end of the top wall (163) configured to selectively prevent a first signal from the cartridge mounting portion (276)

from passing therethrough or to alter a path of the first signal; and

a second signal blocking portion (189, 199) bridged over (187) in the vertical direction on the front wall (161), ends of the second signal blocking portion in a width direction and the cutout (187) forming rectangular openings in sidewalls (165, 166), respectively,

1.5.1 the second signal blocking portion projecting from the front wall (161) in a direction (30) of insertion of the ink cartridge (10) into the cartridge mounting portion (276) configured to selectively prevent a second signal from the cartridge mounting portion (276) from passing therethrough or to alter a path of the second signal,

wherein the second signal blocking portion (189, 199) has a thickness such that the second signal blocking portion (189, 199) does not prevent the second signal from passing therethrough and does not alter the path of the second signal at a time that the first signal blocking portion (191) initially prevents the first signal from passing therethrough or alters the path of the first signal; and

a recording apparatus (250) comprising:

the cartridge mounting portion (276) configured to mount the ink cartridge (10, 10');

a first sensor (235) disposed in the cartridge mounting portion (276) and comprising a first signal-emitting element configured to emit the first signal and a first signal-receiving element configured to receive the first signal, wherein the first signal blocking portion (191) is configured to selectively prevent the first signal from passing therethrough or to alter the path of the first signal at least during a mounting of the ink cartridge (10, 10') to the

cartridge mounting portion (276), and wherein an intensity of the first signal received by the first signal-receiving element when the first signal is prevented from passing through the first signal blocking portion (191) or the path of the first signal is altered by the first signal blocking portion (191) is different from an intensity of the first signal received by the first signal-receiving element when the first signal is not prevented from passing through the first signal blocking portion (191) or the path of the first signal is not altered by the first signal blocking portion (191);

a second sensor (230) disposed in the cartridge mounting portion (276) and comprising a second signal-emitting element configured to emit the second signal and a second signal-receiving element configured to receive the second signal, wherein the second signal blocking portion (189, 199) is configured to selectively prevent the second signal from passing therethrough or to alter the path of the second signal during the mounting of the ink cartridge (10, 10') to the cartridge mounting portion (276), wherein an intensity of the second signal received by the second signal-receiving element when the second signal is prevented from passing through the second signal blocking portion (189, 199) or the path of the second signal is altered by the second signal blocking portion (189, 199) is different from an intensity of the second signal received by the second signal-receiving element when the second signal is not prevented from passing through the second signal blocking portion (189, 199) or the path of the second signal is not altered by the second signal blocking portion (189, 199); and

a determiner configured to determine information associated with the ink cartridge (10, 10') based on the intensity of the second signal received by the

second signal-receiving element at a time that the intensity of the first signal received by the first signal-receiving element initially changes during the mounting of the ink cartridge (10, 10') to the cartridge mounting portion (276)."

XII. The arguments of the appellant in the written and oral proceedings can be summarised as follows:

Main request - claim 1 as granted

The first and second signal blocking portions are independent of the movable member which is not mentioned in the general statement of the invention in paragraph [0006] and in claim 1 of the application as published - The movable member is only introduced in dependent claim 7 as filed.

The movable member 21 serves a different purpose, such as protecting the front of the cartridge and providing an ejection force. Therefore, it is not necessary to include the movable member in the subject-matter of claim 1. Further, the removal or omission of the movable member does not require any modification of the other features of the claim.

The information concerning the type of cartridge is determined by whether or not the second signal blocking portion still blocks the second signal at a time T1 when the first signal blocking portion initially blocks the first signal. This is not dependent on whether the front wall is fixed or not with respect to the main body of the cartridge.

According to decision T 461/05 an intermediate limitation is allowable when the functions of the movable

member and the blocking portions are recognisably independent of one another.

Furthermore, the conditions of the essentiality test are met: the movable member is not necessary for the invention.

It is allowable to pick particular features from the specific embodiments which share a clearly recognisable functional or structural relation. Paragraphs [0078] and [0079] only disclose that the signal blocking portions project from the front wall 161. There is no description of a relationship between the signal blocking portions and the movable member. Therefore, there is no structural union as alleged by the opponent. In consequence, the subject-matter of claim 1 as granted constitutes an intermediate limitation based on features of the exemplary embodiments.

In addition, the appellant should not be penalised as a consequence of his very detailed disclosure of the exemplary embodiments.

In consequence the subject-matter of claim 1 as granted (main request) satisfies the requirements of Articles 100(c) EPC 1973 and 123(2) EPC.

Auxiliary requests 1 to 7

The arguments advanced in the context of the main request also apply to auxiliary requests 1 to 7.

Admissibility of auxiliary requests 7a to 7f

Auxiliary requests 7a to 7g constitute a reaction to the preliminary opinion of the board and should be admitted into the proceedings.

The arguments advanced in the context of the main request also apply to auxiliary requests 7a to 7c.

The skilled person understands that it is not essential for the member 21 to be movable - therefore, amended claim 1 according auxiliary requests 7d to 7f introduces a "*member (21)*" (with the front wall) which is not described as movable.

Auxiliary request 7g

Amended claim 1 according to auxiliary request 7g includes the movable member 12 and thus overcomes the objection of added subject-matter. Upon a query of the board relative to claim 1 according to auxiliary request 7g including more technical features than claim 1 according to auxiliary request 8 (outcome of the opposition proceedings) - a fact which prima facie implies a narrower scope of protection - the representative contacted the appellant and subsequently expressly confirmed auxiliary request 7g and considers that it meets all grounds of appeal.

XIII. The arguments of the respondent in the written and oral proceedings can be summarised as follows:

Main request

The application as filed discloses that first and second signal blocking portions project from the front wall 161 of the movable member 21 and together constitute a single rigid structure (paragraphs [0073],

[0078], [0079]). The combination of features 1.3, 1.4.1 and 1.5.1 in granted claim 1 constitutes an intermediate generalisation, because the movable member 21 has been omitted. This constitutes added subject-matter, for which there is no basis in the application as filed. The appellant failed to disclose a required corresponding generic description of the now claimed structure of the signal blocking portions.

Auxiliary requests 1 to 7

The arguments advanced in the context of the main request also apply to auxiliary requests 1 to 7 which do not include the movable member 21.

Admissibility of auxiliary requests 7a to 7f

Amended claim 1 according to auxiliary requests 7a to 7f still includes the same intermediate generalisation in that the signal blocking portions may project from a front wall which need not be part of the movable member 21. Auxiliary requests 7a to 7f thus do not *prima facie* overcome the objection of added subject-matter and should not be admitted into the proceedings.

Auxiliary request 7g

The admissibility of auxiliary request 7g is not contested. Nevertheless, it is considered that claim 1 according to auxiliary request 7g does not meet the requirements of the EPC. In response to the resulting query from the board, the respondent wishes to remain silent and does not advance any arguments to substantiate this opinion.

Reasons for the Decision

1. *Main request - added subject-matter (Articles 100(c) EPC 1973)*

1.1 According to features 1.4.1 and 1.5.1 of claim 1 as granted (main request), the first and second signal blocking portions are "*projecting from the front wall*", where the front wall is generically defined in feature 1.3 of granted claim 1 as "*a front wall (161)*".

Features 1.4.1 and 1.5.1 specify structural features of the signal blocking portions. Structural features concerning the signal blocking portions were only disclosed in the application as filed in the context of the detailed description of the exemplary embodiments (figures 2(a) to 2(d), 3(a) to 3(d), 8, 9, 10(a), 11(a), 11(b), 13 to 15, 20, 21, 22(a) and 22(b)). This was not contested by the appellant.

As pointed out by the appellant, paragraphs [0078] and [0079] only describe the signal blocking portions as projecting from the front wall 161. However, the description must be read as a whole and paragraph [0073] clearly discloses that this front wall 161 is part of a movable member 21. In consequence, contrary to the opinion of the appellant, there is a clear structural union of the first and second signal blocking portions and the movable member 21, since they project from its front wall 161. There are no statements in the application as filed that the first and second signal blocking portions may project from an arbitrary front wall, i.e. from a front wall which is not necessarily part of movable member 21.

It thus also follows that, contrary to the opinion of the appellant, the removal or omission of the movable member 21 from the subject-matter of claim 1 does require a modification of the other features of claim 1, because, in that case, features 1.4.1 and 1.5.1 would have to be removed as well, since they were originally disclosed as being part of the movable member 21.

In consequence, the appellant's arguments that the movable member 21 has clearly different functions and/or is not necessary or essential for solving the problem of inaccurate cartridge detection on the part of the recording apparatus (application as published, column 1, lines 46 to column 2, line 10) cannot help a claim in which at least some features (namely features 1.4.1 and 1.5.1) which were originally disclosed as features of the movable member are already included in its subject-matter.

The combination of features 1.3, 1.4.1 and 1.5.1 of claim 1 as granted (main request) thus constitutes an intermediate generalisation in that the first and second signal blocking portions may project from a front wall which need not be part of the movable member 21. Such a generalisation has no basis in the application as filed. The appellant need not feel "penalised" by having provided a very detailed disclosure of the exemplary embodiments, but could instead have considered providing suitably general descriptions of the invention, for example in the section of the description according to Rule 42(1)(c) EPC.

- 1.2 In consequence, the subject-matter of claim 1 as granted (main request) comprises added subject-matter contrary to Articles 100(c) EPC 1973.

2. *Auxiliary requests 1 to 5*

Amended claim 1 according to auxiliary requests 1 to 5 identically includes features 1.4.1 and 1.5.1 of granted claim 1 and comprises the feature 1.3' "*a front wall (161) of the ink cartridge (10, 10')*" instead of feature 1.3 of granted claim 1.

Amended feature 1.3' does not require the front wall to be part of the movable member 21. In consequence, the arguments set out above in the context of the main request carry over to the subject-matter of amended claim 1 according to auxiliary requests 1 to 5, in that the combination of features 1.3', 1.4.1 and 1.5.1 constitutes the same intermediate generalisation in that the first and second signal blocking portions may project from a front wall which need not be part of the movable member 21.

In consequence, the subject-matter of claim 1 according to auxiliary requests 1 to 5 comprises added subject-matter contrary to Article 123(2) EPC.

3. *Auxiliary request 6*

Claim 1 according to auxiliary request 6 is worded as a use claim which involves the use of a cartridge which comprises in combination features 1.3, 1.4.1 and 1.5.1.

In consequence, the arguments set out above in the context of the main request carry over to the subject-matter of amended claim 1 according to auxiliary request 6, in that the combination of features 1.3, 1.4.1 and 1.5.1 constitutes the same intermediate

generalisation in that the first and second signal blocking portions may project from a front wall which need not be part of the movable member 21.

In consequence, the subject-matter of claim 1 according to auxiliary request 6 comprises added subject-matter contrary to Articles 123(2) EPC.

4. *Auxiliary request 7*

The "*ink cartridge determination system*" of amended claim 1 according to auxiliary request 7 comprises an ink cartridge with the combination of features 1.3, 1.4.1 and 1.5.1.

In consequence, the arguments set out above in the context of the main request carry over to the subject-matter of amended claim 1 according to auxiliary request 7, in that the combination of cartridge features 1.3, 1.4.1 and 1.5.1 constitutes the same intermediate generalisation in that the first and second signal blocking portions may project from a front wall which need not be part of the movable member 21.

In consequence, the subject-matter of claim 1 according to auxiliary request 7 comprises added subject-matter contrary to Article 123(2) EPC.

5. *Admissibility of auxiliary requests 7a to 7f*

Auxiliary requests 7a to 7f were submitted one month before the oral proceedings before the board and are therefore late filed (Article 12(2) Rules of Procedure of the Boards of Appeal (RPBA)).

According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. In addition, the following criteria may be taken into account for the exercise of discretion, namely whether or not the amendments are relevant to the resolution of raised issues.

5.1 *Admissibility of auxiliary requests 7a to 7c*

Amended claim 1 according to auxiliary requests 7a to 7c identically includes a cartridge with features 1.3, 1.4.1 and 1.5.1 of granted claim 1.

In consequence, the arguments set out above in the context of the main request carry over to the subject-matter of amended claim 1 according to auxiliary requests 7a to 7c, in that the combination of cartridge features 1.3, 1.4.1 and 1.5.1 constitutes the same intermediate generalisation in that the first and second signal blocking portions may project from a front wall which need not be part of the movable member 21.

Since the amendments do not *prima facie* overcome the objection of added subject-matter (Article 100(c) EPC 1973 and 123(2) EPC), the board exercises its discretion under Article 13(1) RPBA to not admit auxiliary requests 7a to 7c into the proceedings.

6. *Admissibility of auxiliary request 7d*

Amended claim 1 according to auxiliary request 7d identically includes feature 1.5.1 of granted claim 1, but features 1.3 and 1.4.1 of granted claim 1 are amended to respectively read:

1.3'' "a member (21) having a front wall (161) facing the front face (41);"

1.4.1' "projecting from [sic] away from the face (41) facing the front wall (161)".

In consequence, the arguments set out above in the context of the main request carry over to the subject-matter of amended claim 1 according to auxiliary requests 7d, in that the combination of cartridge features 1.3'', 1.4.1' and 1.5.1 constitutes the same intermediate generalisation in that the first signal blocking portion may project from elsewhere than the front wall of the movable member 21 and the second signal blocking portion may project from a front wall of an arbitrary member, which need not necessarily be the movable member 21.

Since the amendments do not *prima facie* overcome the objection of added subject-matter (Article 100(c) EPC 1973 and 123(2) EPC), the board exercises its discretion under Article 13(1) RPBA to not admit auxiliary request 7d into the proceedings.

7. *Admissibility of auxiliary request 7e*

Amended claim 1 according to auxiliary request 7e identically includes features 1.4.1 and 1.5.1 of granted claim 1 as well as feature 1.3'' of claim 1 according to auxiliary request 7d.

In consequence, the arguments set out above in the context of the main request carry over to the subject-matter of amended claim 1 according to auxiliary requests 7e, in that the combination of cartridge features 1.3'', 1.4.1 and 1.5.1 constitutes the same intermediate generalisation in that the first and second signal blocking portions may project from the front wall of an arbitrary member, which is not necessarily the movable member 21.

Since the amendments do not *prima facie* overcome the objection of added subject-matter (Article 100(c) EPC 1973 and 123(2) EPC), the board exercises its discretion under Article 13(1) RPBA to not admit auxiliary request 7e into the proceedings.

8. *Admissibility of auxiliary request 7f*

Amended claim 1 according to auxiliary request 7f identically includes feature 1.4.1 and 1.5.1 of granted claim 1 and feature 1.3 of granted claim 1 has been further amended to read:

1.3''' "a member (21) having a front wall (161) facing the front face (41) of the main body;".

In consequence, the arguments set out above in the context of the main request and auxiliary request 7e carry over to the subject-matter of amended claim 1 according to auxiliary requests 7f, in that the combination of cartridge features 1.3''', 1.4.1 and 1.5.1 constitutes the same intermediate generalisation in that the first and second signal blocking portions may project from the front wall of an arbitrary member which need not necessarily be the movable member 21.

Since the amendments do not *prima facie* overcome the objection of added subject-matter (Article 100(c) EPC 1973 and 123(2) EPC), the board exercises its discretion under Article 13(1) RPBA to not admit auxiliary request 7f into the proceedings.

9. *Auxiliary request 7g*

9.1 Admissibility

9.1.1 Amended claim 1 according auxiliary request comprises cartridge features 1.4.1 and 1.5.1 and an amended feature 1.3'''' which reads:

1.3'''' "*a movable member (21) having a front wall (161) facing a front face (41) of the main body (20)*".

In consequence, the objection of added subject-matter which was raised in the context of the main request has been overcome by including the movable member 21 so that the claimed subject-matter corresponds to the original disclosure of the structure of the signal blocking portions as set out in the exemplary embodiments described in paragraphs [0073], [0078] and [0079] of the application as published.

9.1.2 The appellant argued that the amendments clearly overcome the objection of added subject-matter raised in the context of the main request and that the introduction of further features of, for example, the signal blocking portions were intended to overcome any remaining grounds of appeal of Article 100(a) to (c) EPC 1973 raised by the respondent.

The respondent did not object to the admissibility of this request.

In consequence, the board sees no reason to not admit this request into the proceedings.

9.2 Allowability

The respondent explicitly decided to not substantiate his opinion that claim 1 according to auxiliary request 7g did not meet the requirements of the EPC.

In consequence, the board would have to investigate on its own the grounds for which the respondent argues that the subject-matter claimed in auxiliary request 7g did not meet the requirements of the EPC.

The appeal procedure is a judicial procedure (G 7/91 published OJ 1993, 356, G 8/91 published OJ 1993, 346), in contrast to the purely administrative character of the opposition procedure. Since the appeal procedure is less investigative, the board does not further investigate the unsubstantiated objections of the respondent.

The question of whether a board of appeal can put a sole appellant in a worse position than it was in under the contested decision, or whether there should be prohibition of *reformatio in peius* was decided in Enlarged Board of Appeal decisions G 4/93 and G 9/92 published OJ 1994, 875). In point 7 of that decision, the Enlarged Board of Appeal considered the binding effect of the appellant's request and that "*the EPC does not contain any provisions which stipulate that a decision terminating appeal proceedings must not place an appellant in a worse position than it was in as a result of the contested decision*". In consequence, the principle of *reformatio in peius* does not apply.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent as amended according to the following version:
 - claims 1 to 8 filed as auxiliary request 7g with letter of 5 September 2016,
 - description page 2 as filed during oral the proceedings and pages 3 to 14 of the patent specification,
 - figures 1 to 22(b) of the patent specification.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated