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**Datasheet for the decision
of 10 October 2017**

Case Number: T 0611/15 - 3.5.02

Application Number: 03736588.9

Publication Number: 1502483

IPC: H05B41/00, F21Y101/02,
F21Y113/00, F21K99/00

Language of the proceedings: EN

Title of invention:
LED Dimming Controller

Patent Proprietor:
Philips Lighting North America Corporation

Opponents:
Holdip Limited/E Light Limited/LED Lighting
Consultants Limited
Megaman (UK) Limited/Neonlite International Ltd/
Neonlite Electronic & Lighting (HK) Limited

Relevant legal provisions:
EPC Art. 107, 123(2)
RPBA Art. 13(3)

Keyword:

Admissibility of appeal - proprietor adversely affected (no)
Amendments - added subject-matter (yes)
Late-filed auxiliary requests - adjournment of oral
proceedings would have been required (yes)

Decisions cited:

G 0009/92, G 0004/93

Catchword:

See Reasons, under 1.1 et seq.



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 0611/15 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 10 October 2017

Appellant: Philips Lighting North America Corporation
(Patent Proprietor) Three Burlington Woods Drive
Burlington, MA 01803 (US)

Representative: Verweij, Petronella Daniëlle
Philips Lighting B.V.
Philips Lighting Intellectual Property
High Tech Campus 45
5656 AE Eindhoven (NL)

Appellant: Holdip Limited/E Light Limited/LED Lighting
(Opponent 1) Consultants Limited
Prospect Hill/Prospect Chambers/4 Longcliff
Close
Douglas, Isle of Man IM1 1ET/Douglas, Isle of Man
IM1 1ET/Leicester Leicestershire LE14 3LU (GB)

Representative: Adamson Jones
BioCity Nottingham
Pennyfoot Street
Nottingham NG1 1GF (GB)

Party as of right: Megaman (UK) Limited/Neonlite International Ltd/
(Opponent 2) Neonlite Electronic & Lighting (HK) Limited
Unit 2 Quadrant Park, Mundells
The Beehive, City Place
31/F Two Landmark East, 100 How Ming Street
Kwun Tong, Kowloon
Welwyn Garden City Htshire AL7 1FS/Gatwick sus/
HK (GB)

Representative: Potter Clarkson LLP
The Belgrave Centre
Talbot Street
Nottingham NG1 5GG (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 January 2015 concerning maintenance of the
European Patent No. 1502483 in amended form.

Composition of the Board:

Chairman R. Lord
Members: G. Flyng
W. Ungler

Summary of Facts and Submissions

- I. The contested decision is the interlocutory decision of the opposition division, that "account being taken of the amendments made by the patent proprietor during the opposition proceedings, the patent EP-B-1 502 483 and the invention to which it relates [were] found to meet the requirements of the Convention". According to the decision, the valid documents included claims 1 to 50 filed during oral proceedings on 17 October 2014. The patent in suit is based on the international patent application published as WO 03/096761 A1.
- II. The parties to the appeal proceedings are referred to herein as follows:
- The patent proprietor (Philips Lighting North America Corporation, who filed notice of appeal and grounds of appeal, together with a set of claims and some description pages entitled "first auxiliary request") will be referred to as the "**Proprietor**";
 - The joint opponents (Holdip Limited, E Light Limited and LED Lighting Consultants Limited, who filed notice of appeal and grounds of appeal) will be referred to as the "**Opponents**"; and
 - Assumed infringers (Megaman (UK) Limited, Neonlite International Ltd and Neonlite Electronic & Lighting (HK) Limited, who filed notice of intervention, as well as notice and grounds of opposition) will be referred to as the "**Interveners**".
- III. The Board summoned the parties to attend oral proceedings to be held on 10 October 2017.

IV. In a communication pursuant to Article 15(1) RPBA dated 19 September 2017 the Board presented their initial observations on the appeals. The Board raised doubts about the admissibility of the Proprietor's appeal, made observations on the content of the application as filed in respect of filtering and stated that they had the impression that filtering was only disclosed in the context that the filter was a low pass filter which filtered the rectified power-related signal, i.e. the signal provided by the rectifier, before it was fed to a DC converter. The Board noted also that the characteristics of the filter were described in the application as filed as being important and that the omission of these aspects from the independent claims seemed to add fresh subject-matter.

V. Oral proceedings took place on 10 October 2017 as scheduled. As previously announced, the Opponents did not attend.

The parties' final requests were as follows:

- The Proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (**main request**), auxiliarily that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the **first auxiliary request** filed with the letter dated 29 May 2015, or on the basis of the request found allowable by the opposition division (**second auxiliary request**), or on the basis of the claims of one of the **third to fifth auxiliary requests** filed during the oral proceedings of 10 October 2017. Furthermore, they requested dismissal of the Opponents' appeal and rejection of the intervention.

- The Interveners requested, as at the outset, that the decision under appeal be set aside and the patent be revoked.
- The Opponents had requested in writing that the decision under appeal be set aside and the patent be revoked.

The Board pronounced the order of the present decision at the end of the oral proceedings.

VI. The various versions of independent claim 1 according to the Proprietor's requests read as follows:

Main Request (patent as granted)

"1. An illumination apparatus (200), comprising:
at least one LED (104); and
at least one controller (204) coupled to the at least one LED (104) and configured to provide D.C. power to the at least one LED (104),
wherein the controller is configured to receive from an A.C. power source an A.C. power-related signal having higher frequency components than a standard A.C. line voltage and to provide said D.C. power based on the A.C. power-related signal,
characterized in that the at least one controller (204) is configured to filter out the higher frequency components."

First Auxiliary Request

"1. An illumination apparatus (200), comprising:
at least one LED (104); and
at least one controller (204) coupled to the at least one LED (104) and configured to provide D.C. power to the at least one LED (104);

wherein the controller is configured to receive, from an A.C. dimmer circuit, an A.C. power-related signal being a dimmer output signal generated by the dimmer circuit based on a standard A.C. line voltage but having higher frequency components than the standard A.C. line voltage;

wherein the controller is configured to provide said D.C. power based on the A.C. power-related signal; characterized in that the at least one controller (204) is configured to filter out said higher frequency components."

Second Auxiliary Request

"1. An illumination apparatus (200), comprising:

at least one LED (104); and

at least one controller (204) coupled to the at least one LED (104) and configured to provide D.C. power to the at least one LED (104),

wherein the controller is configured to receive, from an A.C. dimmer circuit, an A.C. power-related signal being a dimmer signal output by the dimmer circuit, having portions chopped out of A.C. voltage cycles of a standard A.C. line voltage, and having higher frequency components than the standard A.C. line voltage due to the chopping; and

wherein the controller is configured to provide said D.C. power based on the A.C. power-related signal;

characterized in that the at least one controller (204) is configured to filter out said higher frequency components."

Third Auxiliary Request

Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that the

following features have been added at the end, i.e. after the feature "characterized in that the at least one controller (204) is configured to filter out said higher frequency components", such that it reads:

"1. *[As claim 1 of auxiliary request 2]*,

wherein the A.C. dimmer circuit is controlled by a user interface to vary the power-related signal, and wherein the at least one controller is configured to variably control at least one parameter of light generated by the at least one LED (104) in response to operation of the user interface,

wherein the at least one controller includes:

an adjustment circuit (208) to variably control the at least one parameter of light based on the varying power-related signal; and

power circuitry to provide at least the power to the at least one LED (104) based on the varying power-related signal,

wherein the power circuitry includes:

a rectifier (404) to receive the power-related signal and provide a rectified power related signal;

a low pass filter to filter the rectified power-related signal; and

a DC converter (404) to provide the power to at least the at least one LED (104) based on the filtered rectified power-related signal."

Fourth Auxiliary Request

Claim 1 of the fourth auxiliary request differs from claim 1 of the second auxiliary request in that the word "significantly" has been added, such that it reads "... having significantly higher frequency components than the standard A.C. line voltage due to the chopping" (emphasis added).

Furthermore, the features which were added according to claim 1 of the third auxiliary request (see above) have been added also in claim 1 of the fourth auxiliary request, however they have been added before the feature "characterized in that the at least one controller (204) is configured to filter out said higher frequency components", rather than after it.

Finally, features have been added after the feature "characterized in that the at least one controller (204) is configured to filter out said higher frequency components" such that the end of claim 1 reads:

"[...], and

filter parameters of the low pass filter ensure a cutoff frequencies [sic] of the low pass filter is substantially less than a switching frequency of the DC converter, but substantially greater than the typical several cycle cutoff frequency employed in ordinary switch-mode power supplies,

a total input capacitance of the controller circuit is such that little energy remains in the capacitors at the conclusion of each half cycle of the AC waveform, and

an inductance of the low pass filter is chosen to provide adequate isolation of the high frequency components created by the DC converter to meet regulatory requirements".

Fifth Auxiliary Request

Independent claim 1 of the fifth auxiliary request differs from claim 1 of the fourth auxiliary request in that the words "DC converter of the" have been added, such the first characterising feature of the claim reads: "characterized in that the DC converter of the at least one controller (204) is configured to filter out said higher frequency components" (emphasis added).

VII. The pertinent submissions of the parties may be summarised as follows:

Admissibility of the Proprietor's Appeal and of the Proprietor's Main Request and First Auxiliary Request

The Intervenors submitted that it is evident from the contested decision and the minutes of the oral proceedings before the opposition division that the Proprietor withdrew the main request and first auxiliary request, maintaining the second auxiliary request as the sole request. As the contested decision was favourable in respect of this sole request, the Proprietor was not adversely affected by the decision and consequently the Proprietor's appeal is to be rejected as inadmissible, Article 107 EPC and Rule 101(1) EPC. Furthermore, as the Proprietor's appeal is not admissible, the main and first auxiliary requests submitted in the appeal proceedings are not admissible in view of the principle of *reformatio in peius*.

The Proprietor submitted that during the oral proceedings before the opposition division there was a detailed discussion of the main request, the division then announced a formal decision on the main request and thereafter they withdrew only the auxiliary requests filed in writing before the oral proceedings, not the main request. The statement that they "withdrew all the filed requests" was to be understood in the sense that they withdrew those requests they had filed in writing and that this did not cover the main request, which was based on the claims as granted, i.e. not a request that had been "filed".

Proprietor's Second Auxiliary Request

The Opponents submitted that the patent as amended (i.e. claim 1 of the second auxiliary request) contained added subject-matter, Article 123(2) EPC.

The Interveners submitted that claim 1 of the second auxiliary request contravened Article 123(2) EPC, arguing as follows:

- The application as filed did not directly and unambiguously disclose, at that level of generality, that the controller was configured to filter out "higher frequency components" than the standard A.C. line voltage which were present in the dimmer signal due to the chopping;
- The only filtering disclosed as being performed by the controller was that performed by the specific "low pass filter" 408 of the controller 204. Furthermore the low pass filter was only disclosed in combination with the rectifier 404 and D.C. converter 402 which were essential to the controller's operation. Hence, the aspect of filtering had been introduced into claim 1 whilst

omitting these essential features of the controller;

- The application as filed described the problematic frequency components due to chopping as being "significantly higher frequency components than a typical line voltage", not just "higher frequency components" as claimed (cf WO 03/096761 A1, page 12, lines 15 to 22); and
- The parameters of the low pass filter were described as being significantly important to ensure proper operation of the controller 204 (cf page 18, lines 15 to 24), but these essential features had been omitted from claim 1.

The Proprietor argued that it was evident to the skilled reader from the statement at page 14, lines 3 to 6 of the application as filed, that the invention included a controller "to appropriately condition an A.C. signal provided by a dimmer circuit so as to provide power to (i.e. "drive") one or more LEDs of the lighting unit", that the controller was able to deal with high frequency components that, as set out at page 12, lines 15 to 22, were present due to chopping by the dimmer. This gave a basis for the controller, seen as a whole, being configured to filter out these high frequency components, without it being necessary to specify in claim 1 which specific part(s) of the controller performed the filtering. As regards the rectifier and DC converter, the skilled person had no reason to believe that these were particularly connected with the filtering issue, and therefore there was no reason why these features needed to be brought into claim 1 (see letter dated 12 May 2017, page 2, third paragraph).

In the oral proceedings the Proprietor argued at first that the low pass filter 408 of figure 3, which was described on page 17, line 14 as a "low pass (i.e. high frequency) filter", was just one example of a filter that could filter out the higher frequency components present in the dimmer signal due to chopping. The Proprietor went on to explain, however, that in the disclosed embodiments it was in fact not the low pass filter 408 of the controller that filtered out these higher frequency components. According to the Proprietor, this was evident from the low values of the resistor R4 and capacitors C2, C3 of the low pass filter 408 as in figure 4 which would give a cut-off frequency of about 10 kHz - a value too high to filter out the high frequency components present due to the chopping, which would typically be up to about 1 kHz. According to the Proprietor the filtering referred to in claim 1 was in fact performed by the capacitor C1 and the inductor L1 of the DC converter 402 of the controller of figures 4 and 6, whose values were such that the respective cut-off frequencies (about 1 kHz in figure 4 and 600Hz in figure 6) were low enough to enable the high frequency components present due to chopping to be filtered out.

Responding to these submissions in oral proceedings the Interveners argued that in the light of the Proprietor's inconsistent arguments as to what performed the claimed filtering in the embodiments, it could not be said that it was directly and unambiguously disclosed in the application as filed that the controller (seen as a whole) was configured to perform the filtering set out in claim 1, or indeed which part of the circuit performed such filtering. The Proprietor responded that the DC converter had been mentioned in error in the third paragraph of page 2 of

the letter dated 12 May 2017 and that it had been intended merely to say that the rectifier was important to the filtering.

Proprietor's third to fifth auxiliary requests

The Interveners argued that in each of the third to fifth auxiliary requests the respective claim 1 *prima facie* gave rise to new clarity objections under Article 84 EPC which neither they nor the Board could reasonably be expected to deal with without adjournment of the oral proceedings.

Concerning the third auxiliary request the Interveners argued *inter alia* that the wording of claim 1 was ambiguous as regards whether or not the filtering of the power-related signal performed by the low pass filter of the controller was the same as the filtering-out of the higher frequency components due to chopping which the controller was configured to perform. This was contested by the Proprietor.

Concerning the fourth and fifth auxiliary requests the Interveners argued *inter alia* that in claim 1 the features "substantially greater than the typical several cycle cutoff frequency employed in ordinary switch-mode power supplies" and "an inductance of the low pass filter is chosen to provide adequate isolation of the high frequency components created by the DC converter to meet regulatory requirements" were unclear, and that furthermore it was not clear in which capacitors of the controller circuit little energy remained at the end of each half cycle.

Reasons for the Decision

1. Admissibility of the Appeals - Article 107 EPC

1.1 Proprietor's Appeal

1.1.1 Under Article 107 EPC, first sentence, parties to proceedings may appeal a decision only if they are adversely affected by it. If an appeal does not comply with this requirement the Board of Appeal shall reject it as inadmissible, Rule 101(1) EPC. In the present case the question has arisen whether the Proprietor was adversely affected by the contested decision.

1.1.2 In the contested decision it is stated in paragraph 16 of section I - Facts and submissions that (emphasis added):

"Oral Proceedings were held on 17.10.2014 in the absence of the opponent. At the oral proceedings the granted patent was revoked. The proprietors withdrew all the filed requests and submitted a single additional request for further consideration. The opposition division maintained the patent in amended form based on this request".

1.1.3 This statement gives the impression that the auxiliary request filed at the oral proceedings before the opposition division was the only request which the Proprietor maintained. If that was the case, it would follow that the opposition division's decision, that account being taken of the amendments made according to this auxiliary request the patent and the invention to which it relates meet the requirements of the European

Patent Convention, did not adversely affect the Proprietor.

- 1.1.4 The Proprietor has argued that during the oral proceedings before the opposition division there was a detailed discussion of the main request, the division then announced a formal decision on the main request and thereafter they withdrew only the auxiliary requests filed in writing before the oral proceedings, not the main request.

The Board considers that the minutes of the oral proceedings do not support this assertion. Firstly, the minutes state that the chairman announced that the division was of the opinion that claim 1 of the patent as granted did not meet the requirements of novelty. This is merely the announcement of a conclusion reached in oral proceedings after having heard the parties, not of a formal decision. Secondly, the minutes state on page 4, in paragraph 3 of the section entitled "Auxiliary request VIII" that (emphasis added): "The representative of the proprietor announced that he would withdraw all other requests so that auxiliary request VIII as filed during the oral proceedings represented the main and sole request of the proprietor". This reference to "main and sole request" in the minutes contradicts the Proprietor's argument and gives clear and unequivocal support for the statement in the decision that the "proprietors withdrew all the filed requests and submitted a single additional request for further consideration". In the absence of any request for correction of the minutes, the Board has to assume that these statements accurately reflect the state of the Proprietor's requests at the end of the oral proceedings before the opposition division.

- 1.1.5 The Proprietor has also argued that the statement that they "withdrew all the filed requests" was to be understood in the sense that they withdrew those requests they had filed in writing and that this did not cover the main request, which was based on the claims as granted, i.e. not a request that had been "filed".

The Board does not find this argument convincing because the main request considered at the beginning of the oral proceedings was also for maintenance of the patent in amended form, based on description pages 3 and 4 that had been filed in writing with the latter dated 4 September 2014. Hence, the expression "filed request" as used in the contested decision is rather to be interpreted in the sense that it covers all the requests pursued by the Proprietor, including the (former) main request.

- 1.1.6 The Board has also considered whether the statement in the decision that at the oral proceedings "the granted patent was revoked" implies that there was a formal decision on the (former) main request. The Board has concluded that this is not the case. The statement that "the granted patent was revoked" was obviously not used legally correctly as there is nothing in the EPC that provides for the "granted patent" to be "revoked" at the same time as a decision is taken under Article 101(3)(a) EPC on maintenance of the patent as amended. In the specific procedural situation the statement can only mean that maintenance of the granted patent was considered not to be possible.

- 1.1.7 Also, the Board considered whether a decision on the main request was implied by the fact that in the

contested decision, in section III - Opponent's arguments and in section IV - Further prior art, paragraphs 1a to 1d, which are a mixture of the submissions of the parties and reasons for the decision, the opposition division discusses the patent as granted at great length, drawing various conclusions on the substantive issues, *inter alia* concluding in section IV, paragraphs 1c and 1d that "the granted patent can not be maintained". The Board has concluded that this is not the case because this can be seen as material which has been largely copied and pasted from the opposition division's summons to oral proceedings, perhaps to set the scene for the reasoning given later when coming to the actual decision on the "main and sole request" (labelled auxiliary request VIII).

1.1.8 For the above reasons the Board concludes that the Proprietor's request filed during the oral proceedings before the opposition division was indeed the sole request pending at the end of the oral proceedings. Given that the decision on this request was in favour of the Proprietor it follows that the Proprietor was not adversely affected by the decision and thus not entitled to appeal according to Article 107 EPC. Hence, the Proprietor's appeal is to be rejected as inadmissible, Rule 101(1) EPC.

1.2 Opponents' Appeal and the Intervention

The admissibility of the opponents' appeal and of the intervention have not been contested by the Proprietor, and the Board also sees no reason to put this in question.

2. **Proprietor's Main and First Auxiliary Requests - Admissibility - Reformatio in Peius**

2.1 As set out in G 9/92 and G 4/93, in view of the principle of *reformatio in peius*, if the opponent is sole appellant against an interlocutory decision by an opposition division maintaining the patent in amended form, the patent proprietor is primarily restricted in the appeal proceedings to defending the patent as thus maintained. Amendments proposed by the patent proprietor (as party to the proceedings as of right under Art. 107 EPC 1973, second sentence) can be rejected by the board as inadmissible if they are neither appropriate nor necessary.

2.2 In the present case the Proprietor's appeal is inadmissible. The Opponents are thus the only appellants and the Proprietor is party to the proceedings as of right under Article 107 EPC, second sentence. The Board considers the amendments proposed according to the Proprietor's main and first auxiliary requests to be neither appropriate nor necessary. They are not appropriate because the requests would go beyond the scope of protection resulting from the amended version of the patent considered to be allowable by the opposition division, putting the appellant Opponents in a worse procedural position. They are not necessary because there are other ways for the Proprietor to react to the objections raised, without putting the appellant Opponents in a worse position. The Proprietor has not contested this point. Hence, the Board concludes that the main request and the first auxiliary request are not admissible in view of the principle of *reformatio in peius*.

3. **Proprietor's Second Auxiliary Request - Amendments - Article 123(2) EPC**

3.1 According to the characterising feature of claim 1 of the second auxiliary request, "the at least one controller (204) is configured to filter out said higher frequency components". The "higher frequency components" referred to here are the "higher frequency components than the standard A.C. line voltage" that, according to the preamble of claim 1, are present in the A.C. power-related dimmer signal which the controller receives from the dimmer circuit because of the chopping-out of portions of the A.C. voltage cycles of the standard A.C. line voltage performed by the dimmer circuit.

3.2 In the application as filed there is no literal basis for the feature that the controller is configured to "filter out higher frequency components" that are present in the dimmer signal due to chopping. The question therefore arises whether such filtering by the controller is directly and unambiguously disclosed, at that level of generalisation, in some way other than by literal disclosure.

3.3 The Board is not convinced by the Proprietor's argument that the skilled person would understand from the disclosure at page 14, lines 3 to 6 of "a controller to appropriately condition an A.C. signal provided by a dimmer circuit so as to provide power to (i.e. , "drive") one or more LEDs of the lighting unit" that the controller was configured to filter out the high frequency components described earlier at page 12, lines 15 to 22 as being present due to chopping by the dimmer. There is no direct and unambiguous link between the conditioning referred to on page 14 and the

filtering-out of the high frequency components referred to on page 12. Furthermore, the disclosure at page 14, lines 6 to 8 suggests that driving the LEDs using any of the variety of techniques listed might well be what was to be understood by appropriately conditioning the AC signal provided by the dimmer circuit so as to drive the LEDs. Moreover, the reference at page 14, lines 10 and 11 to "various signal conditioning ... functions" supports the Interveners' argument that the expression "appropriately condition" could well encompass any number of signal conditioning functions other than the filtering-out of high-frequency components.

3.4 In view of the reference at page 17, line 14 to the low pass filter 408 of figures 3 and 4 being a "high frequency" filter, as well as the statement at page 18, lines 15 and 16 that "filter parameters (e.g., of the low pass filter shown in Fig.4) are significantly important to ensure proper operation of the controller", it might have been presumed that the low pass filter was present in the controller 204 for the purpose of filtering out the high frequency components caused by chopping, but this has been categorically denied by the Proprietor.

3.5 As regards the Proprietor's argument that in the embodiments of figures 4 and 6 the high frequency components due to chopping are filtered out by the capacitor C1 and the inductor L1 of the DC converter 402, the Board finds that there is no suggestion in the application as filed that this is the case. Furthermore, it has not been demonstrated that the person skilled in the art, using common general knowledge, would be able to derive this directly and unambiguously from the circuit arrangements and component values shown in figures 4 and 6.

3.6 The Proprietor was not able to demonstrate any disclosure in the application as filed that gave a direct and unambiguous basis for the controller, at that level of generalisation, being configured to filter out high frequency components present in the dimmer signal due to chopping in the dimmer. Hence, the Board came to the conclusion that the introduction of this feature according to claim 1 of the second auxiliary request amended the patent in such a way that it extended beyond the content of the application as filed, contrary to Article 123(2) EPC.

3.7 For these reasons the Proprietor's second auxiliary request was not allowable and hence the decision under appeal had to be set aside.

4. **Proprietor's Third to Fifth Auxiliary Requests - Admissibility - Article 13(3) RPBA**

4.1 According to Article 13, paragraph 3 of the Rules of Procedure of the Boards of Appeal, amendments to a party's case sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.

4.2 Concerning the third auxiliary request the Board concurs with the Interveners that *prima facie* the wording of claim 1 is ambiguous as regards whether or not the filtering of the power-related signal performed by the low pass filter of the controller is the same as the filtering-out of the higher frequency components due to chopping which the controller was configured to

perform. The Board was not convinced by the Proprietor's argument that it was clear from the description that a number of filtering operations were necessary, one performed by the low pass filter and one performed by C1 and L1 in the DC converter. Bearing in mind the confusion over which part or parts of the controller were disclosed as filtering out the higher frequency components, the Board considered that neither they nor the Interveners could be expected to deal with this new clarity issue during the oral proceedings and hence decided to exercise their discretion under Article 13(3) RPBA not to admit the third auxiliary request into the proceedings.

- 4.3 Concerning the fourth and fifth auxiliary requests the Board considered that the various features identified by the Interveners, as set out in the final paragraph of the "Summary of Facts and Submissions" above, *prima facie* gave rise to new clarity issues that were too complex to deal with in the oral proceedings. The Proprietor did not present any arguments concerning these clarity issues. Hence the Board decided to exercise their discretion under Article 13(3) RPBA not to admit the fourth and fifth auxiliary requests into the proceedings.

5. **Conclusion**

As all of the requests of the Proprietor were either not admissible or not allowable, the patent had to be revoked as requested by the other parties.

Order

For these reasons it is decided that:

1. The patent proprietor's appeal is rejected as inadmissible.
2. The decision under appeal is set aside.
3. The patent is revoked.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated