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**Datasheet for the decision
of 25 January 2021**

Case Number: T 1370/15 - 3.5.04

Application Number: 09168309.4

Publication Number: 2200282

IPC: H04N5/445, H04N5/50, H04N5/46

Language of the proceedings: EN

Title of invention:
Broadcast processing apparatus and control method thereof

Patent Proprietor:
Samsung Electronics Co., Ltd.

Opponent:
Interessengemeinschaft für Rundfunkschutzrechte
e.V.

Headword:

Relevant legal provisions:
EPC Art. 100(a), 56, 54, 114(1)
RPBA 2020 Art. 12(2)

Keyword:

Novelty - main and auxiliary requests (yes)
Inventive step - main and auxiliary requests (no) -
introduction of new *ex officio* common general knowledge (yes,
to the extent that the board is knowledgeable from its
experience)

Decisions cited:

G 0010/91, T 1090/12

Catchword:

Not only in *ex parte*-, but also in *inter partes* appeal proceedings, a board is allowed to introduce new *ex officio* common general knowledge without evidence of such knowledge which prejudices maintenance of the patent, to the extent that the board is knowledgeable in the respective technical field from the experience of its members working on cases in this field. (See Reasons, point 5.3)



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1370/15 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 25 January 2021

Appellant: Samsung Electronics Co., Ltd.
(Patent Proprietor) 129, Samsung-ro
Yeongtong-gu
Suwon-si, Gyeonggi-do, 443-742 (KR)

Representative: Appleyard Lees IP LLP
15 Clare Road
Halifax HX1 2HY (GB)

Respondent: Interessengemeinschaft für Rundfunkschutzrechte
(Opponent) e.V.
Hohenzollernstr. 11-13
40211 Düsseldorf (DE)

Representative: IGR e.V.
Postfach 240202
40091 Düsseldorf (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 21 April 2015
revoking European patent No. 2200282 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman B. Müller
Members: B. Willems
A. Seeger

Summary of Facts and Submissions

- I. The appeal is against the decision of the opposition division revoking European patent No. 2 200 282 B1.
- II. Notice of opposition to the patent had been filed by Interessengemeinschaft für Rundfunkschutzrechte e.V. The opposition was based on the grounds of Article 100(a) EPC: the subject-matter of the European patent was not new and did not involve an inventive step over the prior art.
- III. The documents cited in the decision under appeal included the following:
- D1: WO 2005/076610 A2
- D4: Loewe Opta GmbH: User manual TV
- Individual 46 Compose Full-HD+
Individual 40 Compose Full-HD+
Printed in Germany in June 2007, pages 1-63
- D4a: TV sets - Individual 46 Compose Full-HD+ sold by Loewe company in 2007
- D4b: Sales documents from 2007 for Individual 46 Compose Full-HD+
- IV. The opposition division revoked the patent according to Articles 101(2) and 101(3)(b) EPC for the following reasons.

- The subject-matter of claims 1 and 9 of the patent as granted lacked novelty over the disclosure of either D1 or D4 (Article 100(a) EPC).
- The subject-matter of claims 1 and 6 of the then first auxiliary request lacked inventive step over the disclosure of D1 because features relating to the design of a user interface (UI) did not contribute, either on their own or in combination with other features, to the technical character of the invention and were thus not relevant for assessing inventive step (Article 56 EPC).
- The second auxiliary request was not admitted into the proceedings under Article 114(2) EPC and Rule 116(2) EPC.

V. The patent proprietor (appellant) filed notice of appeal. With the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside. It filed claims according to first to fourth auxiliary requests and submitted that the current main request and third auxiliary request corresponded to the main request and first auxiliary request forming the basis for the decision under appeal. The appellant indicated a basis for the amendments in the application as filed and provided reasons why the subject-matter of claim 1 of each of the current requests was new and inventive over the cited prior art (Articles 100(a), 54 and 56 EPC).

VI. The opponent (respondent) did not make any submissions in response to the appeal.

VII. In a communication under Article 15(1) RPBA 2020 (Rules of Procedure of the Boards of Appeal, OJ EPO 2019,

A63), annexed to the summons to oral proceedings, the board set out its interpretation of claim 1 of the granted patent and expressed the following preliminary opinion.

- The opposition division's finding that the subject-matter of claims 1 and 9 of the granted patent lacked novelty over the disclosure of document D1 or document D4 was not correct (Article 100(a) EPC).
- The subject-matter of claim 1 of the granted patent lacked inventive step over the disclosure of D1 combined with the common general knowledge of the person skilled in the art (Article 100(a) EPC).
- In none of the auxiliary requests did the subject-matter of claim 1 meet the requirements of Article 56 EPC.

- VIII. By letter dated 7 August 2020, the appellant requested that the oral proceedings be conducted using videoconferencing technology.
- IX. By letter dated 1 September 2020, the respondent informed the board that it would not be attending the oral proceedings. The respondent did not comment on the board's preliminary opinion.
- X. By letter dated 7 September 2020, the registrar of the board informed both parties that the oral proceedings would be held by videoconferencing technology.
- XI. By letter dated 28 September 2020, the appellant maintained its main request and first to fourth auxiliary requests filed with the statement of grounds

of appeal and provided reasons why the subject-matter of claims 1 and 9 of the main request and claim 1 of all auxiliary requests was novel and inventive over the cited prior art (Articles 100(a), 54 and 56 EPC).

XII. On 28 October 2020, the board held oral proceedings.

The appellant's final requests were that:

- the fresh submissions made during the oral proceedings and the corresponding skeleton arguments embodied in the paper filed during the oral proceedings be admitted into the appeal proceedings
- the decision under appeal be set aside and the opposition rejected or, in the alternative, that the patent be maintained in amended form based on the claims of auxiliary requests 1 to 4 filed with the statement of grounds of appeal
- if the board tended not to grant any of the claim requests, the following question be referred to the Enlarged Board of Appeal: "*In inter partes proceedings, is the board allowed to introduce new ex officio facts and evidence which prejudice maintenance of the patent?*"

At the end of the oral proceedings, the chairman gave the following provisional opinion of the board:

- The board was entitled to examine lack of inventive step using common general knowledge of the person skilled in the art.

- The common general knowledge of the person skilled in the art was not restricted to the material presented in the first-instance proceedings or the oral proceedings by the appellant; common general knowledge included tables.
- The board was not convinced that the subject-matter of claim 1 of any of the requests on file involved an inventive step.

XIII. Claim 1 of the granted patent reads as follows:

"A broadcast processing apparatus (100) comprising:

an image processor (110) which processes an image received through one of a plurality of transmission methods by using one of plurality of processing methods;

a display unit (120) which displays thereon the image processed by the image processor (110), a user interface (UI) provider (140) which provides a setup UI to select a transmission method for transmitting data of the image to the broadcasting processing apparatus and a processing method for processing the data of the image in the broadcasting processing apparatus, through which an automatic channel setup is performed, among the transmission methods and a plurality of processing methods, respectively; and

a controller (130) which displays the setup UI on the display unit (120) if the automatic channel setup is initiated, and performs the automatic channel setup through the transmission method and the processing method selected through the setup UI;

characterised in that

the UI provider is configured whereby for a first transmission method a processing method from the plurality of processing methods is selectable and for a second transmission method a processing method from the plurality of processing methods is selectable independently from the selection of the processing method of the first transmission method."

- XIV. Claim 1 of the first auxiliary request differs from claim 1 of the granted patent in that the following feature is added at the end of the claim before the full stop:

"and the setup UI is provided, so that the processing method for the first transmission method and the processing method for the second transmission method are determined at the same time by a bout of user's selection on a same screen of the setup UI."

- XV. Claim 1 of the second auxiliary request differs from claim 1 of the granted patent in that the characterising portion of the claim reads:

"characterised in that the UI provider is configured whereby on a same screen of the setup UI, for a first transmission method a processing method from the plurality of processing methods is selectable and for a second transmission method a processing method from the plurality of processing methods is selectable independently from the selection of the processing method of the first transmission method, to perform a single channel set up process for the first and second transmission methods and the processing methods selected corresponding thereto, and

wherein the setup UI is provided, so that the plurality of processing methods are arranged to correspond to each of the plurality of transmission methods, thereby allowing at least one among the plurality of processing method to be selectable for each of the plurality of transmission methods."

XVI. Claim 1 of the third auxiliary request differs from claim 1 of the main request in that the characterising portion of the claim reads:

"characterised in that

the UI provider is configured whereby for a first transmission method a processing method from the plurality of processing methods is selectable and for a second transmission method a processing method from the plurality of processing methods is selectable independently from the selection of the processing method of the first transmission method, wherein:

the at least one transmission method comprises at least one of a terrestrial transmission method, a cable transmission method, a satellite transmission method, an Internet protocol television transmission method and an external device transmission method;

the at least one processing method comprises at least one of an analog processing method and a digital processing method;

the setup UI is provided as a table which has the at least one transmission method arranged on one side and the at least one processing method arranged in another side; and

the setup UI is provided to select or cancel a cell located at an intersection of the one side and the other side and select the transmission method and the processing method, through which the automatic channel setup is performed."

- XVII. Claim 1 of the fourth auxiliary request differs from claim 1 of the granted patent in that the following features are added at the end of the claim before the full stop:

"wherein the UI provider is configured to provide a table in which the first and the second transmission methods are arranged along one axis of the table and at least one processing method is arranged along another axis of the table; and

a cell located at an intersection of the one axis and the other axis is selectable to thereby select a desired transmission method and a desired processing method."

- XVIII. The opposition division's arguments, where relevant to the present decision, may be summarised as follows.

(a) The term "*independently*" in granted claim 1 did not imply that no constraints applied to the selection but meant that a processing method was selected for the first transmission method and then a processing method was selected for the second transmission method (see decision under appeal, point 2.2.1.7.6).

(b) Document D4 disclosed two independent selections: a first selection for the "*Signalquelle*", e.g. antenna, combined with the selection of a

"*Farbnorm*", e.g. PAL/SECAM, and a second selection for the "*Signalquelle*", e.g. cable, combined with the selection of a "*Farbnorm*", e.g. PAL/SECAM. If a first search was performed based on the criterion "*Signalquelle*", then within the results of the first search a second search was performed based on the criterion "*Farbnorm*" (see decision under appeal, point 2.2.2.6.3).

XIX. The appellant's submissions, where relevant to the present decision, may be summarised as follows.

- (a) In the oral proceedings before the board, the appellant, for the first time, made submissions in respect of the board's power to examine inventive step and the scope of any such power. The fundamental legal question was whether the ground of inventive step regarding the main request, which was not part of the decision under appeal, was to be examined by the board of its own motion and if so, to what extent (skeleton arguments, middle of page 1). According to Article 12(2) RPBA 2020, the primary object of the appeal proceedings was to review the decision under appeal in a judicial manner. Therefore, the board was bound to the examination of facts already in the proceedings.

In its decision, the opposition division gave reasons why the subject-matter of claim 1 of the patent as granted lacked novelty and the subject-matter of claim 1 of the first auxiliary request lacked inventive step over the disclosure of document D1. In its assessment of inventive step for the first auxiliary request (see decision under appeal, point 2.3.3.7), the opposition division reasoned that "*the design of the UI, does not make*

any contribution either on its own, or in combination with other features, to the technical character of the invention and is thus not relevant for assessing inventive step". Hence, the division considered whether features related to the design of the UI could contribute to inventive step. The board could not deviate from this reasoning by additionally considering the common general knowledge of the person skilled in the art. Had the respondent presented this argument at this late stage of the appeal proceedings, the board would not have admitted it.

- (b) The Case Law of the Boards of Appeal of the European Patent Office, 9th edition, 2019 ("Case Law"), IV.C.3.4.2, that the board had quoted in its preliminary opinion defined a double requirement for the board to be entitled to examine inventive step: the patent had been opposed on the grounds of lack of novelty and lack of inventive step, and only the ground of novelty had been substantiated. In the case at issue, the patent had been opposed on the grounds of lack of novelty and inventive step, and in its decision, the opposition division gave substantiated reasons why the subject-matter of claim 1 of the patent as granted lacked novelty and the subject-matter of claim 1 of the first auxiliary request lacked inventive step over the disclosure of document D1. As to whether the board was empowered to examine the ground of lack of inventive step, the decisive criterion for the appellant was whether the ground was fully substantiated by the opponent. If not, then this ground was not to be examined by the board. If so, then examination of this ground was limited to the facts submitted by the opponent. The appellant

considered that this ground was fully substantiated. Consequently, the portion from Case Law referred to above did not apply. The board could therefore not introduce an objection of inventive step based on different facts, i.e. based on the disclosure of document D1 in view of the common general knowledge of the person skilled in the art.

- (c) Appeal proceedings were of a judicial nature. As set out in G 10/91, Reasons, point 2, opposition proceedings under the EPC were in principle to be considered as contentious proceedings between parties, who should be given equally fair treatment. The patent proprietor should be given a fair chance to defend its patent. The provisions of Article 114(1) EPC should be applied in a more restrictive manner in *inter partes* appeal proceedings. Procedural uncertainty for patentees should be reduced. Opponents were in a better position because they could initiate revocation proceedings before national courts. In this case, the respondent chose to not reply to the board's communication and not attend the oral proceedings. A party that rested on its alleged facts lost its case (see T 424/14 where the board considered itself unable to establish the facts of its own motion). The patent proprietor should not be "*trapped*" by the late introduction of facts by the board.
- (d) According to Case Law, III.N.2.4, anonymously filed observations could be taken into account in *ex parte* proceedings but not in *inter partes* proceedings.

(e) By referring to the common general knowledge of the person skilled in the art, the board introduced a new fact. Where an assertion that something was common general knowledge was challenged, the person making the assertion must provide proof that the subject-matter in question was in fact common general knowledge (see Case Law, I.C.2.8.5). Although in *ex parte* proceedings the board was under no obligation to provide evidence for what may be considered common general knowledge (see T 1090/12), this was not applicable in *inter partes* proceedings. The appellant recognised that the board was knowledgeable in the technical field of user interfaces for broadcast applications from the experience of its members working on cases in this field. However, the board should not act as an expert witness for the opponent.

If the board was still minded to extend the scope of assessment of inventive step to a combination of D1 and common general knowledge and tended not to grant any of the claim requests, the appellant requested that the following question be referred to the Enlarged Board of Appeal pursuant to Article 112(1) (a) EPC:

"In inter partes appeal proceedings, is the Board allowed to introduce new ex officio facts and evidence which prejudice maintenance of the patent?"

Both options of Article 112(1) EPC applied. Yet the appellant agreed that as to the option *"to ensure uniform application of the law"* because of divergent case law, the cases that the appellant addressed in the skeleton arguments submitted

during the oral proceedings before the board all went in the same direction supporting the appellant's position.

The requested referral also related to a point of law of fundamental importance. The revised version of the RPBA that entered into force on 1 January 2020 expressly introduced in Article 12(2) RPBA 2020 that the primary function of the appeal proceedings was the review of the decision under appeal. In *inter partes* proceedings, the EPC required fairness to all parties. The following questions arose in this context: For boards extending proceedings, where should the limits be in dealing with new issues given that parties "could not make" amendments to their case? How would boards change their approach given that appellants/respondents were supposed to change their approach? Which decisions handed down before 2020 were good case law?

- (f) The term "*independently*" in granted claim 1 implied that a user interacted with a single user interface (UI) to set processing methods for transmission methods in which the selection of a first processing method did not put any constraints on the selection of further processing methods (see letter dated 28 September 2020, page 2, point "3. *Interpretation of claim 1 of the granted patent*").
- (g) D1 did not disclose that the "*UI provider is configured whereby for a first transmission method a processing method from the plurality of processing methods is selectable and for a second transmission method a processing method from the plurality of processing methods is selectable*

independently from the selection of the processing method of the first transmission method" (see statement of grounds of appeal, page 5, second paragraph, and letter dated 28 September 2020, pages 2 and 3, point "4. Claims 1 and 9 of the granted patent - novelty over D1 (Article 100(a) EPC)" and page 3, point "6. Claims 1 and 9 of the granted patent - inventive step over D1 (Article 100(a) EPC)").

- (h) In D1, setting different processing methods for different transmission methods would result in setting all processing methods for all transmission methods (see statement of grounds of appeal, page 3, penultimate paragraph, and page 5, Table 2).
- (i) Document D4 did not disclose the claimed independent setting of processing methods (see statement of grounds of appeal, page 4, last paragraph).
- (j) The claimed UI enabled the user to set the criteria by interacting with one UI, i.e. user interaction was reduced compared with D1. It also achieved a faster execution of the search compared with the consecutive searching suggested by the board (see statement of grounds of appeal, page 5, and letter dated 28 September 2020, page 3, the heading "*Technical Effect*").
- (k) Features relating to the user interaction with the UI could contribute to inventive step. The claimed UI provided a tangible technical effect (see statement of grounds of appeal, page 7, middle

paragraph, and letter dated 28 September 2020, page 5, first and second paragraphs).

- (l) It was unknown from D1 whether the results of searching for the second combination overwrote or erased the results of searching for the first combination. In such a case, this example could not be performed using the UI known from D1. The technical execution of the search for the combinations (cable, digital) and (antenna, analogue) was faster because allowing all searches to be executed in one go reduced the overhead associated with separately activated successive searches. Thus, the difference identified did relate to the execution of the search and was not limited to the user interaction with the UI. The technical effect of this difference was to increase user convenience in selecting search criteria while improving the execution of the search (see letter dated 28 September 2020, page 4).

- (m) The objective technical problem to be solved might be formulated as how to increase user convenience in selecting search criteria while improving the execution of the search (see letter dated 28 September 2020, page 5, heading "*Objective technical problem*").

- (n) The claimed UI was more efficient, allowing faster interaction with the broadcast display apparatus. This in turn was more efficient.

- (o) Seeking to increase user convenience in selecting search criteria, the skilled person might have sought to address the error messages displayed according to document D1 if the user did not select

at least one of blocks 41 and 42 at step 330 or at least one of blocks 43 and 44 at step 340 (see document D1, page 8, lines 7 to 10 and 28 to 31, and letter dated 28 September 2020, page 6, first paragraph). However, selecting the different processing methods with respect to a certain transmission method needed a different UI (see letter dated 28 September 2020, page 6, last paragraph).

- (p) Grids and drop-down menus were known generally at the priority date. This did not mean that grids for selecting items belonged to the common general knowledge. In particular, suitable grids and drop-down menus did not belong to the common general knowledge of the skilled person working in the field of the patent in suit before the priority date of the patent in suit. Common general knowledge included basic principles such as using a drill to drill a round hole in a wall. The common general knowledge to be considered in this case consisted of the background of this application, the disclosure of documents D1 and D4, and the background to these documents. However, tables suitable for selecting two items were not known in the field of the patent in suit. There was no indication that electronic program guide (EPG) grids, i.e. tables for selecting programs at the intersection of a column corresponding to a broadcast time and a row corresponding to a broadcast channel, belonged to the common general knowledge of the person skilled in the art before the priority date of the application. Even if suitable grids and drop-down menus were known for a broadcast processing apparatus, the skilled person would only have arrived at the subject-matter of

claim 1 of the granted patent with hindsight (see letter dated 28 September 2020, page 7, first to third paragraphs and submissions made during the oral proceedings of 28 October 2020).

- (q) By correlating the transmission methods and the processing methods using the table, user convenience in selecting search criteria was further increased. By selecting a transmission method, the user also selected a correlated processing method and vice versa without having to know which processing methods were correlated with which transmission methods. In contrast, D1 merely presented error messages if the user failed to make permissible selections (see letter dated 28 September 2020, page 8, sixth paragraph). Tables such as EPG grids did not allow the selection of two items in the grid.

- (r) The person skilled in the art would not have considered implementing a channel setup using tables similar to those known from EPGs. EPGs served a completely different purpose. Channel setup was performed far less frequently than program selection with an EPG.

Reasons for the Decision

1. The appeal is admissible.
2. *Interpretation of claim 1 of the granted patent*
 - 2.1 Claim 1 of the granted patent specifies that "*the UI provider is configured whereby for a first transmission method a processing method from the plurality of processing methods is selectable and for a second transmission method a processing method from the plurality of processing methods is selectable independently from the selection of the processing method of the first transmission method*".
 - 2.2 Contrary to the opposition division (see point XVIII(a) above), the board agrees with the appellant (see point XIX(f) above) that the wording of granted claim 1 implies that a user interacts with a single user interface (UI) to set processing methods for transmission methods in which the selection of a first processing method does not put any constraints on the selection of further processing methods. This interpretation of claim 1 is based on Figures 2 and 4 and the corresponding parts of the description.
3. *Claims 1 and 9 of the granted patent - novelty over D1 (Article 100(a) EPC)*
 - 3.1 Document D1 discloses a broadcast processing apparatus comprising:

an image processor which processes an image received through one of a plurality of transmission methods by using one of a plurality of processing methods (see Figure 2, reference numeral 24, and page 6, lines 4

to 15: "I/O block 23 may include separate input terminals for receiving signals from cable, antenna (i.e., terrestrial), satellite, internet and/or other signal sources [...] Processor 24 is operative to perform various signal processing and control functions of apparatus 20 [...] including signal tuning, analog and digital demodulation, and other functions to thereby generate data representing audio, video and/or data content")

a display unit which displays the image processed by the image processor (page 10, lines 27 and 28: "The present invention may be applicable to various apparatuses, either with or without an integrated display device")

a user interface (UI) provider which provides a setup UI to select a transmission method for transmitting data of the image to the broadcasting processing apparatus and a processing method for processing the data of the image in the broadcasting processing apparatus, through which an automatic channel setup is performed, among the transmission methods and a plurality of processing methods, respectively (see Figure 4 and page 6, lines 28 to 30: "Processor 24 is also operative to perform and/or enable other functions of apparatus 20 including, but not limited to, enabling display of on-screen menus for user channel search option selection", and page 10, lines 16 to 20: "According to an exemplary embodiment, processor 24 enables performance of the channel search at step 370 in accordance with the user's selections at steps 330 to 360 in response to the user activating a "Start" icon 47 shown in on-screen menu 400 of FIG. 4 via user input device 1")

a controller which displays the setup UI on the display unit if the automatic channel setup is initiated and performs the automatic channel setup through the transmission method and the processing method selected through the setup UI (Figures 1 and 3; page 7, lines 15 to 17: "*According to an exemplary embodiment, the user selects the channel search option at step 310 via user input device 10 responsive to an on-screen menu provided under the control of processor 24*"; page 10, lines 15 and 16: "*At step 370, apparatus 20 performs the channel search according to the user's selections at steps 330 to 360*")

- 3.2 The board agrees with the appellant that D1 does not disclose that the "*UI provider is configured whereby for a first transmission method a processing method from the plurality of processing methods is selectable and for a second transmission method a processing method from the plurality of processing methods is selectable independently from the selection of the processing method of the first transmission method*" (see point XIX(g) above). The UI shown in D1, Figure 4, does not allow independently setting "*digital*" or "*analog*" for "*cable*" or "*antenna*". Thus, in the UI shown in Figure 4 of D1, setting different processing methods for different transmission methods results in setting all processing methods for all transmission methods (see point XIX(h) above). Therefore, the layout and resulting functionality of the claimed UI differ from the UI provided in D1.
- 3.3 The reasoning set out in points 3.1 and 3.2 applies equally to claim 9 of the granted patent.
- 3.4 In view of the above, the opposition division's finding that the subject-matter of claims 1 and 9 of the

granted patent lacked novelty over the disclosure of D1 was not correct (Article 100(a) EPC).

4. *Claims 1 and 9 of the granted patent - novelty over D4 (Article 100(a) EPC)*
- 4.1 Even if, *arguendo*, D4 implicitly disclosed two searches (see point XVIII(b) above), these could not be equated with the claimed independent setting of processing methods (see also the board's interpretation of claim 1 set out in points 2.2 and XIX(i) above).
- 4.2 The reasoning set out in point 4.1 applies equally to claim 9 of the granted patent.
- 4.3 In view of the above, the opposition division's finding that the subject-matter of claims 1 and 9 of the granted patent lacked novelty over the disclosure of D4 was not correct (Article 100(a) EPC).
5. *The board's power to examine inventive step for claim 1 of the granted patent and claim 1 of the first to fourth auxiliary requests, and the scope of any such power*
- 5.1 No remittal to the department of first instance

The foregoing examination of the appeal has revealed that it is allowable within the meaning of Article 111(1) EPC. This is because the opposition division erred in finding that the subject-matter of claims 1 and 9 of the granted patent lacked novelty (see point 4.3 above). Pursuant to Article 111(1) EPC:

Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power

within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

Making use of its discretion, the board decides to exercise the power within the jurisdiction ("competence") of the opposition division to examine the subject-matter of the claims submitted for a decision on appeal. As opposition proceedings were initiated in mid-2013 and the appeal was filed in mid-2015, a remittal of the case would unreasonably delay its final settlement. Furthermore, the board is knowledgeable in the relevant technical field of user interfaces for broadcast applications from the experience of its members working on cases in this field.

The appellant stressed that according to Article 12(2) RPBA 2020, the board's primary task was to review the decision under appeal. At the same time, the appellant denied that the board had power to introduce common general knowledge into the proceedings that had not been the subject of the decision under appeal.

Remitting the case to the opposition division would remove the restrictions of Article 12(2) RPBA 2020, whatever their scope may be (see below, point 5.3). In addition, it would comply with the principle that two tiers of assessment of an opposition should be available.

However, these considerations do not prompt the board to remit the case. Doing so would run counter to the principle embodied in revised Article 11 RPBA 2020 according to which a board "*shall not remit a case to the department whose decision was appealed for further*

prosecution, unless special reasons present themselves for doing so". The explanatory remarks embodying the lawmakers' intention in this regard confirm the board's position. They read as follows:

The aim of the new provision is to reduce the likelihood of a "ping-pong" effect between the Boards and the departments of first instance, and a consequent undue prolongation of the entire proceedings before the EPO. When exercising its discretion under Article 111 EPC, the Board should take account of this aim ...

(See Supplementary publication 2, OJ EPO 2020, page 54.)

Remitting a case because of new submissions would thus generally be contrary to what was intended with Article 11 of the revised RPBA of 2020.

Accordingly, the board will proceed to tackle the issue of inventive step in respect of the subject-matter of claim 1 of each request.

In doing so, it will take into account the submissions related to the introduction of common general knowledge into the proceedings that were made orally and in writing (skeleton arguments) for the first time during the oral proceedings. The board introduced common general knowledge in its communication of 18 March 2020 attached to the summons to oral proceedings. The appellant replied in substance with the letter of 28 September 2020 without objecting to the introduction of common general knowledge into the proceedings. In the oral proceedings, the appellant stated that it was only in the preparation for these that it decided to raise this objection.

The board considers, favourably for the appellant, that these submissions are all of a legal nature, i.e. "arguments". The board will further assume in favour of the appellant that such fresh arguments may be introduced at any stage of the appeal proceedings, even during the oral proceedings and even if this means that, contrary to the boards' practice, a decision cannot be given at the end of the oral proceedings. The board thus considers, *arguendo*, the corresponding case law (see Case Law, V.A.4.10.1, in particular T 1914/12, point 7.2.3) to be good law. Upon their submission, those oral and written arguments therefore became part of the proceedings. As a consequence, the request to admit these arguments has no object.

In these circumstances, the board need not take a position on the question of whether this case law also applies if taking into account legal reasoning (arguments) causes a substantial delay of the proceedings, and if there is no good reason for coming up with the legal reasoning at a late or even the latest conceivable stage. While Article 114(2) EPC does indeed not mention the EPO's power to not admit ("disregard") legal reasoning (arguments), general principles of the law might prevent taking into account the legal reasoning under certain circumstances.

- 5.2 The board's power to examine inventive step at all
 - 5.2.1 As to the substantiation of the ground of inventive step in the notice of opposition, the board notes that in point 3 of the notice, the opponent objected that the subject-matter of claim 1 of the granted patent lacked inventive step over the disclosure of D1 or D4. In this regard, it drew attention to references in D1 and D4 cited in section 2 of the notice of opposition

in relation to the ground of lack of novelty. The opponent did not expressly assert, in particular, lack of inventive step over D1 in combination with the common general knowledge of the person skilled in the art as preliminarily found by the board.

5.2.2 With respect to whether or not the board is entitled to examine inventive step in respect of the subject-matter of claim 1 of the main request (and of the auxiliary requests as well; see point 7 below), the board affirms the view that it expressed in its communication annexed to the summons to oral proceedings. In point 6.1, the board essentially replicated a paragraph of section IV.C.3.4.2 of Case Law considering that this paragraph applied to the case at issue. It reads as follows:

If a patent has been opposed on the grounds of lack of novelty and lack of inventive step and if only the ground of novelty has been substantiated within the opposition period, a specific substantiation of the ground of lack of inventive step is not necessary. Under such circumstances a specific substantiation of the ground of lack of inventive step is not even generally possible since - given that novelty, i.e. the presence of a difference between the claimed subject-matter and a prior art, is a prerequisite for determining whether an invention involves an inventive step in view of that prior art - this would contradict the reasons in support of lack of novelty. Therefore, the objection of lack of inventive step does not constitute a fresh ground for opposition and can therefore be examined in the appeal proceedings without the agreement of the patentee.

In the board's view, the question of whether the contents of point 3 of the notice of opposition referred to above constitutes a substantiation in full or in part or no substantiation at all is immaterial. This is because, as stated in the preceding quote, in the present case, the opponent arguing lack of novelty could not be required to substantiate the ground of inventive step because having done so might have

contradicted the reasons advanced in support of lack of novelty. Therefore, the fact that the opponent chose to provide a brief substantiation of the ground of inventive step without being required to do so cannot be found to weigh against it. It follows that the board is entitled to examine the ground of lack of inventive step independent of how thoroughly it was substantiated.

- 5.2.3 The appellant agreed that in this case the board was entitled to examine the ground of inventive step because, in its opinion, that ground was fully substantiated in point 3 of the notice of opposition. Examination by the board was, however, "*limited to the facts*" (see skeleton arguments, middle of page 2), i.e. what was expressed in point 3: the subject-matter of claims 1 and 9 of the patent as granted (main request) lacks inventive step in light of either D1 or D4, with attention being drawn to references in D1 and D4 cited in section 2 of the notice of opposition and relating to the ground of lack of novelty.
- 5.3 The board's power to examine inventive step starting from D1 in view of common general knowledge
- 5.3.1 In the communication attached to the summons to oral proceedings and in the oral proceedings, the board expressed the view that the subject-matter of claim 1 of the main request lacked an inventive step not over D1 alone, but over D1 in view of the common general knowledge to which EPGs in the form of a UI, such as a grid or drop-down menus belonged. The appellant recognised that the board was knowledgeable in the technical field of user interfaces for broadcast applications, which included the common general knowledge introduced, from the experience of its

members working on cases in this field. However, the appellant asserted that the board was not entitled to introduce an objection of inventive step based on these different facts.

5.3.2 This was a point of law of fundamental importance. The revised version of the RPBA expressly introduced in Article 12(2) RPBA 2020 that the primary function of the appeal proceedings was the review of the decision under appeal. In *inter partes* proceedings, the question that arose was where should the limits be for boards extending proceedings in dealing with new issues given that parties "could not make" amendments to their case (see also point XIX(e) above).

5.3.3 If the board was still minded to extend the scope of assessment of inventive step to a combination of D1 and common general knowledge and tended not to grant any of the claim requests, the appellant requested that the following question be referred to the Enlarged Board of Appeal pursuant to Article 112(1)(a) EPC:

"In inter partes appeal proceedings, is the Board allowed to introduce new ex officio facts and evidence which prejudice maintenance of the patent?" (see also point XIX(e) above).

5.3.4 The board notes that the question requested for referral relates to the current case only in so far as the term "*facts and evidence*" is restricted to "*common general knowledge without evidence of such knowledge*". In so far as the question goes beyond this, it is not relevant for deciding the case in question and to this extent is therefore inadmissible (see Case Law, V.B.2.3.3).

- 5.3.5 The board judges that an answer to this more narrowly worded question by the Enlarged Board of Appeal is not required. To ensure uniform application of the law, or if a point of law of fundamental importance arises, the board must, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes (Article 112(1)(a) EPC).
- 5.3.6 The board refuses this request. As to the option "*to ensure uniform application of the law*" because of divergent case law, the appellant has not submitted pertinent facts. Rather, the appellant agreed that the cases addressed in its skeleton arguments all went in the same direction supporting the appellant's position (see also point XIX(e) above).
- 5.3.7 The more narrowly worded question may concern an important point of law, but it can be answered by reference to the EPC without doubt (see Case Law, V.B.2.3.7).
- 5.3.8 The narrower question is similar to the second question requested for referral in *ex parte* case T 1092/12 (see point 6.2), asking:

"To what extent is a board entitled to rely upon an assertion of common general knowledge, without providing documentary evidence of such common knowledge, even though the assertion is contested?"

In the board's view, the answer to this second question applies *mutatis mutandis*. In pertinent part, it reads as follows:

there is ... no general obligation on a board to provide documentary evidence for the existence of a piece of common general knowledge. In proceedings before the EPO, a board of appeal has to respect the right to be heard and to give reasons for its decision. In cases where a board refers to common general knowledge as state of the art, it is not obliged to provide documents in every conceivable case. Doing so may be the most straightforward way to give convincing reasons why, for example, a certain feature was known in the art at the priority date of an application. But it is not the only way. It is also possible for a board to state what it deems to be known, and possibly where it is known from, in a way that puts the appellant in a position to try to convince the board that its findings are erroneous. Proceeding that way respects the party's right to be heard (see for example T 458/07, section 7 and R 20/11, sections 3.1 and 4, last sentence). In analogy to the situation in which documentary state of the art is presented, the appellant has the opportunity to comment on the board's view and provide arguments as to why the facts the board relies on are held to be wrong. A mere denial that such commonly known prior art existed is not sufficient. In its letter of 26 May 2017, the appellant complained that it was not in a position to prove a negative, i.e. what is not known to the skilled person. But that is not what the appellant is supposed to do. He could, for example, have provided evidence of when the contentious ... feature was introduced into the art, which the appellant however chose not to do.

- 5.3.9 The appellant citing T 1090/12 agreed that in *ex parte* proceedings the board was under no obligation to provide evidence for what may be considered common general knowledge. However, according to the appellant, this was not applicable in *inter partes* proceedings (see point XIX(e)). In this context, it relied on Article 12(2) RPBA 2020 and the decision of the Enlarged Board in case G 10/91, together with a number of subsequent board decisions applying the rationale of G 10/91.

The board disagrees with the appellant's view. It holds (a) that the extract of T 1090/12 reproduced above applies *mutatis mutandis* to *inter partes* appeal

proceedings, in particular the current *inter partes* case, (b) that this conclusion is unaffected by the revised rules of procedure (RPBA 2020), in particular, Article 12(2), or (c) by the remaining objections raised by the appellant. The reasons are given below.

(a) The Enlarged Board held in G 10/91 (in point 8):

The **purpose of the appeal procedure *inter partes*** is **mainly** to give the losing party a possibility to **challenge the decision** of the Opposition Division on its merits. ... Furthermore, in contrast to the merely administrative character of the opposition procedure, the **appeal procedure is** to be considered as a **judicial procedure** ... Such procedure is by its very nature less investigative than an administrative procedure. Although Article 114(1) EPC formally covers also the appeal procedure, it is therefore justified to apply this provision generally in a more restrictive manner in such procedure than in opposition procedure. In particular with regard to fresh grounds for opposition, for the above reasons the Enlarged Board considers that such grounds may in principle not be introduced at the appeal stage. ... However, an exception to the above principle is justified in case the patentee agrees that a fresh ground for opposition may be considered ... If a fresh ground is admitted, the case should ... be **remitted to the first instance for further prosecution**, unless special reasons present themselves for doing otherwise.

In *inter partes* appeal proceedings, in principle, the parties submit facts and evidence to the board, and the board applies the law to the uncontested or proven facts. This also applies to common general knowledge in a specific technical field.

While the Enlarged Board found in G 10/91 that the appeal procedure in *inter partes* cases was less investigative than the procedure of the opposition division, Article 114(1) EPC - which requires the EPO to examine the facts of its own motion - still

applies. This means that a board is not excluded outright from introducing new facts and evidence in *inter partes* proceedings.

The appellant argues that *inter partes* proceedings are less investigative. Thus, the board must not, of its own motion, introduce new facts and evidence into the proceedings.

The board notes that, in general, when a board introduces new facts or evidence into the proceedings, this is the consequence of its own investigations.

It is, however, not of an investigative nature when the board introduces facts relating to technical features that are either notoriously well-known or known to the board from its members' official experience. In such a situation, no investigations will have been necessary. The appellant recognised that the board was knowledgeable in the technical field of user interfaces for broadcast applications from the experience of its members working on cases in this field (see also point XIX(e) above). The board introduced knowledge pertaining to this technical field, i.e. on EPGs in the form of grids or tables.

The general danger perceived in the case law in accordance with G 10/91, independent of any basis for it, of a lack of impartiality in seeking, gathering and selecting evidence (see T 223/95, Reasons, point 4, cited in the skeleton arguments *in fine*) cannot exist in cases such as this case because it is merely pre-existing knowledge imparted on the party or parties.

As the board is in possession of this knowledge, no proof in the form of documentary evidence is needed. The appellant's objection that the board should not act as an expert witness for the opponent is ill conceived for this reason and also because a fact does not have to be proven by an opponent to a patentee (or vice versa) but to the board.

If the board is knowledgeable about what was common general knowledge before the priority date of the patent in suit, this knowledge need not be proven to the board. The party concerned must, however, be provided the chance to contest the board's introduction of common general knowledge.

The appellant had the opportunity to comment on the board's view and provide arguments why the facts the board relies on are held to be wrong. A mere denial that such commonly known prior art existed is not sufficient. In the oral proceedings, the appellant said that it could neither confirm nor deny the existence of it.

The appellant, however, did not, for example, provide evidence of when the contentious feature, i.e. an EPG in the form of grids or tables, was introduced into the art.

In the light of the foregoing, the answer to the narrower question requested for referral to the Enlarged Board:

"In inter partes appeal proceedings, is the Board allowed to introduce new ex officio *common general*

knowledge without evidence of such knowledge which prejudices maintenance of the patent?"

is therefore: yes, to the extent that the board is knowledgeable in the respective technical field from the experience of its members working on cases in this field.

(b) RPBA 2020

The application *mutatis mutandis* of the extract from T 1090/12 quoted above to *inter partes* appeal proceedings, and thus the above answer to the narrower question requested for referral to the Enlarged Board, cannot be disputed on the basis of the revised Rules of Procedure of the Boards of Appeal that entered into force on 1 January 2020 (see Article 24(1) RPBA 2020).

The appellant repeatedly referred to newly introduced Article 12(2) RPBA 2020, mentioning "*the primary object of the appeal proceedings [is] to review the decision under appeal in a judicial manner*". As is clear from the portion from G 10/91 quoted above, this part of the provision is, in essence, a repetition of a main principle enunciated in the decision on that case. Its wording as such can therefore hardly be considered as imposing stricter rules on the boards in treating new material in the course of appeal proceedings from 1 January 2020, i.e. the date of entry into force of the revised RPBA. The "*main purpose*" put forward in G 10/91 of 31 March 1993 has not prevented the development of a substantial body of case law not only in *ex parte* but also *inter partes* cases on the admittance of submissions

made for the first time in proceedings before the boards.

However, according to the foreword to the RPBA 2020 (*ibid.*, third paragraph, emphasis added),

...changes have been made to clarify that the primary object of appeal proceedings is to review the decision under appeal in a judicial manner; **one of the consequences** of the Boards' function being above all to review the appealed decision is that, as the appeal proceedings progress, the **possibilities** for parties **to amend** their case **become increasingly limited**.

According to the "*convergent approach*" comprising three converging levels implemented in Articles 12(4), 13(1) and 13(2) RPBA 2020, it becomes increasingly difficult for parties to have new submissions accepted on appeal. This depends on the stage of the proceedings corresponding to the level of the convergent approach during which the submissions are made (i.e. at the outset of the appeal proceedings, with the statement of grounds of appeal or reply to it (Article 12(4)); after the initial stage of the proceedings, but before the period set in a communication under Rule 100(2) EPC has expired or a summons to oral proceedings has been notified (Article 13(1)); and thereafter (Article 13(2)); see the explanatory remarks on Articles 12(4), 13(1) and (2), *ibid.*, pages 56 and 59-60).

It is in accordance with these provisions that, as the appeal proceedings progress, the possibilities for parties to amend their case become increasingly limited. Given that these provisions are addressed to the parties and not to the boards, they have no immediate impact on the boards raising new issues

under Article 114(1) EPC. This applies, in particular, to a board introducing common general knowledge that its members have gathered in the course of their official experience, as in this case.

The explanatory remarks given with respect to Article 13(1) RPBA 2020 in Rules of Procedure of the Boards of Appeal (*ibid.*, page 59, third paragraph *in fine*), confirm this finding. There it is said: "*Where the Board raises an issue of its own motion under Article 114(1) EPC, the party's right to be heard under Article 113(1) EPC must be respected.*" This sentence makes it clear that a board, under the RPBA 2020, is not prohibited from raising issues of its own motion. The explanatory remarks do not confine application of this statement to *ex parte* cases. The appellant's inquiry into the impact of the more restrictive approach of the RPBA 2020 regarding parties' submissions made on appeal on new material introduced by the boards (see point XIX(e) *in fine* above) must therefore be answered such that there is no immediate impact. (In this case, incidentally, the board introduced common general knowledge garnered in the course of its official experience in the communication annexed to the summons to oral proceedings, and thus at the earliest stage possible.)

(c) The remaining objections

The remaining objections raised against the introduction of common general knowledge by the board without evidence of such knowledge (the objections are summarised in points XIX(a)-(e)

above) are equally unconvincing. This should be self-evident from the analysis made above. In addition, the board only refers to the appellant's argument that national law suits would be more appropriate to challenge a patent long after its grant. (In this case, the application was filed around 11 years ago and the patent was granted around 8 years ago.) In T 389/95 that the appellant cited in support of its assertion (skeleton arguments, page 5), admittance of a new document would have entailed the remittal of the case causing an "*accumulation of delays in such iterative looping*". In cases such as the case at issue, however, the introduction of common general knowledge by the board does not delay the decision on the case.

- 5.3.10 In the light of the foregoing, the board reiterates that the extract of T 1092/10 reproduced above applies *mutatis mutandis* to *inter partes* appeal proceedings, in particular the current *inter partes* case.
6. *Claim 1 of the granted patent - inventive step over D1 (Article 100(a) EPC)*
- 6.1 Document D1 is the closest prior art for the assessment of inventive step of the subject-matter of claim 1 of the granted patent.
- 6.2 The subject-matter of claim 1 of the granted patent differs from the disclosure of D1 by the features identified in point 3.2 above (see also point XIX(g) above).
- 6.3 The board agrees with the appellant that the features identified in point 3.2 above can contribute to

inventive step because they provide a tangible technical effect (see also point XIX(k) above and Case Law, I.D.9.1.1, in particular the reference to T 1375/11 and T 1296/05).

- 6.4 To carry out the example search shown in Figure 2 of the patent in suit, the user interacting with the UI known from D1 would have to enter a first combination (cable, digital), store the selection and then recall the UI to enter the second combination (antenna, analog). The board agrees with the appellant that the claimed UI enables the user to set the criteria by interacting with one UI and that thus user interaction with the UI is reduced (see also point XIX(j) above).
- 6.5 However, the board is not convinced that the claimed method or apparatus achieves a faster execution of the search *per se* (see also point XIX(l) above).
- 6.5.1 Document D1, page 10, lines 1 to 3, discloses that *"[a]t step 360 the user selects whether to search previously found channels. That is, the user may select at step 360 whether to search for channels that were found during previously channel searches"*. Therefore, in contrast to the appellant's statement, it is clear that the results of a previous search are neither overwritten nor erased when performing a subsequent search. Hence the board has not been persuaded that the UI known from document D1 cannot be used to perform the search referred to in point 6.4 above (see point XIX(l) above).
- 6.5.2 Claim 1 does not specify whether the searches for different combinations of transmission methods and processing methods are treated separately or combined into one search. In particular, claim 1 does not

specify features which avoid the need for successively scanning frequencies allocated to different combinations of transmission method and processing method. Therefore, the board has not been persuaded that, compared with document D1, the technical execution of the search is faster due to a reduced overhead associated with separately activated successive searches (see point XIX(1) above).

- 6.5.3 Thus, the difference identified does not relate to the execution of the search (e.g. whether channels received via cable or antenna are searched simultaneously or consecutively) but is limited to the user interaction with the UI.
- 6.6 In view of the arguments set out in point 6.5 above, the board is not convinced that the problem to be solved may be identified as how to increase user convenience in selecting search criteria while improving the execution of the search (see point XIX(m) above). Rather, the problem to be solved is increasing user convenience in selecting search criteria.
- 6.7 The person skilled in the art trying to solve the problem identified in point 6.6 above would have provided an adequate UI, such as a grid or drop-down menus, based on their common general knowledge.
 - 6.7.1 The board agrees with the appellant that the claimed UI allows a more efficient user interaction (see point XIX(n) above).
 - 6.7.2 However, the board is not persuaded that the person skilled in the art seeking to increase user convenience in selecting search criteria would only have addressed the error messages that may be displayed if the user

does not select at least one of blocks 41 and 42 at step 330 or at least one of blocks 43 and 44 at step 340 (see point XIX(o) above). Rather, the person skilled in the art would have recognised the need for a different UI to select different processing methods with respect to certain transmission methods.

6.7.3 It is a *non sequitur* to conclude that general knowledge does not include the common general knowledge of the person skilled in the art (see point XIX(p) above). It would be illogical if the person skilled in the art in a particular field (user interfaces) was not aware of the knowledge of the public at large (general knowledge) in this field. Thus, if tables (grids) and drop-down menus were generally known at the priority date (see point XIX(p) above), they must have been part of the common general knowledge of (a team including) a person developing user interfaces. The board is not convinced that the person skilled in the art would not have applied this common general knowledge to the field of broadcasting (see point XIX(p) above). In contrast to the appellant, the board is of the opinion that the person skilled in the art would have recognised that the generally known tables (grids) could be used for any user selection based on two factors by simply choosing appropriate variables (see point XIX(q) above). According to the board, before the priority date of the patent in suit, it belonged to the common general knowledge of the skilled person designing user interfaces for broadcast application that electronic program guide (EPG) tables (grids) allowed a user to select a program at the intersection of a column corresponding to a time slot and a row corresponding to a channel (see also point XIX(q) above). To someone working in the field of user interfaces, selecting items at the intersections of columns and rows of a

table would have been a principle as basic as using a drill to drill a round hole in a wall. Therefore, the board is not convinced that its assessment is based on hindsight.

6.7.4 An EPG provides a user interface for inputting user selections to the broadcast receiver. The board is not convinced that the purpose and the frequency of use of an EPG would have dissuaded the person skilled in the art from considering the use of a similar table for inputting channel setup selections (see point XIX(r) above).

6.8 In view of the above, the subject-matter of claim 1 of the granted patent lacks inventive step over the disclosure of D1 combined with the common general knowledge of the person skilled in the art (Article 100(a) EPC).

7. *Auxiliary requests - inventive step (Article 56 EPC)*

7.1 In comparison with claim 1 of the granted patent, claim 1 of the **first auxiliary request** further specifies that "*the setup UI is provided, so that the processing method for the first transmission method and the processing method for the second transmission method are determined at the same time by a bout of user's selection on a same screen of the setup UI*". The board's assessment of inventive step in section 6 above is based on an interpretation of granted claim 1 according to which the user interacted with one UI to set the search criteria. Therefore, the reasoning set out in section 6 above applies equally to claim 1 of the first auxiliary request.

7.2 In comparison with claim 1 of the first auxiliary request, claim 1 of the **second auxiliary request** further specifies that the *"UI is provided, so that the plurality of processing methods are arranged to correspond to each of the plurality of transmission methods, thereby allowing at least one among the plurality of processing methods to be selectable for each of the plurality of transmission methods"*.

In view of the comments set out in point 6.7 above, the reasoning set out in section 6 applies equally to claim 1 of the second auxiliary request.

7.3 In comparison with claim 1 of the granted patent, claim 1 of the **third auxiliary request** further specifies that:

- (a) the at least one transmission method comprises at least one of a terrestrial transmission method, a cable transmission method, a satellite transmission method, an internet protocol television transmission method and an external device transmission method
- (b) the at least one processing method comprises at least one of an analog processing method and a digital processing method
- (c) the setup UI is provided as a table which has the at least one transmission method arranged on one side and the at least one processing method arranged on another side
- (d) the setup UI is provided to select or cancel a cell located at an intersection of the one side and the other side and to select the transmission method

and the processing method through which the automatic channel setup is performed

The board holds that D1, Figure 4, discloses the features mentioned in points 7.3(a) and 7.3(b) above. Furthermore, the reasoning set out in section 6 above, in particular in point 6.7, applies equally to claim 1 of the third auxiliary request. The board is not convinced that by arranging transmission methods on one side and processing methods on another side, the user is barred from selecting combinations which are not available, i.e. the user does not have to know which processing methods are correlated with which transmission methods (see point XIX(q) above).

7.4 In comparison with claim 1 of the granted patent, claim 1 of the **fourth auxiliary request** further specifies that:

"the UI provider is configured to provide a table in which the first and the second transmission methods are arranged along one axis of the table and at least one processing method is arranged along another axis of the table; and

a cell located at an intersection of the one axis and the other axis is selectable to thereby select a desired transmission method and a desired processing method."

The reasoning set out in section 6 above, in particular in point 6.7, applies equally to claim 1 of the fourth auxiliary request because the features quoted in the paragraph above merely give a descriptive definition of a table or grid.

- 7.5 In view of the above, the subject-matter of claim 1 of each of the auxiliary requests lacks inventive step over the disclosure of D1 combined with the common general knowledge of the person skilled in the art (Article 56 EPC).
8. Since none of the appellant's requests is allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

1. The request for referral of a question to the Enlarged Board of Appeal is refused.
2. The appeal is dismissed.

The Registrar:

The Chairman:



K. Boelicke

B. Müller

Decision electronically authenticated