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**Datasheet for the decision
of 6 May 2021**

Case Number: T 1796/17 - 3.2.05

Application Number: 08009863.5

Publication Number: 2002978

IPC: B41F15/40, B41F15/08

Language of the proceedings: EN

Title of invention:

Liquid transfer member pressing force adjusting method and apparatus of rotary stencil printing plate liquid coating machine

Patent Proprietor:

Komori Corporation

Opponent:

KBA-NotaSys SA

Relevant legal provisions:

RPBA 2020 Art. 11, 13(1), 13(2)
EPC Art. 84, 111(1), 123(2), 123(3)
EPC R. 80

Keyword:

Amendment after summons - exceptional circumstances (yes) -
prima facie allowable (main request: no, auxiliary request:
yes)
Amendments - allowable (yes)
Remittal - special reasons (yes)

Decisions cited:

G 0003/14, T 0155/88, T 0169/93, T 0578/16



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Case Number: T 1796/17 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 6 May 2021

Appellant: Komori Corporation
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 June 2017
revoking European patent No. 2002978 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman P. Lanz
Members: T. Vermeulen
A. Bacchin

Summary of Facts and Submissions

- I. The appeal was filed by the patent proprietor against the opposition division's decision to revoke European patent No. 2 002 978 (hereinafter "the patent").
- II. The patent was opposed on the grounds of lack of novelty and inventive step (Article 100(a) EPC) and insufficiency of disclosure (Article 100(b) EPC).
- III. In the decision under appeal the opposition division held that the subject-matter of independent claims 1 and 8 according to the only request then on file extended beyond the content of the application as originally filed (Article 123(2) EPC).
- IV. With the statement of grounds of appeal the patent proprietor (appellant) filed a new main request and five auxiliary requests.
- V. On 15 January 2021 the parties were summoned to oral proceedings.
- VI. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal in the 2020 version (RPBA 2020), issued on 14 April 2021, the parties were informed of the board's provisional opinion that the amendments made to the independent claims of the main request and to each of the auxiliary requests did not comply with Article 123(2) EPC.
- VII. With a letter dated 5 May 2021 the appellant filed four further auxiliary requests.

VIII. Oral proceedings before the board were held by videoconference on 6 May 2021. During the oral proceedings the appellant withdrew the main request, the first to sixth auxiliary requests and the eighth auxiliary request.

IX. The appellant requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the seventh auxiliary request (hereinafter: main request) or, alternatively, on the basis of the ninth auxiliary request (hereinafter: auxiliary request), both filed by letter of 5 May 2021. The appellant further requested the remittal of the case for the examination of novelty and inventive step.

The respondent (opponent) requested that the appeal be dismissed. The respondent further requested the remittal of the case should the need arise to examine novelty and inventive step.

X. The independent claims of the **main request** have the following wording:

"1. A liquid transfer member pressing force adjusting method of a rotary stencil printing plate liquid coating machine including,
- a stencil printing plate cylinder (11) which supports a stencil printing plate (11c) and is supported rotatably,
- a pressing body (13) which is provided to oppose the stencil printing plate cylinder, and is supported rotatably, and
- a liquid transfer member (38, 90) which is located within the stencil printing plate cylinder and, during liquid coating, contacts an inner peripheral surface of the stencil printing plate, while being pressed against

the inner peripheral surface of the stencil printing plate, to transfer a liquid stored within the stencil printing plate cylinder to a material (W) to be liquid coated, which is supplied between the stencil printing plate cylinder and the pressing body, via holes of the stencil printing plate,

characterized in that

- the liquid transfer member pressing force adjusting apparatus comprising control means (40A, 40B) which controls a pressing force of the liquid transfer member acting on the inner peripheral surface of the stencil printing plate during the liquid coating in accordance with a type and a thickness of the material to be liquid coated, and

- the control means (40A, 40B) makes adjustment of the pressing force of the liquid transfer member (38, 90) acting on the inner peripheral surface of the stencil printing plate (11c) by controlling a position of the liquid transfer member."

"7. A liquid transfer member pressing force adjusting apparatus of a rotary stencil printing plate liquid coating machine including,

- a stencil printing plate cylinder (11) which supports a stencil printing plate (11c) and is supported rotatably,

- a pressing body (13) which is provided to oppose the stencil printing plate cylinder, and is supported rotatably, and

- a liquid transfer member (38, 90) which is located within the stencil printing plate cylinder and, during liquid coating, contacts an inner peripheral surface of the stencil printing plate, while being pressed against the inner peripheral surface of the stencil printing plate, to transfer a liquid stored within the stencil printing plate cylinder to a material (W) to be liquid

coated, which is supplied between the stencil printing plate cylinder and the pressing body, via holes of the stencil printing plate,

characterized in that

- the liquid transfer member pressing force adjusting apparatus comprising control means (40A, 40B) which controls a pressing force of the liquid transfer member acting on the inner peripheral surface of the stencil printing plate during the liquid coating in accordance with a type and a thickness of the material to be liquid coated, and

- the control means (40A, 40B) makes adjustment of the pressing force of the liquid transfer member (38, 90) acting on the inner peripheral surface of the stencil printing plate (11c) by controlling a position of the liquid transfer member."

XI. The independent claims of the **auxiliary request** have the following wording:

"1. A liquid transfer member pressing force adjusting method of a rotary stencil printing plate liquid coating machine including,

- a stencil printing plate cylinder (11) which supports a stencil printing plate (11c) and is supported rotatably,

- a pressing body (13) which is provided to oppose the stencil printing plate cylinder, and is supported rotatably, and

- a liquid transfer member (38, 90) which is located within the stencil printing plate cylinder and, during liquid coating, contacts an inner peripheral surface of the stencil printing plate, while being pressed against the inner peripheral surface of the stencil printing plate, to transfer a liquid stored within the stencil printing plate cylinder to a material (W) to be liquid

coated, which is supplied between the stencil printing plate cylinder and the pressing body, via holes of the stencil printing plate,
characterized in that

- a pressing force of the liquid transfer member acting on the inner peripheral surface of the stencil printing plate during the liquid coating is obtained from a type and a thickness of the material to be liquid coated,
- adjustment of the pressing force of the liquid transfer member (38, 90) acting on the inner peripheral surface of the stencil printing plate (11c) is made by adjusting a position of the liquid transfer member, and
- adjustment of the position of the liquid transfer member (38, 90) is made by a motor (36A, 36B)."

"6. A liquid transfer member pressing force adjusting apparatus of a rotary stencil printing plate liquid coating machine including,

- a stencil printing plate cylinder (11) which supports a stencil printing plate (11c) and is supported rotatably,
- a pressing body (13) which is provided to oppose the stencil printing plate cylinder, and is supported rotatably, and
- a liquid transfer member (38, 90) which is located within the stencil printing plate cylinder and, during liquid coating, contacts an inner peripheral surface of the stencil printing plate, while being pressed against the inner peripheral surface of the stencil printing plate, to transfer a liquid stored within the stencil printing plate cylinder to a material (W) to be liquid coated, which is supplied between the stencil printing plate cylinder and the pressing body, via holes of the stencil printing plate,
characterized in that
- the liquid transfer member pressing force adjusting

apparatus comprising control means (40A, 40B) which controls a pressing force of the liquid transfer member acting on the inner peripheral surface of the stencil printing plate during the liquid coating in accordance with a type and a thickness of the material to be liquid coated,

- the control means (40A, 40B) makes adjustment of the pressing force of the liquid transfer member (38, 90) acting on the inner peripheral surface of the stencil printing plate (11c) by controlling a position of the liquid transfer member, and

- the control means (40A, 40B) makes adjustment of the position of the liquid transfer member (38, 90) by drivingly controlling a motor (36A, 36B)."

XII. The appellant's submissions may be summarised as follows:

Admittance of the main request and the auxiliary request

In the opposition proceedings the appellant had filed an amended main request in reply to the notice of opposition in an attempt to overcome the novelty and inventive-step objections raised by the respondent. In response to the opposition division's preliminary opinion, according to which document D1 disclosed all the features of granted claims 1 and 8, an amended main request was filed in preparation for the oral proceedings. The independent claims of that main request had been amended by introducing a feature into the claims concerning a predetermined relationship between type and thickness of a material to be liquid coated and the pressure force. In the oral proceedings, however, the opposition division arrived at the conclusion that the amendment was too broad and was

only disclosed in the application as originally filed together with the conversion table. The patent was revoked. In order to overcome the objection made in the decision under appeal, a new main request and five auxiliary requests were filed with the statement of grounds of appeal, the independent claims of which claimed the conversion table instead of the predetermined relationship. The reply to the grounds of appeal was very brief. It contained only one sentence with regard to a potential lack of original disclosure of the conversion table together with the pressure force. Furthermore, the communication providing the board's preliminary opinion was only received two weeks before the date of the oral proceedings. The appellant was taken by surprise by the board's objection under Article 123(2) EPC, which differed from the reasoning presented in the decision under appeal. Only after reading the board's communication did it become clear to the appellant that the position of the liquid transfer member was a crucial feature. These constituted exceptional circumstances that justified the filing of further requests. If such a response to the board's communication were not possible, the oral proceedings would lose their function.

The new main and auxiliary requests were filed on the day before the oral proceedings. The office of the appellant's Japanese representatives was closed due to consecutive national holidays. It was therefore not possible to file the requests any earlier. They were based on originally filed and granted claims. The characterising part of claim 1 of the main request was brought into conformity with the characterising part of claim 7 and included the limitation of the original claim 13. The expression "in accordance with" had the same meaning as the expression "obtained from" used in

the original claim 1; it did not result in an extension of the scope of protection. Admittedly, claim 1 of the main request did not actually contain any method steps, but some of its features could be considered to imply method steps. Furthermore, it was not disputed that the first characterising feature of claim 1 of the main request contained a reference to "the ... apparatus". In the auxiliary request, the limitations of the original claims 6 and 7 were introduced into the original claim 1, and the limitations of the original claims 13 and 14 were introduced into the original claim 8. By introducing the position of the liquid transfer member into the independent claims and deleting the feature "conversion table", the board's objection under Article 123(2) EPC was overcome.

No subject-matter had been abandoned in the opposition proceedings. Decision T 148/00 cited by the respondent in this context did not appear relevant. T 155/88, also cited by the respondent, on the other hand, was of some interest. Particular reference was made to the second paragraph on page 910 as well as the first paragraph on page 1252 of the German version of "Case Law of the Boards of Appeal of the European Patent Office" in its 9th edition from 2019 (hereinafter: "Case Law"), which implied that a patent proprietor who had introduced a feature into a claim in opposition proceedings was not barred from deleting that feature again in appeal proceedings in an attempt to overcome an objection raised in the decision under appeal. Such a course of action did not constitute an abuse of procedure.

Auxiliary request

The claims of the auxiliary request were combinations of claims as originally filed or as granted. Therefore,

the requirements of Rule 80 EPC, Article 123 EPC and Article 84 EPC were met.

XIII. The respondent's submissions were essentially as follows:

Admittance of the main request and the auxiliary request

The requests were submitted one day before the oral proceedings and were therefore filed late. In the reply to the grounds of appeal the respondent had already mentioned the missing disclosure in the application as originally filed of a conversion table linked to a pressure force. The board's position on this matter expressed in its communication issued in preparation for the oral proceedings therefore could not come as a surprise to the appellant. Hence, there were no exceptional circumstances that could warrant the opportunity to file further requests.

Moreover, the amendments in the main request were not *prima facie* suitable for overcoming the objections raised. They introduced new subject-matter that had not been discussed before. The replacement of the expression "obtained from" with "in accordance with" in claim 1 of the main request did not comply with Article 123(2) EPC. The feature "control means" had no basis in the original method claims and was only disclosed in the description as originally filed together with additional features.

Furthermore, the appellant was adversely affected by the decision against the claim request under consideration by the opposition division; the appeal was not against the granted patent. By amending the

claims in response to the notice of opposition the appellant had made it clear that they did not wish to pursue the subject-matter of the patent as granted, which was thereby effectively abandoned. It was therefore not possible to go back to the original or the granted claims in subsequent appeal proceedings. Instead, any new claim request should start from the claims underlying the opposition division's decision, which, in this case, included the feature concerning a predetermined relationship between type and thickness of a material to be liquid coated and the pressure force. Decisions T 155/88 and T 148/00 were cited in this regard. The main and auxiliary request were attempts to go back to abandoned subject-matter, which went against the principle of *reformatio in peius* and constituted an abuse of proceedings.

Reasons for the Decision

Admittance of the main request and the auxiliary request

1. The main request and the auxiliary request were filed as seventh and ninth auxiliary requests, respectively, on the day preceding the oral proceedings before the board. Since they are new requests in the appeal proceedings, they constitute an amendment to the appellant's appeal case within the meaning of Article 13 RPBA 2020, the admittance of which is at the board's discretion
2. As the summons to oral proceedings was notified after the date of entry into force of the RPBA 2020 (1 January 2020), Article 13(2) RPBA 2020 applied by virtue of Article 25(1) and (3) RPBA 2020. Following this provision, the amendment to a party's appeal case

made after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned. Within the RPBA 2020, Article 13(2) implements the third level of the convergent approach applicable in appeal proceedings, imposing the most stringent limitations on a party wishing to amend its appeal case at an advanced stage of the proceedings, either after expiry of a period set in a communication of the board under Rule 100(2) EPC or, where no such communication is issued, after a summons to oral proceedings has been notified. The RPBA 2020 do not specify what is meant by "exceptional", but the explanatory remarks in section VI of document CA/3/19 (see also Supplementary publication 2 to OJ EPO 2020, page 60) contain an example: an objection raised by the board for the first time in a communication. The explanatory remarks also indicate that, where exceptional circumstances are shown to exist, the board may decide to admit the amendment in the exercise of its discretion. The criteria applicable at the second level of the convergent approach, i.e. as set out in Article 13(1) RPBA 2020, may also be relied on (see the third and fourth paragraphs in the right-hand column on pages 42/78 and 43/78 of CA/3/19).

3. As justification for the late filing of the requests, the appellant submitted that, having introduced the feature "conversion table" in the claims filed with the statement of grounds of appeal in direct response to an objection raised in the decision under appeal, they were taken by surprise that the board found fault with this amendment in its communication pursuant to Article 15(1) RPBA 2020.

Exceptional circumstances

4. In order to determine whether the circumstances qualified as "exceptional" and whether the reasons advanced in support of this were "cogent", a closer look is required at the course of the proceedings and at the context of the objections referred to by the appellant.

4.1 In point 12.3 of the reasons for the decision under appeal, the opposition division concluded the following, *inter alia*, with regard to the introduction of the feature "a predetermined relationship ..." into claims 1 and 8 of the then main request:

"(i) ... The position of the liquid transfer member represents a specific pressure force onto the material to be liquid coated. Therefore, the reference in claims 1 and 8 to the pressure force being adjusted according to the type and thickness of the material to be coated is supported by the description as originally filed".

"(ii) ... As a consequence, the term "predetermined relationship" in claims 1 and 8 is broader than the conversion tables disclosed in paragraphs [0069] and [0070] as originally filed. Since this broadening is not supported by the whole original disclosure (only "conversion tables" are disclosed to illustrate a predetermined relationship), this amendment does not fulfill the requirement of Article 123(2) EPC".

4.2 In view of this, it is credible that the appellant had good reason to assume that the replacement of "predetermined relationship" with "conversion table" in

claims 1 and 8 of the main request underlying the decision under appeal would be successful in overcoming at least one of the objections under Article 123(2) EPC that resulted in the patent being revoked.

- 4.3 In point 11.5 of the communication pursuant to Article 15(1) RPBA 2020, however, the board gave its provisional opinion that the expressions "conversion table" and "table of conversion" appearing in the independent claims of each of the six claim requests filed with the statement of the grounds of appeal was not considered to be disclosed together with a "pressing force" in the application as originally filed. The following reasons were given:

"In the first embodiment shown in Figures 1 to 12(d) a squeegee fulfils the role of the liquid transfer member. In this context, the expression "table of conversion" is only disclosed together with the type and the thickness of the material to be printed in the description as originally filed in the paragraph bridging pages 12 and 13, in the bottom two paragraphs of page 19 and in the top two paragraphs of page 20. For the second embodiment shown in Figures 13 to 22(c), which uses a doctor roller as liquid transfer member, the disclosure of the table of conversion in conjunction with the type and the thickness of the material to be printed is restricted to the second paragraph of page 53 and to the second to fifth paragraphs of page 60.

None of these passages indicate or imply that the table of conversion establishes a relationship between the type or the thickness of the material to be printed and a pressing force. Instead, the

passages consistently specify the "throw-on position (count value of the counter) of the squeegee" and the "throw-on position (count value of the counter) of the doctor roller" as the output value of the tables of conversion. In fact, both embodiments instruct that the adjustment of the liquid transfer member is carried out by determining a reference throw-on position of the liquid transfer member and feeding this value to the drivers of left and right side motors 36A and 36B (cf. the fifth paragraph of page 3, the third and fourth paragraphs of page 11, the bottom paragraph of page 41, the second paragraph of page 52 and the fourth paragraph of page 81 of the description as originally filed).

The fourth paragraph of page 3 of the description as originally filed, which corresponds to paragraph [0011] of the published application cited by the appellant in their letter dated 8 August 2018, must be read in this context: a change in the pressing force of the liquid transfer member acting on the inner peripheral surface of the stencil printing plate is merely a consequence of the adjustment of the position of the liquid transfer member."

- 4.4 In view of the above, the board's provisional opinion was clearly at variance with the reasoning provided in the decision under appeal.
- 4.5 Moreover, that particular objection was new, as it was raised for the first time in the communication pursuant to Article 15(1) RPBA 2020. The respondent's argument to the contrary, i.e. that it had already raised that objection in appeal proceedings, hinged on one sentence in the reply to the grounds of appeal, according to

which the "conversion tables" were not generally disclosed in connection with "pressing force" ("*Insbesondere ist aber jeder dieser „conversion table“ nicht allgemein mit „pressing force“ offenbart, sondern nur mit ganz speziellen Stellungen (z. B. „throw-on position“ (count value of a counter)*"). This cursory statement makes no reference to the application as originally filed, nor does it provide an explanation as to why the opposition division was incorrect when implying that "predetermined relationship" should have been replaced with "conversion table". The board is therefore unable to see how the respondent's statement in the reply to the grounds of appeal was anything more than a mere unsubstantiated assertion.

- 4.6 Hence, the appellant provided cogent reasons that the objection raised by the board in the communication pursuant to Article 15(1) RPBA 2020 was a new development of the appeal proceedings creating exceptional circumstances within the meaning of Article 13(2) RPBA 2020.

Prima facie allowability

5. One of the criteria for the exercise of discretion by the board set out in Article 13(1) RPBA 2020 is whether, in the event of an amendment to a patent, the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by another party in the appeal proceedings or by the board and does not give rise to new objections.
6. In the oral proceedings before the board, the appellant submitted that the amendment to independent method claim 1 of the main request replaced the method step of the characterising part with two features taken from

the granted apparatus claims. They accepted that this resulted in a method claim devoid of any actual method steps. While, in principle, there is nothing that speaks against the use of apparatus features in method claims - particularly a method claim concerning the use of an apparatus may require apparatus features in order to be clear -, a claim defining a method only in terms of apparatus features will most probably be unclear. In this case, the board judges that a new objection under Article 84 EPC against claim 1 of the main request would be all the more likely given that the first characterising feature of claim 1 uses the definite article to refer to a previously undefined "liquid transfer member pressing force adjusting apparatus".

7. This is different for the auxiliary request, in which the appellant reverted to the wording of claims 1 and 8 as granted with the addition of further features taken from the dependent method and apparatus claims as granted, respectively. At first sight, the amendments in the auxiliary request appear to be a straightforward and promising attempt at addressing the issues raised both in the board's communication pursuant to Article 15(1) RPBA 2020 and in the decision under appeal without raising new objections under Article 123 EPC or Article 84 EPC which would require further consideration by the board. In addition, the combination of claims as granted means that the subject-matter of the auxiliary request does not amount to an entirely new case that would come as a surprise to the respondent, even at such a late stage of the appeal proceedings.
8. The respondent objected to the admittance of the auxiliary request, essentially arguing that the appellant was effectively bound to the version of the

claims considered by the opposition division in the decision under appeal.

9. This line of argument cannot be followed by the board. It is well-established case law of the Boards of Appeal that claims amended during opposition proceedings do not imply any irrevocable surrender of subject-matter not covered by such amendment (see "Case Law", IV.C.5.1.1, V.A.3.2.1.g and V.A.4.12.13). Whether amended claims filed in subsequent appeal proceedings are to be considered is subject to a number of procedural restrictions anchored in the RPBA, particularly whether the amendment constitutes an abuse of procedure, and to the prohibition of *reformatio in peius*. But they cannot be rejected *a priori* for the mere reason that they are "broader" than the claims defended before the opposition division. For an appellant whose patent has been revoked, a worse outcome of the appeal is excluded (T 169/93, point 2.4 of the Reasons), and therefore the prohibition of *reformatio in peius*, invoked by the respondent, does not apply. Such an appellant is thus in principle entitled to reinstate subject-matter of the claims as granted or in a differently limited form even though its main request before the opposition division has been that the patent be maintained in a more limited form. It is then left to the board's discretion whether or not to admit such a request during the appeal proceedings, on account of the applicable procedural rules.

The decisions T 155/88 and T 148/00 relied on by the respondent do not alter the above conclusion. Quite the opposite, since decision T 155/88 cited in section III.I.8 and IV.C.5.1.1 of the "Case Law" actually acknowledges the possibility of a patent proprietor reverting to the subject-matter of earlier requests

(see in particular point 2.2 of the Reasons: "*It is in the interest of an efficient opposition procedure before the EPO that patentees should feel free to propose limiting amendments which are genuinely intended to meet the objections raised therein (and which may be acceptable to the Opponents) without thereby putting at risk their freedom to reinstate their earlier broader claims in order that a decision should be issued on the allowability of such broader claims*"). In T 148/00 a limited claim was remitted to the examining division for further prosecution. The board was unable to see how this decision could have any bearing on this case.

10. In view of the above, the board exercised its discretion under Article 13 (1) and (2) RPBA 2020 and did not admit the main request, but admitted the auxiliary request into the appeal proceedings.

Auxiliary request - Rule 80 EPC, Article 123(2) and (3) EPC and Article 84 EPC

11. Independent method claim 1 of the auxiliary request is a combination of method claims 1, 6 and 7 as granted. Independent apparatus claim 6, on the other hand, is a combination of apparatus claims 8, 13 and 14 as granted. It follows from the above that the amendments were an attempt to overcome the ground for opposition under Article 100(a) EPC. Hence, they comply with Rule 80 EPC.
12. In the proceedings before grant the claims were only amended by introducing the two-part form. Therefore, the board is satisfied that the particular combination of the claims as granted in the auxiliary request meets the requirements of Article 123(2) and (3) EPC.

13. An amendment consisting in combining claims as granted in accordance with their dependency cannot introduce any non-compliance with Article 84 EPC that was not already present in the patent as granted. Consequently, the requirements of Article 84 EPC cannot be examined by the board (G 3/14, Order).

Remittal

14. Under Article 111(1) EPC the board of appeal may either decide on the appeal or remit the case to the department which was responsible for the decision appealed. The appropriateness of remittal to the department of first instance is a matter for decision by the board, which assesses each case on its merits.
15. A case is normally remitted if essential questions regarding the patentability of the claimed subject-matter have not yet been examined and decided on by the department of first instance. The reason is that ruling on novelty an inventive step for the very first time on appeal would constitute an undue burden and would run contrary to the very purpose of a judicial review within the meaning of Article 12(2) RPBA 2020 (T 578/16, point 3.2 of the Reasons).
16. In this case, the opposition division made a brief statement in the communication annexed to the summons for oral proceedings in respect of two documents considered as prior art under Article 54(3) EPC. Apart from this, the grounds for opposition raised by the respondent under Article 100(a) EPC were not addressed in the opposition proceedings. Furthermore, the opposition division did not take a position on the ground for opposition under Article 100(b) EPC, which

was also raised by the respondent in their notice of opposition.

17. Also taking into account that both parties requested that the case be remitted should the need arise to examine novelty and inventive step, the board judges that "special reasons" within the meaning of Article 11 RPBA 2020 apply in this case.
18. For the aforementioned reasons, the board remits the case to the opposition division for further prosecution (Article 111(1) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



N. Schneider

P. Lanz

Decision electronically authenticated