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**Datasheet for the decision  
of 19 January 2022**

**Case Number:** T 2626/17 - 3.5.02

**Application Number:** 09783565.6

**Publication Number:** 2443632

**IPC:** H01B3/56, H02B13/055

**Language of the proceedings:** EN

**Title of invention:**

Encapsulated Switchgear

**Patent Proprietors:**

ABB Schweiz AG  
Hitachi Energy Switzerland AG

**Opponents:**

Siemens Aktiengesellschaft  
3M Innovative Properties Company

**Relevant legal provisions:**

EPC Art. 54, 56  
RPBA 2020 Art. 13(2)

**Keyword:**

Novelty - (no) - inherent features

Inventive step - (no) - choice of the less ambitious of two known alternatives

Amendment after summons - taken into account (no) - exceptional circumstances (no)



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Case Number: T 2626/17 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 19 January 2022**

**Appellant:** Siemens Aktiengesellschaft  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
5 October 2017 concerning maintenance of the  
European Patent No. 2443632 in amended form.

**Composition of the Board:**

**Chairman** R. Lord  
**Members:** F. Giesen  
A. Bacchin

## Summary of Facts and Submissions

I. The present appeal by opponent 1 (Siemens AG) lies from the interlocutory decision of the opposition division posted on 5 October 2017 concerning maintenance of the European Patent No. 2443632 in amended form.

The respondents are the patent proprietors 1 and 2 (ABB Schweiz AG and Hitachi Energy Switzerland AG).

Opponent 3 (3M Innovative Properties Company) did not file an appeal against the decision of the opposition division and is therefore a party as of right to the appeal proceedings pursuant to Article 107 EPC.

Opponent 2 (Solvay Fluor GmbH) withdrew their opposition by letter dated 14 February 2018, by which procedural act opponent 2 ceased to be a party to the proceedings.

II. Reference will be made to the following documents:

- D4 Tuma, P. E.: "*A Low-GWP Fluoroketone Potential Alternative to SF<sub>6</sub> in Some Dielectric Applications?*", NEMA Ad Hoc Task Group on SF<sub>6</sub>, 5 February 2009
- D9 Giere, S.: "*Vakuumschalttechnik im Hochspannungseinsatz*", 1. Auflage, Göttingen Cuvilier 2004, pages 1 to 6

III. Oral proceedings before the board took place on 19 January 2022 in the form of a videoconference, to

which the appellant and the respondents had given their consent. As announced by letter dated 14 December 2021 the party as of right was not represented at the oral proceedings.

The parties' requests were as follows:

The appellant (opponent 1) requested that the decision under appeal be set aside and the patent be revoked.

The respondents (proprietors 1 and 2) requested that the appeal be dismissed or, as an auxiliary measure, that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims of one of the 1st to 6th auxiliary requests filed with the reply to the statement of grounds of appeal.

The party as of right did not submit any requests during the appeal proceedings.

IV. Claim 1 according to the **main request** (the version maintained in opposition) reads as follows:

*"Encapsulated switchgear comprising a housing (4) defining an insulating space (6) and an electrical active part (8; 9, 11a, 11b, 11c) arranged in the insulating space (6), said insulating space (6) comprising an insulation medium, characterized in that the insulation medium comprises a dielectric compound having a boiling point of above -5 °C at ambient pressure and being a fluoroketone having from 4 to 12 carbon atoms."*

- V. Claim 1 according to the **first auxiliary request** contains the features of claim 1 of the main request and in addition the words

*"the encapsulated switchgear is a medium-voltage encapsulated switchgear and"*

inserted after the words *"characterized in that"*.

- VI. Claim 1 according to the **second auxiliary request** contains the features of claim 1 of the main request and in addition the words

*"the encapsulated switchgear is a medium voltage encapsulated switchgear designed to be operated at an insulation gas pressure of 1.5 bar and"*

inserted after the words *"characterized in that"*.

Claims 2 to 11 of the second auxiliary request are dependent on claim 1. Claim 12 defines a process for providing an encapsulated switchgear according to any of claims 4 to 11, and claims 13 and 14 are dependent on claim 12.

In view of the tenor of this decision, the wording of the claims of the further auxiliary requests is not reproduced here.

- VII. The arguments of the appellant that are relevant for the present decision were essentially as follows:

The affidavit of Mr. Peter Glaubitz should be admitted to the appeal proceedings as a *prima facie* very

relevant supplement to the disclosure of document D4. His witness statement would contain important supplementary information concerning the discussions among experts about the use of fluoroketones in switchgear at the conference at which the talk documented in D4 was given. If this issue were put into question, Mr. Peter Glaubitz should be heard as a witness.

The subject-matter of claim 1 of the main request lacked novelty in view of document D4. The opposition division had erred in concluding that D4 did not disclose the features "switchgear", "an encapsulation" and "an insulating space comprising the fluoroketone". Those were merely features which switchgear inherently possessed, as would be understood by a skilled person. This was corroborated by the opposed patent page 2, lines 5 to 8. It was only logical that switchgear which contained expensive insulation gas had to have an encapsulation in order not to let the insulation gas dissipate into the atmosphere. It was also to be noted that the opening slide of D4 showed a photograph of switchgear. This fact suggested that switchgear, despite the cautious statement on slide 6, was envisaged as being one of the dielectric applications mentioned in the title. Switchgear were in fact the most relevant application. A skilled person would not discard the disclosure of D4 as being technically incorrect or unreliable. There were various different ways to determine the breakdown voltage. The value of 31 kV/(cm bar) was not unreasonable. None of the participants at the conference doubted the correctness, which could be confirmed by Mr. Glaubitz if necessary. Concerning the statement on slide 6 according to which carbon formation may preclude the use of the fluoroketone in switchgear, this statement referred



solely to the problem of carbon formation and did not express any reservations concerning the arc extinguishing capabilities of the fluoroketone.

The subject-matter of claim 1 according to the first auxiliary request was neither new, nor did it involve an inventive step in view of document D4. The subject-matter of claim 1 was limited to the switchgear being a medium-voltage switchgear. According to the previously cited passage of the opposed patent, switchgear was used either in the medium or in the high voltage range. A mere arbitrary selection out of two possible alternatives was neither new nor inventive.

The subject-matter of claim 1 according to the second auxiliary request did not involve an inventive step because slide 4 of D4 showed that the fluoroketone could be used at 1.5 bar.

This objection against auxiliary request 2 should be admitted and considered. It was raised in the letter dated 10 December 2021. According to the summons, the date until which submissions could be made was the 19 December 2021. The respondents' representative could be expected to monitor the online file of the case for new submissions. They had thus in total 40 days for the preparation for a very limited number of arguments. To ask a party to file responses "as soon as possible" created legal uncertainty as this was not a clear time limit. Representatives normally relied on a computer supported system for monitoring time limits. Such systems will bring forward the file one month before the oral proceedings but was not able to handle unclear deadlines like "as soon as possible".

Moreover, the arguments did not amount to an amendment of the appeal case. The request submitted with the statement of grounds of appeal was explicitly directed to the revocation of the patent also in the version of the auxiliary requests submitted in opposition proceedings. The arguments did not raise a new ground for opposition and had already been part of the written proceedings in opposition, which means the respondents had been aware of them since 2017. The statement of grounds of appeal contained more than just a blanket reference to the written proceedings in opposition. It had been kept short in order to benefit the procedural economy. In particular, all of the dependent claims had been treated in the notice of opposition. Be that as it may, in the present case only new arguments were submitted, which always had to be taken into account. It was also to be noted that the revised Rules of Procedure entered into force only after the statement of grounds of appeal had been drafted. The appellant's representative could not be expected to foresee the new requirements imposed by the revised Rules of Procedure. Article 12(4) RPBA 2007 stipulated a discretion of the board, and the appellant appealed to this discretion to admit the objection in view of the circumstances. If the board decided not to consider the objection against the second auxiliary request then it was not apparent what purpose the oral proceedings served and how the appellant's right to be heard in view of the second auxiliary request was guaranteed.

It was not explicitly disclosed in D4 that the switchgear was medium-voltage switchgear. However, D4 disclosed on slide 4 that the fluoroketone was used and could be used at 1.5 bar.

VIII. The arguments of the respondents that are relevant for the present decision were essentially as follows:

The affidavit of Mr. Glaubitz should not be admitted, and he should not be heard as a witness.

The subject-matter of claim 1 of the main request was new in view of document D4. The term switchgear appears only together with the information that the fluoroketone might be unsuitable for the use in switchgear. This prediction turned out to be correct as later verified by the respondents. The appellant chose a linguistic approach rather than assessing the technical information that a skilled person derives from this document.

Furthermore, D4 contained technically erroneous information. The graph on slide 5 of D4 indicated for 100 vol% SF<sub>6</sub> a pressure-reduced breakdown strength of approximately 33 kV/(cm bar), which was in contradiction to the generally accepted dielectric strength of 89 kV/(cm bar). In accordance with the principles set out in the case law, D4 was therefore not be considered to form part of the state of the art.

Even if a skilled person were to consider the contents of D4, this document taught that fluoroketones could replace SF<sub>6</sub> only in some applications. Based on the assumption of formation of carbon, however, the use in switchgear was precluded and not among those applications.

The subject-matter of claim 1 according to the first auxiliary request involved an inventive step. D4 did not disclose the use of the fluoroketone in medium-voltage switchgear. Due to the chosen voltage range, a

sufficient concentration of the fluoroketone could be achieved at very low operating temperatures (see paragraphs [0018] and [0019] of the opposed patent). Despite the relatively high boiling point of the fluoroketones according to the present invention, they had a vapour pressure sufficient for establishing a high enough concentration in the gas phase in medium-voltage switchgear.

The objection against the second auxiliary request should not be admitted. It was filed only after notification of the summons, however no special circumstances justified its admittance. The statement of grounds of appeal only contained objections against the main and the first auxiliary requests. If the appellant had wanted to raise objections against the further auxiliary requests he should have included them. The statement at the end of the summons did not contain a time limit. What this statement expressed was rather that, in addition to meeting the requirements of Articles 12 and 13 RPBA, any submission should be at the disposal of the board and the other parties one month before the oral proceedings. However, the letter dated 10 December 2021 did not reach the office of the respondents' representative until 27 December 2021. The respondents' representative could not be expected to monitor the register for late filed submissions. Despite their assertion, the appellant's decision to wait before filing objections against the second auxiliary request was not conducive to procedural economy. The late objection could not be considered to be only a new argument. It was directed against new subject-matter for the first time, namely claim 1 of the second auxiliary request, and thereby went beyond the content of the appeal. Not only the revised version, but also the previous version of the Rules of

Procedure contained the requirement that objections had to be substantiated.

- IX. The party as of right did not submit any arguments during the appeal procedure.

### **Reasons for the Decision**

1. *Admissibility of the Appeal*

The appeal satisfies the requirements of Articles 106 and 108 EPC, as well as Rule 99 EPC. It is therefore admissible.

2. *Main Request - Lack of Novelty*

- 2.1 The subject-matter of claim 1 according to the main request is not new in view of D4.

- 2.2 According to the impugned decision, point 3.6, the respondent no longer contested that document D4 belonged to the state of the art. The board could also come to a decision as to the substance on the basis of the content of D4 alone, which was in favour of the appellant, who was the party requesting to hear Mr. Glaubitz. It was thus not necessary to hear Mr. Glaubitz as a witness or to consider his affidavit. The decision not to hear the witness therefore does not affect either party adversely.

2.3 Document D4 contains slides from a presentation given at a conference. The title as well as slide 4 suggest that SF<sub>6</sub> could be replaced in some dielectric applications by a fluoroketone, which would be desirable because of its low global warming potential (GWP).

Measurements of dielectric breakdown suggest that nitrogen gas saturated with this fluoroketone performs satisfactorily as far as the breakdown voltage is concerned compared to pure SF<sub>6</sub>.

The author cautions that not much is known as far as the arc extinguishing capabilities of fluoroketones are concerned, and that under arcing carbon might form, which may preclude its use in switchgear. The talk finishes with the statement that fluoroketones might be a viable substitute for SF<sub>6</sub> and that the employer of the author of D4, the company manufacturing the fluoroketone, is looking for partners for further development of their applications in dielectric applications.

All that can be concluded from the cautious statement is that the author of D4 has not himself tested, whether the potential problems do indeed preclude the use of the fluoroketone in switchgear. The oral and written description of an idea is appropriate as a novelty-destroying disclosure, as long as the teaching it describes is enabling and not manifestly erroneous. In contrast, an attempt to put the idea into practice is clearly not a prerequisite for making that idea available to the public or to serve as a novelty-destroying disclosure.

2.4 The opposition division took the view that D4 did not disclose switchgear. The reason was that it was not apparent whether the photograph on the title slide represented switchgear. This is not convincing, given that the use of the fluoroketone in switchgear is explicitly mentioned on slide 6 as the appellant-opponent pointed out on page 3, second paragraph, of the notice of opposition.

The opposition division argued further that the feature "encapsulated" in relation to switchgear was not mentioned in D4, and that there was also no disclosure that the fluoroketone is within an insulating space. This argument is not persuasive since it disregards what the term switchgear means to a skilled person. Again, the appellant-opponent made this point in the third paragraph on page 3 of the notice of opposition.

The introduction of the opposed patent itself discloses on page 2, lines 5 to 8, that in medium- or high-voltage encapsulated switchgear, the electrical active part is arranged in a gas-tight housing, which defines an insulating space, said insulating space usually comprising an insulation gas and separating the housing from the electrical active part without letting electrical current pass through. This is consistent with the board's understanding of what switchgear means to a skilled person, to whom it is apparent that the purpose of the insulating gas SF<sub>6</sub> is to insulate the electrical active part from the housing and extinguish the arcs that form when the switch is opened. Quite obviously, the insulating gas has to be confined around the electrical active part, otherwise it would simply dissipate into the atmosphere. This makes an encapsulation around the active parts which confines

the insulating gas in its interior essential to any switchgear.

- 2.5 The respondents argued that D4 did not contain a disclosure of switchgear which contained fluoroketone in an encapsulated space. The technical reality conveyed by D4 was rather that switchgear was not among those dielectric applications in which fluoroketone could replace SF<sub>6</sub>.

The board disagrees. Clearly D4 conveys the information that it would be desirable to replace SF<sub>6</sub> with fluoroketones in as many applications as possible due to their lower GWP. It has to be borne in mind that the author of D4 is an employee of a manufacturer of fluoroketones, who, in the context of a presentation to a task force occupied with replacing SF<sub>6</sub>, is hoping for joint application development, see last slide, last bullet point. The discussion on slide 6 demonstrates that the author of D4 had exactly the replacement of SF<sub>6</sub> by fluoroketone in switchgear in mind, because he discusses aspects that are mainly relevant to switchgear, namely arcing. Arcing can occur as an occasional fault in various high-voltage equipment. However, in medium- and high-voltage switchgear it occurs as part of the regular operation every time a switch is opened. It is hardly plausible that the author of D4 would have thought about carbon formation under arcing and scrubbing fluoroketone decomposition products if he had not envisaged precisely the use of the fluoroketone in switchgear where this would become relevant. The mere fact that the author is cautious and identifies potential problems does not mean that D4 disclosed that the use was impossible, or that the disclosure of D4 was not enabling or erroneous. It merely gives the skilled person a realistic idea about



the benefits and the possible challenges. This corresponds to a disclosure of a technical reality.

The respondents re-iterated that the prediction of the author of D4 about carbon formation turned out to be correct, without however submitting more details in this respect. The board does not doubt that carbon may form under arcing and that this is an issue that has to be dealt with in order for fluoroketones to be economically useful as a replacement for SF<sub>6</sub>. However, the board observes that it would be a highly surprising stance to imply that the disclosure of D4 was not enabling given that claim 1 of the main request does not contain any feature which could be considered to mitigate the problem of carbon formation. If the respondents were of the opinion that the disclosure of D4 was not enabling, the same would logically apply a *fortiori* also to the subject-matter of claim 1 of the main request.

Furthermore, the respondents argued that a skilled person would disregard the disclosure of document D4 because it was manifestly erroneous. The value of the pressure reduced dielectric breakdown voltage of 100 vol% SF<sub>6</sub> according to the graph on slide 5 was 33 kV / (cm bar), whereas the accepted literature value was in fact 89 kV / (cm bar).

The board agrees that it is accepted case law that a document normally forms part of the state of the art (even if the disclosure is deficient), unless it can unequivocally be proven that the disclosure of the document is not enabling, or that the literal disclosure of the document is manifestly erroneous and does not represent the intended technical reality. The board can further accept that the latter value cited by

the respondent is a standard literature value. However, the precise figure will depend on experimental details such as the shape of the electrodes, which are not specified. Furthermore, and more importantly, there is nothing in D4 to suggest that the different gases were not measured by the same test equipment, and that therefore the comparison of the dielectric breakdown voltages among these gases was incorrect. The important information here, and thus the intended technical reality in the sense of the case law, is that in a given test equipment, C6 fluoroketone performs comparably to 100 vol% SF<sub>6</sub> in the low pressure range. The absolute number is not so decisive for the purpose of deciding whether the fluoroketone is a viable substitute for SF<sub>6</sub>. The situation here is similar to a thermometer which is not calibrated properly. It would still be possible to compare temperatures, even if the temperature of the freezing point of water were shown to be a value different from 0°C.

2.6 Since, the appellant's objection based on D4 alone is successful, the board did not have to decide whether document D9 should be admitted or not, as the appellant and respondents requested, respectively.

### 3. *First Auxiliary Request - Lack of Inventive Step*

3.1 The subject-matter of claim 1 according to the first auxiliary request does not involve an inventive step within the meaning of Article 56 EPC.

3.2 Document D4 does not disclose the envisaged voltage range. The appellant argued in the statement of grounds of appeal, that the subject-matter of claim 1 was neither new nor inventive, and in the letter dated

10 December 2021, somewhat inconsistently, that the limitation to a medium-voltage switchgear was a distinguishing feature.

The board agrees with the argument of the appellant that gas-insulated switchgear is mainly divided into switchgear for medium- and for high-voltage applications. This is also in line with the disclosure in the opposed patent, page 5, lines 16 to 18, and thus with the view of the respondents' themselves. For a disclosure to be novelty-destroying, it has to be direct and unambiguous. This is not the case here because the switchgear of D4 could be either medium- or high-voltage switchgear. Therefore the limitation to medium-voltage switchgear is a distinguishing feature.

3.3 However, the above discussion demonstrates that a skilled person in arriving at the subject-matter of claim 1 of the first auxiliary request faces essentially a choice between two alternative voltage ranges. The board considers it to be common knowledge that the higher the voltage that a switchgear has to handle, the more difficult the extinction of arcs becomes. The respondents have therefore, in the face of two possible known alternatives, merely opted for the less ambitious one.

The argument of the respondents is not persuasive. They argued that because the switchgear was a medium-voltage switchgear, a sufficient concentration of the fluoroketone could be achieved in the insulating gas at low temperatures. This argument confuses cause and effect. The low vapour pressure and high boiling point of the fluoroketone are material properties which exist irrespective of the type of switchgear in which the fluoroketone is used. Due to these material properties

the concentration of fluoroketone in the gas phase will be limited. This makes extinguishing arcs the more challenging the higher the voltages to be switched. A skilled person is aware of these difficulties on the basis of slide 4 of D4, which clearly discloses the material properties and points out the challenges they cause. The respondents' argument is therefore merely a restatement in more complicated terms of the board's observation that the medium-voltage range is the less ambitious of the two possible voltage ranges.

4. *Second Auxiliary Request - Admission of New Objections*

4.1 The new objection against the second auxiliary request is not taken into account in the appeal proceedings (Article 13(2) RPBA 2020).

4.2 With letter of 10 December 2021 the appellant submitted that document D4, at page 4, directly and unambiguously discloses that the fluoroketone could be used in encapsulated switchgear at a pressure below 1.5 bar. As a consequence, claim 1 of the second auxiliary request did not involve an inventive step.

There was dispute between the parties whether the objection of lack of inventive step submitted by the appellant for the first time in appeal proceedings with the letter of 10 December 2021 formed part of the appeal proceedings.

4.3 According to Article 13(2) RPBA 2020 "Any 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".

In the appellant's view, their submissions did not represent an amendment of their appeal case in the sense of Article 13(2) RPBA 2020, as they only included new arguments but no new facts. The statement of grounds of appeal contained already the request to revoke the patent also in the version of the auxiliary requests, which had been submitted in opposition proceedings. In addition, even if the objection were regarded as an amendment of the appellant's appeal case, it had been filed within the date for latest submissions indicated in the Board's communication under Article 15 RPBA 2020. For all these reasons, Article 13(2) RPBA 2020 did not apply in this case.

The respondents objected to the admission of the appellant's new objection of lack of inventive step against auxiliary request 2, as it would constitute for them new elements of fact, since it was not submitted with the statement of grounds of appeal.

- 4.4 The Board considers that the appellant's latest submissions concerning the second auxiliary request cannot be regarded as mere arguments. Indeed they clearly involve the assessment of features of claim 1 of the second auxiliary request, concerning the use of the fluoroketone below 1.5 bar, which have never been discussed earlier in the appeal proceedings and inevitably comprise elements of fact. These factual aspects were not addressed in the statement of grounds of appeal, in which only objections against the main request and the first auxiliary request were presented, nor are they directed to refining objections relied on by the appellant in their statement of grounds of

appeal, but rather go beyond the framework established therein for the appeal proceedings. Moreover, this new objection was not submitted as an immediate reaction to the respondents' filing of the same auxiliary requests in appeal proceedings on 21 June 2018.

The general request for revocation of the patent in the version of the auxiliary requests submitted in opposition proceedings, which was filed with the statement of grounds of appeal (point 1.1), cannot be considered sufficient to comply with the substantiation requirements of Article 12(3) RPBA 2020. According to this provision, the statement of grounds of appeal and the reply shall contain a party's complete appeal case. Submissions made only in the course of opposition proceedings are not automatically part of the appeal proceedings (Article 12(1) RPBA 2020). However, the appellant had not provided, until the latest submissions before the appeal oral proceedings, any reasons why the second auxiliary request was not allowable. In this respect the board also notes that the appellant's argument that this provision of the RPBA 2020 could not have been taken into account at the time of filing the statement of grounds of appeal is not justified, as the provisions of Article 12(3) RPBA 2020 in this respect are substantially identical to those of Article 12(2) RPBA 2007, applicable at the relevant time.

The board also is not persuaded by the appellant's argument that by deciding not to admit these submissions, oral proceedings would have served no purpose for the appellant. Without disregarding the importance of oral proceedings in the framework of the proceedings before the Boards of Appeal, the board would like to observe that following the appellant's

argument in the present case, oral proceedings would not just allow the appellant to refine their arguments and evidence submitted in a timely fashion in the written appeal proceedings, but rather to discuss for the first time in the proceedings, objections to features of claims which have never been heard before. This is clearly contrary to the nature of an appeal. Indeed in the present case the oral proceedings had a purpose for the appellant to the extent that the parties' arguments on the main request and on the first auxiliary request were discussed and decided upon.

The board has thus come to the conclusion that the appellant's submissions concerning lack of inventive step against the second auxiliary request filed on 10 December 2021 constitute an amendment of the appellant's appeal case submitted after notification of the summons to oral proceedings in the sense of Article 13(2) RPBA 2020.

Finally, the board is not persuaded by the appellant's argument that even if regarded as amendments, these submissions were filed in a timely manner, since they were submitted one month before the oral proceedings, as required by the board in the communication under Article 15 RPBA 2020. The board notes that the cited passage of this communication explicitly indicated that admittance of any further submissions is governed *inter alia* by the provisions of Article 13 RPBA 2020 and that, *in addition to these requirements*, any further submission should be at the disposal of the other party and the board at least one month before the oral proceedings (last paragraph of the communication). Thus the indication of this date cannot be considered as an additional time limit, superseding the framework for

admittance established by Articles 12 and 13(1) and(2) RPBA 2020.

Furthermore, the board explicitly drew the parties' attention to the fact that there were no arguments by the appellant on file against auxiliary requests 2 to 6 (point 3. of the communication under Article 15 RPBA 2020). Irrespective of the fact that these requests were actually filed in appeal with the reply to the grounds of appeal already on 21 June 2018, and of the board's indication in their communication, the appellant waited a further 11 months before raising objections against the second auxiliary request.

The board cannot see any genuine reason why these objections were not filed earlier. The appellant has not disputed either that there are no "exceptional circumstances" as required by Article 13(2) RPBA 2020. Thus the appellant's new objection against the second auxiliary request is not taken into account.

## 5. *Conclusions*

The main and first auxiliary requests are not allowable. Since there is no admissible objection against the second auxiliary request by the appellant, the patent is to be maintained on the basis of this request. The parties did not object to a remittal to the opposition division for the adaptation of the description to the amended claims.



## 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 with the order to maintain the patent in amended form on the basis of the claims 1 to 14 of the second auxiliary request, filed with the reply to the appeal, and a description to be adapted.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated