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**Datasheet for the decision  
of 17 January 2023**

**Case Number:** T 2732/18 - 3.2.03

**Application Number:** 10750537.2

**Publication Number:** 2410255

**IPC:** F24F11/02, G05B23/02,  
G06Q50/00, H04Q9/00

**Language of the proceedings:** EN

**Title of invention:**  
DEVICE MANAGEMENT SYSTEM

**Applicant:**  
Daikin Industries, Ltd.

**Headword:**

**Relevant legal provisions:**

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

**Keyword:**

Inventive step - (no)  
Amendment after summons - exceptional circumstances (no)

**Decisions cited:**

G 0007/93, T 0640/91

**Catchword:**



**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 2732/18 - 3.2.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.03**  
**of 17 January 2023**

**Appellant:** Daikin Industries, Ltd.  
(Applicant) Osaka Umeda Twin Towers South, 1-13-1  
Umeda, Kita-ku  
Osaka-shi, Osaka 530-0001 (JP)

**Representative:** Goddar, Heinz J.  
Boehmert & Boehmert  
Anwaltspartnerschaft mbB  
Pettenkoferstrasse 22  
80336 München (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 13 July 2018  
refusing European patent application No.  
10750537.2 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** C. Herberhold  
**Members:** G. Patton  
W. Sekretaruk

## **Summary of Facts and Submissions**

- I. The applicant (appellant) lodged an appeal against the decision of the examining division to refuse European patent application No. 10 750 537.2.
- II. According to the decision under appeal, the subject-matter of the claims of the then main request and of the then auxiliary request 1 lacked inventive step and the then auxiliary request 2 was not admitted into the proceedings.
- III. The appellant's statement setting out the grounds of appeal maintained in the appeal proceedings the requests discussed in the decision under appeal.

The Board presented its preliminary, non-binding opinion on these requests by communication pursuant to Article 15(1) RPBA 2020 dated 7 June 2022.

In response, the appellant filed a new main request by letter dated 11 November 2022, replacing the former main request.

During the oral proceedings before the Board held on 17 January 2023, the appellant additionally filed auxiliary request 1a. Details of the oral proceedings are set out in the minutes of the oral proceedings.

- IV. At the end of the oral proceedings, the appellant requested that
- the decision under appeal be set aside and a patent be granted on the basis of one of the sets of claims filed
  - as main request by letter dated 11 November 2022,

or, in the alternative,  
- as auxiliary requests 1 and 2 with the statement setting out the grounds of appeal and corresponding, respectively, to the then auxiliary requests 1 and 2 underlying the impugned decision, or  
- as auxiliary request 1a during the oral proceedings before the Board on 17 January 2023.

V. Independent claim 1 of the **main request** reads as follows (the features added with respect to claim 1 of the former main request discussed in the decision under appeal are indicated in bold):

"A device management system (100) that manages an installation device (50a, 50b,...), the device management system comprising:

a storage section (15) that stores operating rules of the installation device, **the operating rules including an operating schedule for the installation device;**

a detecting component (12b) that detects a violating action of the installation device running counter to the operating rules, **the violating action including an action that contributes to increased energy with respect to energy in the operating rules, and an action in which an actual set temperature is set higher or lower than a set temperature in the operating rules;**

a calculating component (12c, 22a) that calculates a violating quantity that quantitatively expresses the violating action in a specific time period; and

an action command component (12d) that transmits a control command complying with the operating rules to the installation device (50a, 50b,...), wherein,

the installation device (50a, 50b,...) is an air conditioner,

the calculating component (12c, 22a) calculates as the violating quantity an arithmetic mean value of an increased energy quantity, which quantifies the violating action contributing to increased energy over the operating schedule in line with a predetermined rule in a specific time period, and/or a saved energy quantity, which quantifies the violating action contributing to saved energy over the operating schedule in line with a predetermined rule in a specific time period, **the energy quantities being calculated by subtracting the set temperature resulting from the operating schedule from the actual set temperature and multiplying a difference between the set temperature and the actual set temperature by an amount of time in which the violating action is performed.**"

Independent claim 1 of **auxiliary request 1** reads as follows:

"A device management system (100) that manages an installation device (50a, 50b,...), the device management system comprising:

a storage section (15) that stores operating rules of the installation device;

a detecting component (12b) that detects a violating action of the installation device running counter to the operating rules;

a calculating component (12c, 22a) that calculates a violating quantity that quantitatively expresses the violating action in a specific time period; and

an action command component (12d) that transmits a control command complying with the operating rules to the installation device (50a, 50b,...), wherein,

the installation device (50a, 50b,...) is an air conditioner,

the calculating component (12c, 22a) calculates as the violating quantity an arithmetic mean value of an increased energy quantity, which quantifies the violating action contributing to increased energy over the operating schedule in line with a predetermined rule in a specific time period, and/or a saved energy quantity, which quantifies the violating action contributing to saved energy over the operating schedule in line with a predetermined rule in a specific time period,

the predetermined rule includes rules by which the violating action is calculated as an amount of time in which the violating action has been performed, as an energy quantity that has increased over or decreased below a predetermined energy quantity because of the violating action, as a CO<sub>2</sub> quantity that has increased over or decreased below a predetermined CO<sub>2</sub> quantity because of a violating action, or as a number of times the remote controller for receiving the input of an

operation command from a user has been operated in violation."

With respect to claim 1 of auxiliary request 1, claim 1 of **auxiliary request 1a** was restricted to the "and" alternative in the penultimate paragraph by the deletion of "/or".

The wording of the claims of **auxiliary request 2** is irrelevant to the decision.

VI. The following document considered in the opposition proceedings is relevant to the present decision:

D1: JP 2001 014026 A

A human translation of D1 (D1bis) was provided to the appellant as an annex to the communication dated 7 June 2022.

VII. As far as relevant to the present decision, the appellant essentially argued as follows:

*Main request*

The claims of the main request were aligned with those of the parallel American patent application which had been granted (US 9 135 592 B2) by the United States Patent and Trademark Office (USPTO). Having been granted by the USPTO, the claims were to be considered *prima facie* allowable which, in combination with the currently running Patent Prosecution Highway (PPH) programme between the EPO and the USPTO, constituted exceptional circumstances justifying the late-filing of the main request.



The main request should therefore be admitted into the appeal proceedings.

*Auxiliary request 1*

D1 did not disclose the following features of claim 1 of auxiliary request 1:

- (a) the installation device is an air conditioner;
- (b) a calculating component that calculates a violating quantity that quantitatively expresses the violating action in a specific time period;
- (c) the calculating component calculates as the violating quantity an arithmetic mean value of an increased energy quantity, which quantifies the violating action contributing to increased energy over the operating schedule in line with a predetermined rule in a specific time period, and/or a saved energy quantity, which quantifies the violating action contributing to saved energy over the operating schedule in line with a predetermined rule in a specific time period; and
- (d) the predetermined rule includes rules by which the violating action is calculated as an amount of time in which the violating action has been performed, as an energy quantity that has increased over or decreased below a predetermined energy quantity because of the violating action, as a CO<sub>2</sub> quantity that has increased over or decreased below a predetermined CO<sub>2</sub> quantity because of a violating action, or as a number of times the remote controller for receiving the input of an operation command from a user has been operated in violation.

The subject-matter of claim 1 of auxiliary request 1 was inventive over D1 taken as the closest prior art in view of the claimed alternative "and" in distinguishing feature (c). The alternative "and" provided greater flexibility with regard to managing the claimed device by calculating both an increased energy quantity and a saved energy quantity. The final energy balance was then paramount for management. This alternative was not disclosed in D1, nor did it belong to the skilled person's common general knowledge. Furthermore, D1 taught away from applying the claimed solution of a calculating component since D1 aimed at correcting each of the violating actions in real time.

Hence, the subject-matter of claim 1 of auxiliary request 1 should be acknowledged to involve an inventive step.

*Auxiliary request 1a*

The subject-matter of claim 1 of auxiliary request 1a was already present in the claims submitted with the statement setting out the grounds of appeal and was also discussed in the decision under appeal. Hence, Article 13(2) RPBA did not apply. Furthermore, arguments in support of the claimed subject-matter involving an inventive step were already provided in the statement setting out the grounds of appeal.

Hence, auxiliary request 1a should be admitted into the appeal proceedings.

*Auxiliary request 2*

The appellant did not provide any argument with respect to the way in which the examining division exercised its discretion by not admitting auxiliary request 2 into the examination proceedings.

**Reasons for the Decision**

1. Rules of Procedure of the Boards of Appeal (RPBA)

The revised Rules of Procedure of the Boards of Appeal (RPBA 2020) entered into force on 1 January 2020. Subject to the transitional provisions (Article 25 RPBA 2020), the revised version also applies to appeals, like the present appeal, which were pending on the date of entry into force.

Since the summons to oral proceedings were notified on 7 June 2022, i.e. after the date of entry into force, Article 13(2) RPBA 2020 applies to any amendment of the appellant's appeal case made after the notification of said summons in accordance with Article 25(3) RPBA 2020.

2. Main request

2.1 The main request was filed after notification of the summons by letter dated 11 November 2022 in replacement of the former main request discussed in the decision under appeal and re-filed with the statement setting out the grounds of appeal. The amendments introduced in claim 1 of the main request with respect to claim 1 of

the former main request are substantial, see point V above. Hence, the conditions set out in Article 13(2) RPBA 2020 apply to the admittance of the main request into the appeal proceedings.

- 2.2 At the oral proceedings before the Board, the appellant withdrew their argument put forward in writing by letter dated 11 November 2022 that they did not file the main request as an additional request at the time of filing the statement setting out the grounds of appeal or during the examination proceedings since they could not be aware at that time of the future revision of the rules of procedure. Therefore, this argument does not need to be addressed.

Notwithstanding this fact, the Board emphasises that the appellant had ample time between the filing of their statement setting out the grounds of appeal on 6 November 2018 and the summons to oral proceedings dated 7 June 2022, i.e. nearly four years, to file the respective amendment and so prevent Article 13(2) RPBA 2020 from applying.

- 2.3 The appellant argued that the aim of filing the main request was to align the wording of the claims with that of the parallel American application which had been granted (US 9 135 592 B2) by the United States Patent and Trademark Office (USPTO).

For the appellant, the claims of the main request, which were even more restricted than those of the American patent US 9 135 592 B2, were *prima facie* allowable because of their grant by the USPTO. In view of the Patent Prosecution Highway (PPH) programme between the EPO and USPTO, the filing of quasi-

identical claims should be allowed even at this stage of the appeal proceedings.

The combination of *prima facie* allowability and the PPH programme constituted exceptional circumstances justifying the late filing of the main request.

2.4 The Board is not convinced by the appellant's arguments.

Contrary to the appellant's view, the grant of a set of claims by another patent office, i.e. the USPTO in the present case, does not confer any *prima facie* allowability of the same or quasi-identical set of claims at the EPO, even if it is more restricted. As a matter of fact, the examination of *prima facie* or full patentability applied at the EPO, e.g. the problem-solution approach for inventive step, always remains the same, whatever the fate - grant or refusal - of the same or quasi-identical set of claims in another patent office. There is no legal basis in the EPC which would support the appellant's view on this.

In addition, as also admitted by the appellant at the oral proceedings, the criteria for assessing *prima facie* or full patentability of a set of claims at the EPO and the USPTO are not necessarily identical, especially as far as inventive step is concerned which is the ground for the refusal of the application in the decision under appeal.

In view of the above, the set of claims according to the main request cannot be regarded as *prima facie* allowable because of the grant of a quasi-identical set of claims at the USPTO.

The appellant is right in that a PPH programme is in force between the EPO and the USPTO, as it is with many other patent offices. However, a PPH programme aims merely to fast-track patent examination. It allows the applicant to request accelerated processing of a European application if the claims have been deemed patentable/allowable by another office. It also enables the EPO to re-use the work done at other offices. The programme does not provide, however, any extended rights to an applicant having the same or quasi-identical set of claims granted by another patent office with which a PPH programme is running, such as an automatic admittance of such a late-filed set of claims at the EPO without justification. Hence, the PPH programme between the EPO and the USPTO cannot constitute exceptional circumstances justifying the late filing of the main request. Here again, there is no legal basis in the EPC which would support the appellant's view on this.

Notwithstanding the above, it is emphasised that the appellant filed the main request around seven years after the grant of the parallel American application on 15 September 2015. This runs counter to the aim of the PPH programme to fast-track patent examination.

Furthermore, the parallel American application was granted around three years before the oral proceedings before the examining division which took place on 27 June 2018 in the absence of the appellant. The appellant did not provide any justification as to why they could not align the claims of the main request during the examination proceedings, as there was ample time to do so, but rather decided to wait for the notification of the summons to oral proceedings before the Board. Had the appellant filed the set of claims in

the examination proceedings, the claims could have been examined and decided upon by the examining division and been part of the decision under appeal to be reviewed pursuant to Article 12(2) RPBA 2020.

2.5 As a result of the above, there are no convincing cogent reasons justifying exceptional circumstances for the late filing of the main request. Hence, the main request is not admitted into the appeal proceedings pursuant to Article 13(2) RPBA 2020.

3. Auxiliary request 1

3.1 Claim 1 - inventive step

3.1.1 Disclosure of D1

D1 (see first embodiment, paragraphs 36 to 65; in the following all references to D1 are understood to relate to the English translation D1bis) discloses a device management system ("operation management apparatus" 40, see paragraph 36) that manages an installation device ("installed system" 11, 12, 15, 20), the device management system (40) comprising:

a storage section ("energy-saving management unit" 46, see paragraph 40) that stores operating rules ("operating schedule", "schedule information" 51 set in operation table 53, see paragraphs 40, 44 and 45) of the installation device;

a detecting component ("monitoring and control unit" 42; see paragraphs 37, 41, 42) that detects a violating action of the installation device running counter to the operating rules ("...collects information...");

a component ("energy-saving management unit" 46, see paragraph 40) that saves the history of the violating actions in a specific time period ("...holding the history...", "...registers the history of the change in status as history information 56...", paragraphs 40, 41 and 47); and

an action command component via for instance the monitoring device (31) instructing the "monitoring and control unit" 42 (paragraphs 40, 41, 50, 51) that transmits a control command complying with the operating rules to the installation device (11, 12, 15, 20).

3.1.2 Thus, the Board agrees with the appellant that D1 does not disclose in combination the following features of claim 1:

- (a) the installation device is an air conditioner;
- (b) a calculating component that calculates a violating quantity that quantitatively expresses the violating action in a specific time period;
- (c) the calculating component calculates as the violating quantity an arithmetic mean value of

an increased energy quantity, which quantifies the violating action contributing to increased energy over the operating schedule in line with a predetermined rule in a specific time period,

**and/or**

a saved energy quantity, which quantifies the violating action contributing to saved energy over



the operating schedule in line with a predetermined rule in a specific time period; and

(d) the predetermined rule includes rules by which the violating action is calculated as an amount of time in which the violating action has been performed,

as an energy quantity that has increased over or decreased below a predetermined energy quantity because of the violating action,

as a CO<sub>2</sub> quantity that has increased over or decreased below a predetermined CO<sub>2</sub> quantity because of a violating action, or

as a number of times the remote controller for receiving the input of an operation command from a user has been operated in violation.

3.1.3 As far as distinguishing feature (a) is concerned, the Board sees no reason to deviate from the reasoning and conclusion of the impugned decision, points II.2.7 and II.3.1, that the type of device controlled by the management system does not justify inventive step for the claimed subject-matter. This finding of the examining division has not been disputed by the appellant, either in writing or orally at the oral proceedings.

At the oral proceedings, the Board further referred to paragraphs 1 to 5 of D1 which concern the problem to be solved in D1 in view of the disclosures of the prior art and in which reference is made to "*installed devices such as air conditioners*", as in claim 1. The skilled person can therefore directly and unambiguously derive that the device management system of D1 is

suitable and even intended for managing air conditioners, such that the claimed feature (a) cannot justify inventive step.

In this respect, the appellant has not argued for the presence of a synergy between, on the one hand, technical effects associated with feature (a) and, on the other hand, technical effects associated with distinguishing features (b), (c) and (d). Since such a synergy is not derivable from the application as originally filed, the Board agrees with the appellant's view and distinguishing features (b), (c) and (d) are discussed hereafter independently of feature (a).

- 3.1.4 At the oral proceedings before the Board, the appellant completely reformulated the problems to be solved that they had provided in writing with respect to distinguishing features (b), (c) and (d). They argued for the first time in the proceedings that, due to the alternative "and" in feature (c) (see point 3.1.2 above), the arithmetic mean value of the claimed subject-matter concerned the quantification of the violating actions contributing to increased energy quantity (more energy consumption) **and** to saved energy quantity (less energy consumption), see also paragraphs 69 and 87, item 2, of the application as filed (in the following all references to the application documents as originally filed are understood to be to the published application EP 2 410 255 A2). This meant that greater flexibility could be achieved in the management of the claimed system by tolerating violating actions in both directions, i.e. more energy consumption and less energy consumption. Only the final energy balance was paramount, which was ideally equal to zero.

The problem to be solved formulated by the appellant was then to modify the device management system of D1 so as to provide more management flexibility.

- 3.1.5 The Board notes firstly that the appellant's line of argument with respect to the alternative "and" was brought forward for the first time at the oral proceedings before the Board (see point 4.3 below for non-admittance of the late-filed line of argument).

Notwithstanding this, the Board does not share the appellant's view for the following reasons.

The appellant focuses for the formulation of the problem on a single alternative ("and") among the three alternatives present in claim 1 of auxiliary request 1. The line of argument obviously does not apply to the other two alternatives ("or") regarding the quantification of the violating actions contributing to, on the one hand, increased energy quantity alone (more energy consumption) and, on the other hand, saved energy quantity alone (less energy consumption).

In addition, even for the alternative "and", the Board is not convinced of the technical effect allegedly associated therewith. As a matter of fact, a final energy balance is not present in claim 1 of auxiliary request 1, nor is it disclosed or discussed in the application as originally filed. Claim 1 and paragraphs 69 and 87, item 2, which were cited by the appellant, are silent on a final energy balance and even discuss the two other alternatives "or". The final energy balance to be performed with the quantification of the alternative "and" concerns *de facto* a further step which is not disclosed in the application as originally filed.

As a consequence, the appellant's arguments put forward orally at the oral proceedings are not convincing.

3.1.6 In their written submissions, the appellant argued that it was possible with distinguishing features (b) and (c) to grasp quantitatively how compliant with the operating rules the operation of the installation device has been, in a specific time period. They further argued that the increased energy quantities and the saved energy quantities calculated by the calculating component in accordance with distinguishing feature (d) were indicators expressing the extent of the violations, thus forming a quantitative basis for future actions in order to offset violating quantities.

3.1.7 Hence, based on these arguments as well as on the disclosure of the application as originally filed, paragraphs 3 to 5, the problem to be solved is formulated as how to modify the device of D1 to accurately grasp how compliant with the operating rules and their original purpose the operation of the installation device has been while enabling future actions to be decided in order to offset violating quantities.

3.1.8 According to the appellant, the purpose of D1 would appear to be to detect and notify about each of the violating actions and to correct the violating action in real time. Thus, there would be an inhibitory factor in D1, i.e. a teaching away, with regard to applying the claimed solution.

3.1.9 The Board does not share the appellant's view.

As already discussed under point 3.1.1 above, D1 explicitly discloses saving the history of the violating actions (see in particular paragraph 47). This is *de facto* performed over a given time period.

Furthermore, notification can also be made to the monitoring device (31) to indicate whether the state of the equipment (lighting) matches the operation schedule (see paragraphs 62, 63, 64, 65). Hence, there is no obligation to correct the violating action in real time. There is therefore no teaching away in D1 regarding the claimed solution.

In fact, the Board is of the opinion that the skilled person faced with the above mentioned technical problem (see point 3.1.7 above) would immediately think of performing computation in the way claimed, i.e. an arithmetic mean value of an increased energy quantity (features (b) and (c)), and in accordance with any one of the predetermined rules specified in feature (d), as this is part of the usual way of presenting data for evaluating wasted energy.

This is suggested in particular in paragraphs 64, 65 and 66 of D1 itself, as discussed during the oral proceedings before the Board. As a matter of fact, paragraph 65 of D1 discloses that, "*if it is assumed that the power consumption of each of the illumination devices 12 is the same, the fact that the actual number of lit devices has become larger than the number of lit devices specified by the operating schedule means that **power consumption has become greater than the set value***" (emphasis by the Board). This disclosure prompts

the skilled person to calculate an arithmetic mean value of an increased energy quantity ("power consumption") following the predetermined rule of feature (d) such as the *"energy quantity that has increased over ... a predetermined energy quantity because of the violating action"* ("greater than the set value").

As a consequence, the skilled person would arrive at the claimed subject-matter in an obvious manner in view of D1 alone (Article 56 EPC).

4. Auxiliary request 1a

4.1 Auxiliary request 1a was filed for the first time at the oral proceedings before the Board. As a consequence, its admittance into the appeal proceedings is subject to the conditions set out in Article 13(2) RPBA 2020 (see point 1 above).

4.2 The appellant argued at the oral proceedings that the subject-matter of claim 1 of auxiliary request 1a was based on claim 1 of auxiliary request 1 which had been filed with the statement setting out the grounds of appeal. The subject-matter consisted in maintaining the alternative "and" of claim 1 of auxiliary request 1, i.e. the two other alternatives covered by "or" in feature (c) were deleted (see point 3.1.2 above). Since this subject-matter was already present at the beginning of the appeal proceedings, Article 13(2) RPBA 2020 did not apply. Furthermore, the arguments in support of this subject-matter involving an inventive step, i.e. this specific alternative "and", were brought forward in the statement setting out the grounds in view of the last sentence of the last paragraph of page 3.

4.3 The Board does not share the appellant's view.

It is true that the subject-matter of claim 1 of auxiliary request 1a was already present as one alternative among the three alternatives ("and/or" of feature (c)) in claim 1 of auxiliary request 1 which was discussed in the decision under appeal and maintained with the statement setting out the grounds of appeal.

However, the appellant had never brought forward any argument in support of inventive step for this alternative, either in the examination proceedings or in the appeal proceedings. Contrary to the appellant's view, the last sentence of the last paragraph of page 3 of the statement setting out the grounds of appeal does not constitute any argument specific to this alternative. Even if it refers to "*the increased energy quantities **and** the saved energy quantities calculated by the calculating component*" (emphasis by the Board), the sentence does not further elaborate on this, but rather merely states that energy quantities are "*calculated by the calculating components*" and "*are indicators expressing the extent of the violations, thus forming a quantitative basis for future actions in order to offset violating quantities*". The sentence, which is in a paragraph in the "auxiliary request 1" section, clearly concerns the three alternatives ("and/or") of claim 1 of auxiliary request 1 calculated by the calculating components. A focus on the alternative "and" in the sense that it would provide more flexibility and that the final energy balance would be paramount as argued for the first time at the oral proceedings before the Board (see point 3.1.4 above) was not present in the statement setting out the

grounds of appeal. The fact that the sentence referred to by the appellant contains "and" does not change this fact. Hence, the arguments in support of inventive step for the subject-matter of claim 1 of auxiliary request 1a, as discussed under point 3.1.4 above, were presented by the appellant for the first time at the oral proceedings before the Board.

As a consequence, the filing of auxiliary request 1a and the arguments in its support constitutes an amendment to the appellant's appeal case to be considered under Article 13(2) RPBA 2020 with regard to admittance thereof.

Since the appellant has not provided any cogent reasons justifying exceptional circumstances for the late filing of this amendment, auxiliary request 1a is not admitted into the appeal proceedings pursuant to Article 13(2) RPBA 2020.

5. Auxiliary request 2

Auxiliary request 2 was not admitted into the proceedings by the examining division, see decision under appeal, point II.5 and II.5.1.

It is established case law that, on appeal against a decision taken by a department of first instance in exercise of its discretion, it is not for the board to review all the facts and circumstances of the case as if it were in that department's place and decide whether or not it would have exercised discretion in the same way. The board should overrule the way in which the department of first instance exercised its discretion in reaching a decision in a particular case only if they conclude that it did so in accordance with



the wrong principles, without taking the right principles into account or in an arbitrary or unreasonable way, thereby exceeding the proper limits of its discretion (see Case Law of the Boards of Appeal, 10th Edition, 2022, V.A.3.4.1.b; G 7/93, OJ 1994, 775; T 640/91, OJ 1994, 918).

The Board considers that the examining division exercised its discretion in accordance with the right principle, i.e. *prima facie* relevance of the claimed subject-matter for overcoming the raised objections, in a reasonable way.

As the appellant has not provided any argument against the discretion exercised by the examining division in this matter, either in writing or orally at the oral proceedings, there is no reason for the Board to overrule the examining division's decision.

Hence, auxiliary request 2 is not admitted into the proceedings.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



C. Spira

C. Herberhold

Decision electronically authenticated