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**Datasheet for the decision  
of 28 February 2023**

**Case Number:** T 0376/20 - 3.5.03

**Application Number:** 11770788.5

**Publication Number:** 2769557

**IPC:** H04R1/00, H04R3/02, H04R27/00,  
H04R27/02

**Language of the proceedings:** EN

**Title of invention:**  
Microphone assembly

**Patent Proprietor:**  
Sonova AG

**Opponent:**  
Oticon A/S / Widex A/S / GN Hearing A/S

**Headword:**  
Hearing aid's drop-down event/SONOVA

**Relevant legal provisions:**  
EPC Art. 54, 56  
RPBA 2020 Art. 13(2)

**Keyword:**

Novelty - main request, first to third, new third, fifth and sixth auxiliary requests (no)

Inventive step - fourth and seventh to ninth auxiliary requests (no)

Admittance of amendment after summons - tenth auxiliary request (no): no exceptional circumstances

**Decisions cited:**

T 2271/18, T 0256/19



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Case Number: T 0376/20 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 28 February 2023**

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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
18 November 2019 concerning maintenance of the  
European Patent No. 2769557 in amended form.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** K. Peirs  
C. Almberg

## Summary of Facts and Submissions

I. The appeal from the joint opponents (appellant) lies from the interlocutory decision of the opposition division to maintain the opposed patent of the proprietor (respondent) in amended form on the basis of the claims of the proprietor's then "second auxiliary request". The joint opponents invoked in their notice of opposition the grounds for opposition under

- Article 100(a) in conjunction with Articles 54 and 56 EPC;
- Article 100(b) EPC;
- Article 100(c) EPC in conjunction with Article 123(2) EPC.

In the appealed decision, the proprietor's then "main request" was deemed to be unallowable for insufficiency of disclosure (Article 100(b) EPC) and for added subject-matter (Article 100(c) EPC). The proprietor's then "first auxiliary request" was held to be unallowable for insufficiency of disclosure (Article 83 EPC).

II. A communication was issued under Article 15(1) RPBA 2020 including the board's preliminary opinion concerning novelty (Article 54 EPC) and inventive step (Article 56 EPC), having regard to the following prior-art document:

**E1:** US 2010/0246847 A1.

III. Oral proceedings before the board were held on 28 February 2023. The parties' final requests were as

follows:

- The appellant requests that the appealed decision be set aside and that the patent be revoked.
- The respondent requests, as **main request**, that the appeal be dismissed, i.e. that the patent be maintained in amended form based on the claims of the then "second auxiliary request" held allowable in the appealed decision or, alternatively, that the patent be maintained in amended form based on the claims of one of **eleven auxiliary requests**, namely the **first to third, new third and fourth to tenth auxiliary requests**.

The first to ninth auxiliary requests were filed with the written reply to the appeal. The new third auxiliary request and the tenth auxiliary request were filed after the notification of the summons to the oral proceedings before the board.

At the end of the oral proceedings, the board's decision was announced.

IV. Claim 1 of the **main request**, i.e. claim 1 as maintained by the opposition division, reads as follows (board's feature labelling):

- (a) "A mobile microphone assembly (10) comprising:
- (b) at least one microphone (40, 42) for generating an audio signal output (52) from sound impinging on the at least one microphone,
- (c) an acceleration sensor (48) for sensing the acceleration acting on the microphone assembly with regard to three orthogonal axes and for providing

for an acceleration signal according to the sensed acceleration, and

- (d) a control unit (50) for judging, by analyzing the acceleration signal, whether there is a drop-down event of the microphone assembly and for interrupting the audio signal output during a drop-down event,
- (e) wherein the control unit (50) is designed to judge that a drop-down event is terminated and to accordingly terminate interruption of the audio signal output once a release acceleration threshold is found to be not exceeded by the acceleration signal for at least a given release time period."

V. Claim 11 of the **main request**, i.e. claim 11 as maintained by the opposition division, reads as follows (board's feature labelling):

- A) "A method for capturing audio signals from sound, comprising:
- B) generating, by at least one microphone (40, 42) of a mobile microphone assembly (10), an audio signal output (52) from sound impinging on the microphone,
- C) sensing, by an acceleration sensor (48) of the mobile microphone assembly, the acceleration acting on the microphone assembly with regard to three orthogonal axes and providing an acceleration signal corresponding to the sensed acceleration, and
- D) judging, by a control unit of the mobile microphone assembly, by analyzing the acceleration signal, whether there is a drop-down event of the microphone assembly and interrupting the audio signal output during a drop-down event,

E) wherein the judging comprises to judge, by the control unit, that a drop-down event is terminated and to accordingly terminate interruption of the audio signal output once a release acceleration threshold is found to be not exceeded by the acceleration signal for at least a given release time period."

VI. Claim 1 of the **first auxiliary request** is the same as claim 1 of the main request. Claim 11 of the first auxiliary request includes all the features of claim 11 of the main request, with the difference that the phrase "wherein the judging comprises to judge" of feature E) has been replaced with the clause "and judging".

VII. In each of the **second to ninth, new third and tenth auxiliary requests**, the corresponding independent method claim was deleted.

VIII. Claim 1 of the **second auxiliary request** is the same as claim 1 of the main request.

IX. Claim 1 of the **third auxiliary request** includes all the features of claim 1 of the main request, with features (d) and (e) replaced with the following features respectively (amendments vis-à-vis features (d) and (e) underlined by the board):

(f) "a control unit (50) for judging, by analyzing the acceleration signal, whether there is a drop-down event of the microphone assembly and for interrupting the audio signal output during a drop-down event, wherein the control unit (50) is designed to judge that there is a drop-down event once a given drop-down threshold

acceleration is found to be exceeded by the acceleration signal for at least a given drop-down time period; and";

(g) "wherein the control unit (50) is designed to judge that a drop-down event is terminated and to accordingly terminate interruption of the audio signal output once a release acceleration threshold is found to be not exceeded by the acceleration signal for at least a given release time period, so as to avoid noise from dropping of the microphone assembly onto a hard surface."

X. Claim 1 of the **new third auxiliary request** includes all the features of claim 1 of the main request, with feature (d) replaced with the following feature (amendments vis-à-vis feature (d) underlined by the board):

(h) "a control unit (50) for judging, by analyzing the acceleration signal, whether there is a drop-down event of the microphone assembly and for interrupting the audio signal output during a drop-down event, so as to avoid noise from dropping of the microphone assembly onto a hard surface, wherein the control unit (50) is designed to judge that there is a drop-down event once a given drop-down threshold acceleration is found to be exceeded by the acceleration signal for at least a given drop-down time period; and";

XI. Claim 1 of the **fourth auxiliary request** includes all the features of the new third auxiliary request, with feature (e) replaced with the following feature (amendments vis-à-vis feature (e) underlined by the



board):

- (i) "wherein the control unit (50) is designed to judge that a drop-down event is terminated and to accordingly terminate interruption of the audio signal output once a release acceleration threshold is found to be not exceeded by the acceleration signal for at least a given release time period, and wherein the microphone assembly (10) is a hand-held device for capturing the voice of a user (11)."

XII. Claim 1 of the **fifth auxiliary request** includes all the features of claim 1 of the main request,

- with the following feature inserted between features (b) and (c):

- (j) "means (28, 30, 92) for transmitting the audio signal output via a wireless link (12, 27) to at least one audio signal receiver unit (14, 61),";

- and with the following feature added at the end:

- (k) "and wherein the microphone assembly is for unidirectional audio signal transmission via the wireless link to the at least one audio signal receiver unit".

XIII. Claim 1 of the **sixth auxiliary request** includes all the features of claim 1 of the main request,

- with feature (a) replaced with the following feature (amendments vis-à-vis feature (a) underlined by the board):

(1) "A system for providing sound to at least one user (99), comprising: a mobile microphone assembly (10) designed as an audio signal transmission unit (10) for transmitting the audio signals via a wireless link (12, 27); at least one receiver unit (14, 61) for reception of audio signals from the audio signal transmission unit via the wireless link; and means (16, 98) for stimulating a hearing of the user(s) according to an audio signal supplied from the receiver unit, the mobile microphone assembly comprising:"

- and with the feature (j) inserted between features (b) and (c).

XIV. Claim 1 of the **seventh auxiliary request** includes all the features of claim 1 of the sixth auxiliary request,

- with feature (d) replaced with the following feature (amendments vis-à-vis feature (d) underlined by the board):

(m) "a control unit (50) for judging, by analyzing the acceleration signal, whether there is a drop-down event of the microphone assembly and for interrupting the audio signal output during a drop-down event so as to avoid noise from dropping of the microphone assembly onto a hard surface,";

- and with feature (e) replaced with feature (i).

XV. Claim 1 of the **eighth auxiliary request** includes all the features of claim 1 of the seventh auxiliary

request, with feature (1) replaced with the following feature (amendments vis-à-vis feature (1) underlined by the board):

(n) "A system for providing sound to at least one user (99), comprising: a mobile microphone assembly (10) designed as an audio signal transmission unit (10) for transmitting the audio signals via a wireless link (12, 27); at least one receiver unit (14, 61) for reception of audio signals from the audio signal transmission unit via the wireless link, wherein the receiver unit is connected to a hearing aid (16) or is integrated within a hearing aid (16); and means (16, 98) for stimulating a hearing of the user(s) according to an audio signal supplied from the receiver unit, the mobile microphone assembly comprising:".

XVI. Claim 1 of the **ninth auxiliary request** includes all the features of claim 1 of the main request,

- with feature (a) replaced with the following feature (amendments vis-à-vis feature (a) underlined by the board):

(o) "A system for speech enhancement in a room (90), comprising a mobile microphone assembly (10) comprising:"

- with features (d) and (e) replaced with features (m) and (i) respectively;

- and with the following feature added at the end:
  - (p) "the system further comprising: an audio signal processing unit (94) for processing the audio signal output (52) of the microphone assembly, and a loudspeaker arrangement (98) for generating sound according to the processed audio signals."

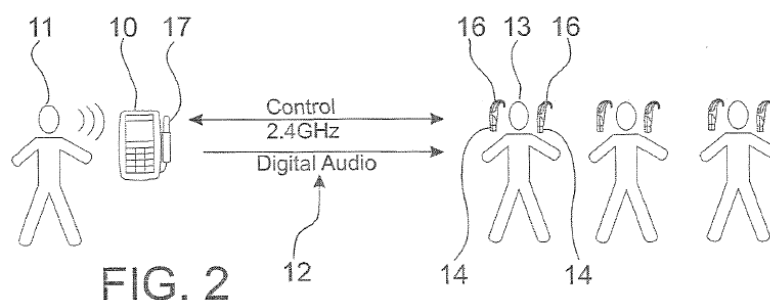
XVII. Claim 1 of the **tenth auxiliary request** includes all the features of claim 1 of the main request, with

- the expression "during a drop-down event" replaced with the expression "during the drop-down event" in feature (d) and
- the term "a drop-down event" replaced with the term "the drop-down event" in feature (e).

### Reasons for the Decision

#### 1. *Technical background*

1.1 The present invention relates to hand-held microphone assembly 10 that can be used by a teacher 11 in a classroom for listeners 13 that wear hearing aids 16 (see reproduced Fig. 2 of the opposed patent).



It particularly concerns the situation where hand-held microphone assembly 10 is accidentally dropped. In such a situation, the microphone of hand-held microphone assembly 10 will detect a mechanical shock upon an impact. This mechanical shock is then typically perceived by listeners 13 as an uncomfortable sound.

1.2 The invention aims to avoid this uncomfortable sound. It does so by detecting that the microphone assembly has been dropped and muting the microphone until hand-held microphone assembly 10 is again at rest.

2. *Main request: claim 11 - claim construction*

2.1 A claim wording should in principle be tested against all the possible, technically meaningful interpretations which would objectively occur to a skilled reader when reading the claim taken by itself.

2.2 In the present case, **features D) and E)** have been formulated quite broadly. This is illustrated, for instance, by the fact that the term "drop-down event" in these features could in principle relate to three different events, as indicated in point 7.1.1 of the board's preliminary opinion (cf. point II above).

2.3 Nonetheless, the skilled reader would, in the board's view, not consider the "bouncing" mentioned in Reasons 20.2 of the impugned decision that may occur after an object has hit the floor (or another obstacle) to be part of the "drop-down event" according to features D) and E). The term "drop-down" deserves careful consideration in this respect:

2.3.1 It relates, within the context of features D) and E), to an object falling vertically over a particular

distance, typically as a direct result of the Earth's gravitational pull. The "bouncing" referred to in Reasons 20.2 of the impugned decision will, however, normally not occur in a vertical direction and is not a direct result of gravity. Any action subsequent to the object having hit an obstacle, such as the reinsertion in or repositioning at the user's ear, can, *a fortiori*, not be part of the "drop-down event".

2.3.2 Moreover, in contrast to the noun "fall", which can be used in, for instance, the expression "free fall", implying a fall (seemingly) without end, the verb "to drop" necessarily implies a definite *end point* in time. According to Reasons 20.2 of the appealed decision, the respondent as well as the opposition division seem to have interpreted the following criterion (board's labelling), i.e.

F) "once a release acceleration threshold is found to be not exceeded by the acceleration signal for at least a given release time period",

to expressly define this *end point*. The board cannot agree to this for several reasons:

First, the skilled reader may, in fact, choose any (arbitrary) value for the "release acceleration threshold" and the "given release time period" of feature E). Such an arbitrary value can in general not be used to define the end point in time of a "drop-down event".

Secondly, criterion F) is not necessarily the only one that needs to be met before a termination of the output interruption can take place. Nothing in claim 11

prevents that further (undefined) conditions are involved in the termination of the interruption according to feature E). Contrary to the respondent's view, the board holds that the term "once", as it occurs in criterion F), does not have the same meaning as the expression "as soon as": while the latter may point to a *sufficient* condition, the former only amounts to a *necessary* condition. In other words, criterion F) constitutes a necessary but not automatically a sufficient condition with respect to unmuting ("terminate interruption") the respective microphone.

Thirdly, feature E) can even be interpreted such that the "control unit" does not terminate the interruption of the audio signal output but only starts to assess when the "drop-down event" is terminated once criterion F) is met. On this interpretation, the board cannot recognise how criterion F) could add a technically meaningful limitation to what the term "drop-down" already conveys: for all possible time frames which the skilled reader would readily consider for the expression "given release time period", the term "release acceleration threshold" is intrinsically limited by the value of "1g" ( $9.81 \text{ m/s}^2$ ), i.e. the acceleration induced by the Earth's gravitation. Hence, criterion F) can inherently be fulfilled as soon as it has been determined that "there is a drop-down event" in accordance with feature D). It does not necessarily define an end point for the "drop-down event".

2.4 The board was not convinced by the respondent's statement that claim 11 must be construed by the skilled reader taking into account the "patent as a whole". Rather, it is the board's conviction that the claims should, for many reasons, essentially be read

and interpreted by the skilled reader on their own merits (see e.g. **T 256/19**, Reasons 3.1).

In particular, none of the respondent's allegations relating to features D) and E)

- that the three occurrences of the "drop-down event" must refer to the *same* event,
- that the "release acceleration threshold" and "release time period" cannot be chosen arbitrarily,
- that it would not make (technical) sense, "for practical reasons", to select the value of 1g or more for the "release acceleration threshold", and
- that criterion F) alone would be sufficient for terminating the interruption of the audio signal output

are apparent from claim 11 taken by itself, regardless of whether paragraphs [0015], [0020] and [0022] of the opposed patent contain more details in this respect.

3. *Main request: claim 11 - novelty*

For the present assessment of novelty, the board will assume that the skilled reader would understand, with respect to the broad formulation of features D) and E) as addressed in point 2.2 above, that only one and the same "drop-down event" is meant in those features.

- 3.1 In the appealed decision (cf. Reasons 23.1 to 23.3), the positive assessment of the proprietor's then "second auxiliary request" focused on independent method claim 11. Correspondingly, the board conducted its review of the appealed decision in this respect primarily on the basis of that claim.



3.2 The respondent contested the feature mapping as to document **E1** set out in Reasons 20.4 of the appealed decision in view of feature D): in the respondent's opinion, the interruption of the audio signal output in the system of E1 did not necessarily occur during the "drop-down event".

This is not convincing given the teaching of paragraphs [0059] and [0185] of E1, to which the opposition division referred in Reasons 20.4 of the appealed decision. Paragraph [0059], last sentence, in fact teaches

"to mute whatever sounds are detected by the communications microphone 140 to enhance user privacy in response to determining that the personal acoustic device 1000b is not in the state of being positioned on or about the user's head" (emphasis added).

Paragraph [0185], penultimate sentence, of E1 states that the determination whether or not the personal acoustic device 1000b is positioned on or about the user's head is made using accelerometers, which detect a "*common mode acceleration*" indicative of "*an acceleration consistent with the personal acoustic device being dropped*" (emphasis added). Hence, the skilled reader would immediately understand from this teaching that the interruption of the audio signal output occurs during the "drop-down event".

3.3 Regarding **feature E)**, the respondent argued, in particular in view of paragraphs [0185] to [0189] and [0213] of E1, that the muting was ceased in E1 when "*differential mode accelerations*" are detected which are above a certain threshold. This was not what is

expressed by criterion F).

The board is not persuaded. Even if one assumes, deviating from what was set out in the last paragraph of point 2.3.2 above, that criterion F) was not inherently met as soon as a "drop-down event" has been determined in accordance with feature D), the respondent's argument would not be convincing: the paragraphs upon which the respondent relies not only indicate the use of *differential-mode* accelerations but also of *common-mode* accelerations. This is apparent, for instance, from paragraph [0186] of E1, which states that

"some common mode accelerations may actually be an indication of a personal acoustic device being in position on a user's head" (emphasis added).

This indication corresponds to the criterion to cease muting in E1 in accordance with the last sentence of paragraph [0059]. In particular, paragraph [0186], last sentence, of E1 teaches to use acceleration analyser 860 of Figure 7b and to determine

"a 1 Hz to 2 Hz repetitive up-and-down movement that would be consistent with a person's head and torso moving up and down as they walk or run".

The frequency of 1 to 2Hz implies a "given release time period" of 0.5 to 1s, during which the acceleration involved in the "repetitive up-and-down movement" will evidently be below any "release acceleration threshold". Hence, E1 in fact discloses feature E) in paragraph [0059] combined with paragraph [0186].

- 3.4 Furthermore, the board does not agree with the respondent that paragraph [0186] of E1 only discloses that the acceleration signal component has to be above a certain threshold. From the phrase "*a 1 Hz to 2 Hz repetitive up-and-down movement that would be consistent with a person's head and torso moving up and down as they walk or run*" (emphasis added) in the last sentence of paragraph [0186] of E1, the skilled reader would, in the board's view, readily understand that the acceleration signal related to the up-and-down movement must be within a certain range, in the sense that it has an *upper* and a *lower* limit. Regardless of this, the board was also convinced by the appellant's argument that an *upper* limit for the acceleration to be detected in E1 is given by the detection of the "drop-down event" as set out in paragraph [0185] of E1. This drop-down event is detected by accelerometers that will measure an acceleration of 1g. This value of 1g must then, conversely, constitute the *upper* limit for the acceleration when the "drop-down event" is terminated.
- 3.5 Moreover, because claim 11 is not specific about which value to take for the "given release time period" according to feature E) (see point 2.3.2 above), the respondent could also not convince the board that criterion F) would imply a faster termination of the interruption than in the system of E1. The board acknowledges that E1 (cf. the last sentence of paragraph [0059]) ceases the muting of the microphone when the "personal acoustic device" with the microphone is again positioned on or about the user's head and that the opposed patent may allow to reactivate the microphone faster in some specific scenarios, but nothing in claim 11 of the main request, taken by itself, expresses this potential difference.

- 3.6 Consequently, claim 11 of the main request lacks novelty (Article 54 EPC).
4. *First auxiliary request: claim 11 - novelty*
- 4.1 The amendment mentioned in the second sentence of point VI above corresponds, at most, to a broadening of the subject-matter of claim 11 of the main request. Therefore, it cannot alter the board's conclusion drawn in point 3.6 above.
- 4.2 As a consequence, claim 11 of the first auxiliary request lacks novelty either (Article 54 EPC).
5. *Second, third, new third, fifth and sixth auxiliary requests: claim 1 - novelty*
- 5.1 Claim 1 of the **second auxiliary request** is the same as claim 1 of the main request (cf. point VIII above). Structural **features (a) to (e)** indicated in point IV above are in direct correspondence with, respectively, the method steps of **features A) to E)** recited in point V above. The reasoning for features A) to E), in particular as set out for features D) and E) in points 3.2 and 3.3 above, applies therefore, *mutatis mutandis*, to features (a) to (e).
- 5.2 Regarding the **third and new third auxiliary requests**, the terms "a given drop-down threshold acceleration" and "a given drop-down time period" of **features (f) and (h)** can refer to arbitrary values, similar to what was set out for the terms "a release acceleration threshold" and "a given release time period" of **feature (e)** in point 2.3.2 above. The expression "an acceleration consistent with the personal acoustic device being dropped" of paragraph [0185] of E1 implies

that an acceleration of the personal acoustic device is measured over "a given drop-down time period" to determine whether it is close to 1g, i.e. lies above "a given drop-down threshold acceleration". Moreover, the clause "so as to avoid noise from dropping of the microphone assembly onto a hard surface" of **features (g) and (h)** expresses a goal that is also obtained in E1, even if this document only explicitly aims "to enhance user privacy" (cf. the last sentence of paragraph [0059] of E1). This is because the muting of the microphone takes place in response to determining that it is detected that the personal acoustic device is "not in the state of being positioned on or about the user's head" (*ibid.*). As disclosed in paragraph [0185] of E1, for this determining step, an indication of a common-mode acceleration that is "*consistent with the personal acoustic device being dropped*" (emphasis added) can be used. This means that the muting of the microphone will in general take place in E1 *before* the personal acoustic device's drop-down comes to an end. The microphone can, as a result, also not produce any signal if it impacts on a hard surface at the end of this drop-down.

- 5.3 Concerning the **fifth and sixth auxiliary requests**, **features (j) and (l)** are disclosed by the ear-worn or head-worn device of E1 being in wireless communication with a cellular phone, which wireless communication was referred to by the respondent during the oral proceedings before the board (see also, for instance, paragraph [0124] of E1). Moreover, **feature (k)** is implicit from the term "one-way communications" in the second sentence of paragraph [0043] of E1, which relates to the kind of "personal acoustic devices" that

the disclosure of E1 is applicable to.

- 5.4 Hence, claim 1 of each of the second, the third, the new third, the fifth and the sixth auxiliary requests also lacks novelty and is therefore likewise not allowable under Article 54 EPC.
6. *Fourth and seventh to ninth auxiliary requests: claim 1 - inventive step*
- 6.1 Regarding **feature (i)**, the board acknowledges that the skilled reader would not consider any of the ear-worn or head-worn devices mentioned in paragraphs [0012] and [0043] of E1 to be a "hand-held device". The board considers, however, that the skilled person would directly have realised that a "cellular phone" is similar to those ear-worn or head-worn devices in the sense that it also has an earpiece and a microphone and that it is typically held in the vicinity of the user's ear when in use. In that regard, the appellant correctly pointed out that the skilled person would have understood such a cellular phone to be typically even more prone to being dropped than an ear-worn or head-worn device. As a result, the board holds that the skilled person would have indeed considered a "cellular phone" when faced with the objective technical problem of *finding other devices in which the system of E1 can also be applied*. Such a cellular phone is an example of a "hand-held device". Feature (i) therefore cannot contribute to an inventive step.
- 6.2 Concerning **feature (m)**, the board refers to the second paragraph of point 5.2 above.
- 6.3 As regards **feature (n)**, the respondent emphasised that the noise that was avoided in feature (n) related to

what the user wearing the hearing aid perceives. This was, in the respondent's view, opposed to the noise that was avoided in the system of **E1**, which, at most, concerned a remote partner in a conversation that was held over the cellular phone mentioned in points 5.3 and 6.1 above. The board notes, however, that feature (n) does not require the hearing aid to be worn by the same person as the one to whom the mobile microphone assembly is associated: the hearing aid and the mobile microphone assembly merely have to be part of the same "system". In terms of the system of E1, the skilled person would, in the board's opinion, have readily considered the typical scenario in which two users talk via their cellular phones, where both users could wear ear-worn or head-worn devices as taught in paragraphs [0012] and [0043] of E1. In such a scenario, it would have been immediately apparent for that skilled person, based on the notorious similarity between, on the one hand, these ear/head-worn devices and, on the other hand, hearing aids, to replace the ear-worn device of E1 by a hearing aid in order to solve the objective technical problem of adopting the system of E1 for use by the hearing-impaired user. As a result, feature (n) does not involve any inventive activity either.

6.4 As to **feature (o)**, it would have been a matter of routine design for the skilled person, based on their common general knowledge, to add some speech-enhancement functionality, e.g. noise or echo suppression in a received speech signal, to the ear/head-worn devices of paragraphs [0012] and [0043] of E1.

6.5 Lastly, **feature (p)** would have been automatically arrived at by the skilled person when applying the

system of E1 to a "cellular phone" as set out in point 6.1 above: such a cellular phone typically comprises an audio signal processing unit and a loudspeaker arrangement according to feature (p).

6.6 Hence, the subject-matter of claim 1 of each of the fourth and seventh to ninth auxiliary requests does not involve an inventive step and is therefore not allowable under Article 56 EPC.

7. *Tenth auxiliary request: admittance*

7.1 As regards the admissibility of the tenth auxiliary request, the respondent invoked "exceptional circumstances" within the meaning of Article 13(2) RPBA 2020 because the board would have provided a "new and unexpected interpretation of claims 1 and 11 in item 7.1.1 of the preliminary opinion".

7.2 The board cannot discern how the observation in the second sentence of point 2.2 above could involve a "new and unexpected" interpretation for the respondent, who, as the patent proprietor, deliberately chose to use three times the indefinite article before the term "drop-down event" when drafting the claims. Even if one were to acknowledge that such an interpretation could be "new and unexpected", this would, in itself, not justify the admittance of amended claim requests into the proceedings (see also **T 2271/18**, Reasons 3.3).

7.3 As a result, the respondent did not provide any "cogent reasons" which could justify admittance of the tenth auxiliary request into the proceedings.

7.4 The tenth auxiliary request was therefore not admitted into the appeal proceedings (Article 13(2) RPBA 2020).



**Order**

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

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated