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**Datasheet for the decision  
of 9 November 2023**

**Case Number:** T 0618/20 - 3.2.06

**Application Number:** 11715853.5

**Publication Number:** 2558045

**IPC:** A61F13/00, A61M1/00, A61F13/02

**Language of the proceedings:** EN

**Title of invention:**  
DRESSINGS AND METHODS FOR TREATING A TISSUE SITE ON A PATIENT

**Patent Proprietor:**  
KCI Licensing, Inc.

**Opponent:**  
Smith & Nephew, Inc.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 123(2)  
RPBA 2020 Art. 12(6)

**Keyword:**

Amendments - main request - extension beyond the content of  
the application as filed (yes)  
Late-filed requests 1, 2 and 3 - error in use of discretion at  
first instance (no) - admitted (no)

**Decisions cited:**

G 0009/91

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0618/20 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 9 November 2023**

**Appellant:** KCI Licensing, Inc.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 January 2020  
revoking European patent No. 2558045 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** P. Cipriano  
W. Ungler

## Summary of Facts and Submissions

- I. An appeal was filed by the appellant (patent proprietor) against the decision of the opposition division revoking European Patent No. 2 558 045.
- II. With its grounds of appeal, the appellant (patent proprietor) requested that the decision under appeal be set aside and the case be remitted to the opposition division on the basis of the main request filed therewith for consideration of the remaining issues under Articles 100(a), 54 and 56 EPC.

As an auxiliary measure the appellant requested that the patent be maintained according to the main request or one of auxiliary requests 1 to 3 as filed with the statement of grounds of appeal. Furthermore it requested that the case be remitted to the opposition division if the ground for opposition under Article 100(c) EPC or the objections under Article 123(2) EPC were considered to be overcome.

- III. The respondent (opponent) requested that the appeal be dismissed.
- IV. The following document is of relevance to the present decision:  
D5 WO 2009/066106
- V. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that claim 1 of the main request did not seem to fulfil the requirement of Article 123(2) EPC.

VI. Oral proceedings were held by videoconference before the Board on 9 November 2023.

The final requests of the parties were as follows:

- The appellant (patent proprietor) requested that the decision under appeal be set aside and the case be remitted to the opposition division on the basis of the main or the first to third auxiliary requests, all filed with the statement of grounds of appeal, auxiliarily that the decision under appeal be set aside and the patent be maintained in amended form on the basis of one of the aforementioned requests in the given order.

- The respondent (opponent) requested that the appeal be dismissed.

VII. Claim 1 of the main request reads as follows:

"A dressing for treating a tissue site on a patient, the dressing comprising:

a foam member for placing proximate to the tissue site;

a covering, wherein at least a first portion of the covering comprises an evaporative window defined by an area of the covering that is free from adhesive and having a liquid-impermeable, vapor-permeable membrane, and a second portion comprises a drape material having adhesive on a portion thereof;

wherein the covering is operable to form a sealed space over the tissue site; and

wherein the liquid-impermeable, vapor-permeable membrane allows liquids in the sealed space that have evaporated to egress the sealed space;

wherein the evaporative window comprises one or more apertures in the covering that are covered by the liquid-impermeable, vapor-permeable membrane;

a manifolding layer disposed proximate to a first side of the liquid-impermeable, vapor-permeable membrane;

a drape covering the manifolding layer, wherein the drape has an aperture; and

a forced-air device fluidly communicating with the aperture in the drape to move air into the manifolding layer."

Claim 1 of auxiliary request 1 differs from of claim 1 of the main request in that the features "the evaporative window comprises one or more apertures in the covering" is replaced by "the evaporative window comprises a plurality of apertures in the covering".

Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the last paragraph reads "a forced-air device fluidly communicating with the aperture in the drape to move air from the atmosphere into the manifolding layer".

Claim 1 of auxiliary request 3 differs from claim 1 of the main request by the combination of the amendments made to claim 1 of auxiliary requests 1 and 2.

VIII. The arguments of the appellant relevant to this decision may be summarised as follows:

*Main request - Article 123(2) EPC*

Claim 1 of the main request fulfilled the requirement of Article 123(2) EPC.

Not only the combination of claims 1, 9 and 15 as granted, but also the originally filed application as a whole provided a basis for one aperture or a plurality of apertures, since the evaporative window was disclosed as being an aperture or (several) apertures in the description as originally filed.

In addition, the disclosure of granted claim 15 was not limited to a plurality of apertures as defined in claim 9 since it was not exclusively dependent on claim 9.

Also paragraph [0030] of the application as filed was not specific to the embodiment of Figure 2, but provided a general definition that an evaporative window comprised one or more apertures, which the skilled person would consider applicable to all embodiments and to the invention as a whole.

A single aperture could not be found in Figure 9 but paragraph [0052] of the description indicated that the dressing of Figure 9 was "analogous" to the dressing of Figure 1 (which had the covering and evaporative window as defined in claim 1 with one aperture). The dressing of the embodiment of Figure 9 would therefore also include an aperture, since a skilled person would read the disclosure of Figure 9 as being widely applicable and freely combinable with the rest of the

application's disclosure, such as the covering and evaporative window defined in claim 1.

Should the Board not accept this argument, the absorbent layer was not inextricably linked to the forced-air device and could thus be omitted, i.e. the skilled person would only read the covering 508 as being generally applicable to the rest of the disclosure of the application, including one or more apertures. The rest could be left out. A forced-air device was already found in general terms in claim 21 and in the embodiment of Figure 8, which also disclosed a dressing without an absorbent layer.

*Admittance of auxiliary request 1*

Auxiliary request 1 should have been admitted into the proceedings by the opposition division.

Auxiliary request 1 was a reaction to a new novelty objection raised by the respondent only seven days before the oral proceedings and had been filed for the first time at the earliest possible moment at the beginning of the oral proceedings in the opposition proceedings.

Auxiliary request 1 was simply a direct combination of dependent claims as originally filed and therefore *prima facie* overcame all objections under Article 123(2) EPC.

*Admittance of auxiliary requests 2 and 3*

Auxiliary requests 2 and 3 should be admitted into the proceedings.



Regarding auxiliary request 3, claim 1 contained the amendments necessary to overcome all objections under Article 123(2) EPC and Article 54 EPC up to that point. In addition, the description as originally filed also provided a basis for the combination of the features of claim 1 comprising the feature "from the atmosphere".

Also the request was made at the beginning of the oral proceedings because it was a response to a novelty objection that had been made only seven days prior to the date of the oral proceedings (i.e. shortly before).

IX. The arguments of the respondent relevant to this decision may be summarised as follows:

*Main request - Article 123(2) EPC*

Claim 1 of the main request did not fulfil the requirement of Article 123(2) EPC.

Neither the combination of the claims 1, 11 and 21 as filed nor any passage in the description provided a basis for the combination of the features of claim 1 together with the option "one aperture".

Paragraph [0030] referred specifically to the embodiment of Figure 2 and was not a general definition.

The embodiments of Figures 8 and 9 included several differences such that the skilled person would not be able to derive from the lack of an absorbent layer in the embodiment of Figure 8 that this was a general teaching.

*Admittance of auxiliary request 1*

The opposition division had exercised its discretion correctly.

Auxiliary request 3 from the opposition proceedings was the request corresponding to auxiliary request 1 filed with the grounds of appeal and this request was filed only at the last possible moment of the oral proceedings, in spite of the objections being known already for several months in advance and the proprietor having filed several requests during this period.

*Admittance of auxiliary requests 2 and 3*

Auxiliary requests 2 and 3 were correctly not admitted into the proceedings by the opposition division.

Both requests comprised the feature "from the atmosphere", which had its basis in the description and gave rise to further objections under Article 123(2) EPC. The requests were therefore not *prima facie* allowable.

## **Reasons for the Decision**

Main request

1. Although the respondent objected to the admittance of the main request, the Board exercised its discretion to admit the request into the proceedings, but since the request is not allowable (see below), the reasons for its admittance can be omitted from this decision.
2. Article 123(2) EPC

2.1 Claim 1 of the main request includes the amendment defining *inter alia that*:

the evaporative window comprises one or more apertures in the covering that are covered by the liquid-impermeable, vapor-permeable membrane.

2.2 The Board however finds that the combination of claims 1, 11 and 21 as originally filed by the appellant provides a basis for the "more apertures" option of the aforesaid amendment, but not for the "one aperture" option.

2.3 The appellant argued that not only the combination of claims 1, 9 and 15 as granted (corresponding to claims 1, 11 and 21 as originally filed), but the application as a whole provided a basis for one aperture or a plurality of apertures, since the evaporative window was disclosed as an aperture or (several) apertures in several embodiments of the originally filed description, see e.g. page 4, lines 20-21; page 8, lines 9-10; page 10, lines 3-4; page 12, lines 26-27; and page 13, line 22.

The Board does not accept this argument. The various passages cited by the appellant each correspond to a different embodiment and corresponding Figure(s). As can be seen from the description and the corresponding Figures, some embodiments disclose one or more apertures (e.g. the embodiment of Figure 2), while others have only one aperture (e.g. the embodiment of Figure 8), or only more than one aperture (e.g. the embodiment of Figure 3), or no apertures at all (e.g. the embodiments of Figures 5 and 9). The skilled person would therefore not derive that the application as a

whole provides a basis for an evaporative window having one aperture or a plurality of apertures generally for each embodiment.

- 2.4 The appellant also argued that the disclosure of granted claim 15 (corresponding to claim 21 as originally filed) was not limited to a plurality of apertures as defined in claim 9 (claim 11 as originally filed) because it was not exclusively dependent on claim 9.

The Board does not find this argument persuasive either. Whilst it is true that dependent claim 21 was not exclusively dependent on claim 11 (which defines an evaporative window comprising a plurality of apertures), there is no dependent claim directed to an evaporative window comprising a single aperture. The fact that the claim combinations encompass dressings without a specific number of apertures does not provide the skilled person with a direct and unambiguous disclosure for a dressing with an evaporative window comprising a single aperture.

- 2.5 The appellant further argued that paragraph [0030] of the application as filed was not specific to the embodiment of Figure 2 but provided a general definition that an evaporative window comprises one or more apertures, which the skilled person would consider applicable to all embodiments (including the embodiment of Figure 9) and to the invention as a whole.

The Board does not accept this argument. Even if paragraph [0030] does not explicitly state that it deals with an "illustrative embodiment" (which is the case in several other paragraphs), the wording of paragraph [0030] starts with "Referring to Figure 2"

which makes it clear to the skilled person that the following sentences refer to the Figure and thus to the embodiment of Figure 2. The use of the reference numerals of Figure 2 (e.g. aperture/apertures 128, covering 108, vapor-permeable membrane 112) also instructs the skilled person that this paragraph is a description of Figure 2 specifically and not a general definition, since these reference numerals are used specifically in Figure 2. Even if, as argued by the appellant, it could well have been the drafter's intention to use Figure 2 as a means of illustrating what should be understood by an evaporative window with an aperture (or apertures), this is nevertheless merely speculation and is far from being the required unambiguous disclosure, for the reasons already given above.

- 2.6 The appellant also argued that the embodiment of Figure 9 provided a basis for combining the features of claim 1 with the single aperture. According to the appellant, although a single aperture could not be found in Figure 9, paragraph [0052] of the description indicated that the dressing of Figure 9 was "analogous" to the dressing of Figure 1 (which had the covering and evaporative window as defined in claim 1 with one aperture). The dressing of the embodiment of Figure 1 therefore also included a forced-air device, since a skilled person would read the disclosure of Figure 9 as being widely applicable and freely combinable with the rest of the disclosure of the application, such as the covering and evaporative window of the embodiment of Figure 1 or of claim 1.

The Board does not accept these arguments. The expression "analogous to the dressing 100 of Figure 1" in paragraph [0052] does not unambiguously imply that

all features of the dressing besides a reduced-pressure interface 576 and a forced-air device 560 and related components are the same. It is clear from the description and the Figures that, for example, the embodiment of Figure 9 also includes an absorbent layer or stack 532 as disclosed in paragraph [0053] and Figure 9. Such an absorbent layer is not disclosed in the embodiment of Figure 1. Thus, the skilled person would understand that there are more differences between the dressings of Figures 1 and 9 besides the reduced-pressure interface 576 and a forced-air device 560 and related components.

- 2.7 The appellant countered that an absorbent layer was not inextricably linked to the forced-air device and could therefore be omitted, i.e. the skilled person would only read the covering 508 as being generally applicable to the rest of the disclosure of the application, including one or more apertures. The rest could be omitted. A forced-air device was already found in general terms in claim 21 and in the embodiment of Figure 8, which also disclosed a forced-air device without an absorbent layer.

These arguments are, again, not persuasive. In the embodiment of Figure 9, the absorbent layer is located directly beneath the covering 508 and affects the flow of fluid therethrough. As pointed out by the appellant, paragraph 57 states that the absorbent layer is "for wicking fluids from the wound interface member 518 and storing liquids" and paragraph 60 discloses that the forced-air device "wicks moisture from a liquid impermeable, vapor-permeable portion of the covering 508". However, this means that in the embodiment of Figure 9, the absorbent layer is structurally and functionally linked to the other components of the

dressing, such as the forced-air device, to allow the fluid to evaporate and exit the dressing, such that the skilled person would not consider it as not being a part of the disclosure.

Further, the dressing of the embodiment of Figure 8 does not have an absorbent layer, and additionally has a completely different construction using a flexible baffling that does not correspond to the one of claim 1. As disclosed in paragraphs [0049] and [0050] of the application as filed, the covering 408, including the membrane 412, is covered by the flexible baffling 464 "that helps channel air from or to the piezoelectric pump 462 over the liquid-impermeable, vapor-permeable membrane 412". Contrary to the appellant's argument on this, such flexible baffling does not correspond to a manifold layer since it does not have multiple flow channels and is not in addition covered by a drape having an aperture as defined in claim 1.

Thus, the dressing of Figure 8 is of such a different construction from the one of Figure 9 that it would not provide a hint to the skilled person that an absorbent layer is only an optional element in the embodiment of Figure 9.

2.8 Hence, the subject-matter of claim 1 does not fulfil the requirement of Article 123(2) EPC with the consequence that the main request is not allowable.

3. Auxiliary request 1 - admittance

3.1 Auxiliary request 1 was filed with the grounds of appeal and corresponds to auxiliary request 3 which the opposition division did not admit into the opposition proceedings during the oral proceedings held before it.

Auxiliary request 3 was filed after the opposition division had found that claim 1 of (then) auxiliary request 2 did not fulfil the requirement of Article 123(2) EPC since there was no basis in the application as filed for the combination of features of claim 1 comprising the option "one aperture" (as discussed in item 2 above).

3.2 A discretionary decision taken by a department of first instance is generally only overturned by the Board of Appeal where the department of first instance incorrectly exercised its discretion, for example by applying inappropriate criteria or making use of its discretion in an arbitrary way.

3.3 The appellant argued that the auxiliary request had been filed for the first time at the beginning of the oral proceedings in the opposition proceedings (as auxiliary request 1) at the earliest possible time and before the decision on Article 123(2) EPC regarding auxiliary request 2 had been taken. According to the appellant, this request was a reaction to a new novelty objection raised by the respondent shortly before the oral proceedings against the subject-matter of dependent claim 21 as originally filed, which could not have been foreseen earlier either from the search report during examination nor from the objections in the notice of opposition.

3.3.1 The Board does not accept these arguments. Just as for claim 1 of auxiliary request 3, it is true that the claim 1 of auxiliary request 1 (filed at the oral proceedings) also did not contain the option "one aperture". However, claim 1 of auxiliary request 1 did contain the further feature "from the atmosphere", which was introduced to overcome a novelty objection, a



feature which the opposition division considered too late to be introduced at the oral proceedings, since it originated solely from the description and *prima facie* raised further objections under Article 123(2) EPC.

- 3.3.2 On the other hand, the appellant argued that the first time that a request was filed in which claim 1 simply removed the option one "aperture" and overcame the objections under Article 123(2) EPC raised by the respondent and confirmed in the preliminary opinion of the opposition division, was in auxiliary request 3. Auxiliary request 3 was filed after the opposition division had given its opinion on Article 123(2) EPC (see 7<sup>th</sup> paragraph on page 2 of the minutes), at which point the opposition division did not admit it into the proceedings, since it considered that this request should have been filed earlier.
- 3.3.3 The Board is not persuaded by these arguments. In item 2 of its preliminary opinion dated 6 March 2019, the opposition division had already opined that there was no basis for the option "one aperture" in the originally filed application. At that point, at the latest, the appellant was aware that such an objection existed and was considered relevant by the opposition division.
- 3.3.4 Instead of addressing it at the next possible opportunity, the appellant chose to file a single new main request with letter dated 4 October 2019 (seven months after the preliminary opinion), which only added further features and thus only addressed the novelty issues of the preliminary opinion.
- 3.3.5 In a further opportunity to amend its requests at the beginning of the oral proceedings, the appellant filed,

*inter alia*, auxiliary request 1, which addressed the matter by deleting the option "one aperture". However, this request also included the additional feature "from the atmosphere", which was considered by the opposition division *prima facie* as resulting in an objection under Article 123(2) EPC. This request was thus not admitted into the proceedings.

- 3.3.6 The appellant then filed three further auxiliary requests, none of them deleting *both* the feature "one aperture" and "from the atmosphere", such that none of the requests *prima facie* overcame all the objections under Article 123(2) EPC. None of the requests were therefore admitted in this third opportunity for the appellant to amend its requests.
- 3.3.7 It was only after the opposition division pronounced that claim 1 of auxiliary request 2, which corresponded to the main request filed on 4 October 2019 (but now demoted after the introduction of five auxiliary requests up to that stage of the oral proceedings), that the appellant filed auxiliary request 3 in what was arguably a further opportunity to introduce auxiliary requests, being the third during the oral proceedings (and indeed the fourth after the preliminary opinion had been issued).
- 3.3.8 The opposition division did not admit auxiliary request 3 into the proceedings and considered that the request should have been filed earlier.
- 3.3.9 The Board finds that the opposition division exercised its discretion correctly. It is clear that the appellant was aware of the existence of an objection and that it could be overcome, at the latest at the beginning of the oral proceedings, since at that time

the appellant filed an auxiliary request without the option "one aperture".

- 3.3.10 The filing of auxiliary request 3 was therefore not a direct response to the objection, which was in the preliminary opinion of the opposition division. Quite the contrary, the appellant had even already filed several requests in which the option "one aperture" was deleted from claim 1 but made a clear and deliberate choice to file auxiliary request 3 only after several occasions to file auxiliary requests had elapsed, e.g. in reply to the preliminary opinion or at two earlier instances during the oral proceedings.
- 3.3.11 There already had been ample time and occasion to file this particular request only deleting the "one aperture" option. Its filing at such a late stage of the proceedings was, however, clearly contrary to procedural economy, as the opposition division explained in the first paragraph of page 12 of its decision.
- 3.4 The Board finds that procedural economy is one of the aspects which the opposition division may legitimately take into consideration when exercising its discretion, and that the latter was not exercised arbitrarily since, as explained above, there had been several previous occasions on which it could have filed auxiliary request 3.
- 3.5 The appellant further argued that claim 1 of auxiliary request 3 was simply a direct combination of dependent claims as originally filed and therefore *prima facie* overcame all the objections under Article 123(2) EPC. It should therefore have been admitted.

The Board cannot concur. Even if claim 1 of auxiliary request 3 fulfilled the requirement of Article 123(2) EPC, this is not the only factor to be taken into account by the opposition division when exercising its discretion. As explained above, the appellant had ample time and occasion to file this particular request earlier. The Board finds it appropriate to apply the principle that the later the amendment is made the more relevance is given to procedural economy. The Board thus cannot recognize an error of the use of discretion by the opposition division in this particular case.

3.6 Since the Board finds that the decision not to admit auxiliary request 1 (auxiliary request 3 in the opposition proceedings) did not suffer from an error in the use of discretion of the opposition division, the Board also sees no reason to overturn the decision of the opposition division and consequently exercises its discretion pursuant to Article 12(6) RPBA 2020 not to admit auxiliary request 1 into the appeal proceedings.

4. Auxiliary requests 2 and 3 - admittance

4.1 Auxiliary requests 2 and 3 filed with the grounds of appeal correspond to the main request and auxiliary request 1 filed at the beginning of the oral proceedings before the opposition division, simply with the further amendment to dependent claim 10 and the deletion of dependent claims 12 and 13 contained in the current main request.

4.2 As already stated in item 4.2 of the preliminary opinion of the Board, however, the opposition division did not admit these two requests (see Reasons 12, 14 and 15), since the addition of the feature "from the atmosphere" to claim 1 of these requests, which had its

alleged basis in the description, did not address the objection under Article 123(2) EPC referred to in the preliminary opinion (and already discussed above). At least *prima facie*, this addition also raised further issues since it was based on the specific embodiments of Figures 9 and 10 of the description. Adding a feature from the description at such a late stage also created a situation, to which the opponent could not reasonably have been expected to react adequately without delaying the proceedings.

- 4.3 In items 4.3 and 4.4 of its preliminary opinion, the Board also stated that it saw no reason to overturn this decision, since the opposition division had seemingly used the correct criteria in a reasonable manner such that the Board was minded not to admit auxiliary requests 2 and 3 into the appeal proceedings.
- 4.4 During the oral proceedings, the appellant chose not to add any comments as regards auxiliary request 2.
- 4.5 In the absence of any further arguments, the Board has no reason to alter its opinion regarding auxiliary request 2, which is hereby confirmed.
- 4.6 Regarding auxiliary request 3, the appellant argued that claim 1 of this request contained the amendments necessary to overcome all objections under Article 123(2) EPC and Article 54 EPC up to that point. In addition, the appellant argued that the originally filed description also provided a basis for the combination of features of claim 1 comprising the feature "from the atmosphere".
- 4.6.1 The Board is not persuaded by this argument. Whilst the appellant's arguments might not necessarily be

incorrect, the appellant has however not argued why the opposition division had incorrectly exercised its discretion. Instead, the essence of its criticism of the division's discretionary decision lies in the fact that the appellant simply disagrees with the substance of the division's *prima facie* assessment of the late filed request, i.e. the appellant argues only that claim 1 meets the requirements of Article 123(2) EPC and Article 54 EPC.

4.6.2 As summarized above, on a *prima facie* basis, the opposition division considered that the basis given for the added features (paragraph [0061]) came from a paragraph belonging to a specific embodiment and further that it was too late to add features from the description. Thus, in the opposition division's assessment, the amendments gave rise to further objections on a *prima facie* basis and were detrimental to procedural economy. The Board finds that the opposition division therefore exercised its discretion correctly by applying the correct criteria (*prima facie* relevance and procedural economy) and not in an arbitrary way.

4.7 The appellant also stressed that the request had been made at the beginning of the oral proceedings because it was a response to a novelty objection that had been raised only seven days prior to (i.e. shortly before) the date of oral proceedings.

4.7.1 The Board is also not persuaded by this argument.

After the negative preliminary opinion of the opposition division, the appellant filed a new main request on the 4 October 2019 to address the issues therein. In reply to this new request, the respondent

argued that D5 also disclosed the features added to claim 1 of the main request. Although the features added came from a granted dependent claim, such that the respondent's argument could have been made before, as the appellant also argued, the Board finds that there is no absolute obligation to attack all the dependent claims already with the notice of opposition and that the latter can be attacked, provided their validity is *prima facie* in doubt on the basis of already available information (see e.g. G 9/91 Reasons 11).

- 4.7.2 D5 was already in the proceedings and was used in the attack by the respondent on claim 1. The validity of the new independent claim was therefore put in doubt *prima facie* by the information already available. The attack should therefore not have come as a surprise to the appellant, since it built on the argument that D5 disclosed all the features of claim 1 of the previous main request (see last paragraph on page 3 of the opposition division's preliminary opinion).
- 4.8 In view of the foregoing, the Board finds that the decision not to admit auxiliary requests 2 and 3 (the main and auxiliary request 1 from the opposition proceedings) did not suffer from an error in the use of discretion by the opposition division. The Board therefore sees no reason to overturn the decision of the opposition division and consequently exercises its discretion pursuant to Article 12(6) RPBA 2020 not to admit auxiliary requests 2 and 3 into the proceedings.
5. It may be added for completeness that, since the decision from the opposition division was not set aside, there is no request on which the Board could remit the case to the opposition division for

consideration of the further issues as requested by the appellant.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated