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Datasheet for the decision of 24 May 2023

Case Number: T 0862/20 - 3.2.02

Application Number: 10702133.9

Publication Number: 2393412

IPC: A61B5/00, A61M5/142, G06F19/00

Language of the proceedings: EN

Title of invention:
MEDICAL DEVICE AND METHOD FOR PROVIDING INFORMATION FOR GLYCEMIC CONTROL

Patent Proprietor:
Sanofi-Aventis Deutschland GmbH

Opponent:
Roche Diabetes Care GmbH

Relevant legal provisions:
EPC Art. 52(2)(c), 53(c), 84, 111(1), 123(2)
RPBA 2020 Art. 11

Keyword:

Patentable invention - method for performing mental acts (main request - yes)
Exceptions to patentability - method for treatment by therapy (auxiliary request 1 - no)
Claims - clarity (auxiliary request 1 - yes)
Added subject-matter (auxiliary request 1 - no)
Remittal to the Opposition Division (yes)

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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 0862/20 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 24 May 2023

Appellant: (Patent Proprietor)	Sanofi-Aventis Deutschland GmbH Brüningstraße 50 65929 Frankfurt am Main (DE)
Representative:	Colonna, Matthew Oliver Venner Shipley LLP 200 Aldersgate London EC1A 4HD (GB)
Respondent: (Opponent)	Roche Diabetes Care GmbH Sandhofer Strasse 116 68305 Mannheim (DE)
Representative:	Peterreins Schley Patent- und Rechtsanwälte PartG mbB Hermann-Sack-Straße 3 80331 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 4 February 2020 revoking European patent No. 2393412 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	M. Alvazzi Delfrate
Members:	S. Dennler
	Y. Podbielski

Summary of Facts and Submissions

I. This appeal is directed against the decision of the Opposition Division to revoke the contested patent on the grounds, *inter alia*, that independent claims 1, 8 and 13 as granted contained added subject-matter in breach of Article 123(2) EPC, and that claim 8 as granted related to a method for performing mental acts as such, excluded from patentability under Article 52(2)(c) EPC.

II. The **appellant (patent proprietor)** requested that the decision under appeal be set aside and that the case be remitted to the Opposition Division for consideration of the other grounds for opposition raised in the notice of opposition, either on the basis of the patent as granted (main request) or, alternatively, on the basis of one of the auxiliary requests 1-3 and the sets A-D of auxiliary requests 4-16 filed with the statement of grounds of appeal.

III. The **respondent (opponent)** requested that the appeal be dismissed or that the case be remitted to the Opposition Division for consideration of the other grounds for opposition.

IV. Claims 1, 8 and 13 as granted (**main request**) read as follows (the amendments to claims 1, 13 and 20 as originally filed, on which these claims are based, have been highlighted by the Board):

"*1. Medical device for providing information for glycemic control, <u>namely a dose of insulin to be set,</u> the device (100) comprising:*

storage means (130) arranged to store data comprising profile parameters for different dose adjustment profiles each comprising a specific initial dose value, a specific time interval for increasing the dose, a specific dose increase step and a specific low blood glucose threshold value;
receiving means (120) arranged to receive blood glucose value data and security data;
data processing means (140, 1710) arranged to execute a first processing function for ~~modifying data retrieved from the storage means~~ adjusting profile parameters for a selected dose adjustment profile, and to execute a second processing function for ~~providing information for glycemic control based on the blood glucose value data and data retrieved from the storage means~~ stepwise adapting the dose of insulin based at least on the selected dose adjustment profile and thereby determining the value for the dose of insulin to be set based on the received blood glucose value data;
validating means (140, 1720) arranged to validate the received security data and to provide validation data corresponding to the validation of the received security data; and
safety means (140, 1730) arranged to ~~control an execution of~~ unlock at least a predetermined function out of the first and second processing functions for execution based on the validation data."

"*8~~13~~. Method for providing information for glycemic control, namely a dose of insulin to be set, the method comprising the steps of:*

receiving security data;
validating the received security data;

providing validation data corresponding to the validation of the received security data;
and ~~controlling an execution of~~ unlocking at least a predetermined function out of at least one first and at least one second processing function for execution based on the validation data, wherein the at least one first processing function is for ~~modifying data retrieved from a storage means~~ adjusting profile parameters for a selected dose adjustment profile, and the at least one the second processing function is for ~~providing information for glycemic control based on received blood glucose value data and data retrieved from the storage means~~ stepwise adapting the dose of insulin based at least on the selected dose adjustment profile and thereby determining the value for the dose of insulin to be set based on received blood glucose value data,
wherein the profile parameters for each different dose adjustment profile comprise a specific initial dose value, a specific time interval for increasing the dose, a specific dose increase step and a low blood glucose threshold value."

"*13~~20~~. A computer program for providing information for glycemic control, namely a dose of insulin to be set, the computer program comprising:*

code for receiving security data;
code for validating the received security data;
code for providing validation data corresponding to the validation of the received security data; and
code for controlling ~~an execution~~ unlocking of at least a predetermined function out of at least one first and at least one second processing function for execution based on the validation data, wherein the at least one first processing function is for ~~modifying data~~

~~retrieved from a storage means~~ adjusting profile parameters for a selected dose adjustment profile, and the at least one the second processing function for ~~providing information for glycemic control based on received blood glucose value data and data retrieved from the storage means~~ stepwise adapting the dose of insulin based at least on the selected dose adjustment profile and thereby determining the value for the dose of insulin to be set based on received blood glucose value data,
wherein the profile parameters for each different dose adjustment profile comprise a specific initial dose value, a specific time interval for increasing the dose, a specific dose increase step and a low blood glucose threshold value."

V. Claims 1, 8 and 13 of **auxiliary request 1** are identical to the claims above, except that the beginning of claim 8 is amended as follows:

"*8. Computer-implemented M~~m~~ethod for providing (...)*"

VI. The **appellant's arguments** relevant for the present decision can be summarised as follows.

Main request - exclusion from patentability under Article 52(2)(c) EPC

The method steps recited in claim 8 of the main request were all, at least implicitly, technical processes that were clearly to be exclusively carried out by technical means such as a computer, rather than by a human mind. In particular, a human mind could not mentally perform a step of "unlocking a processing function for execution". The method of claim 8 of the main request

therefore had a technical character and was not excluded from patentability under Article 52(2)(c) EPC.

Auxiliary request 1 - exclusion from patentability under Article 52(2)(c) EPC

The method of claim 8 of auxiliary request 1 was not excluded from patentability under Article 52(2)(c) EPC due to the explicit definition that it was "computer-implemented".

Auxiliary request 1 - exception to patentability under Article 53(c) EPC

According to paragraph [0160] of the description of the patent, the step of "setting" a dose of insulin defined in claim 10 as granted did not include the step of actually "delivering" it to the patient. The method therefore did not involve a therapeutic step and did not fall within the exception to patentability of Article 53(c) EPC.

Auxiliary request 1 - clarity

Claims 8 and 9 of auxiliary request 1 were clear. The step of "measuring a blood glucose value" recited in claim 9, while involving the measurement unit 110 mentioned in Figure 1, could well be controlled by a computer and as such also be computer-implemented. It was unnecessary to define in detail in claim 9 the interactions between the computer and that measurement unit.

Auxiliary request 1 - added subject-matter

Claims 1, 8 and 13 of auxiliary request 1 did not present the person skilled in the art with information which was not directly and unambiguously derivable from the application as originally filed, as required by Article 123(2) EPC.

VII. The **respondent's arguments** relevant for the present decision can be summarised as follows.

Main request - exclusion from patentability under Article 52(2)(c) EPC

All the method steps recited in claim 8 of the main request could be carried out by a human brain without using any computer or other technical means. A step of "unlocking a function for execution" was commonly performed in situations where the identity of a person was validated by another person, e.g. by checking a passport, and then, based on the outcome of that validation, certain actions were taken, including carrying out other predefined functions. Hence, claim 8 of the main request related to a method for performing mental acts as such and was therefore excluded from patentability pursuant to Article 52(2)(c) EPC.

Auxiliary request 1 - exclusion from patentability under Article 52(2)(c) EPC

The respondent acknowledged that the exclusion from patentability under Article 52(2)(c) EPC did not apply to claim 8 of auxiliary request 1.

Auxiliary request 1 - exception to patentability under Article 53(c) EPC

The method of claim 8 of auxiliary request 1 also encompassed the step of "setting a dose of insulin", defined in dependent claim 10, i.e. the step of delivering the determined dose of insulin to a patient. The claimed method was therefore a therapeutic method, excluded from patentability under Article 53(c) EPC.

Auxiliary request 1 - clarity

The method of claim 8 of auxiliary request 1, although computer-implemented, also encompassed the step of "measuring a blood glucose value", defined in dependent claim 9. This measuring step was defined without reference to any additional dedicated technical means, such as a blood glucose meter or sensor, which was, however, required to physically measure a blood glucose value. It was unclear how such a physical measurement could be performed by the sole computer or generic data processing means on which the method was implemented.

Even assuming that the measurement involved the interaction of the computer with an additional sensor, the claimed method was still unclear because claim 9 did not define which sub-steps were carried out by each of the computer and the additional sensor and how they interacted. Claims 8 and 9 were therefore unclear. This objection was supported by the Guidelines for Examination in the EPO, F-IV, 3.9.2.

Auxiliary request 1 - added subject-matter

Claim 1 of auxiliary request 1, i.e. claim 1 as granted, contained added subject-matter in breach of Article 123(2) EPC.

Firstly, claim 1 as granted was based, *inter alia*, on original claim 1 with the additional requirement that the data comprised "profile parameters for different dose adjustment profiles each comprising a specific initial dose value, a specific time interval for increasing the dose, a specific dose increase step and a specific low blood glucose threshold values". This specific set of parameters was not disclosed as such in the originally filed claims (original claim 8 contained a much larger list of parameters), but only in the original description (see page 8, lines 13-22 and page 57, lines 9-13) in the context of a specific method, in which these parameters were inextricably linked with the steps of: (i) stepwise adapting the dose of insulin based at least on these parameters, and (ii) personalising a selected dose adjustment profile by defining at least a specific target blood glucose value for a specific user.

However, claim 1 as granted allowed that the second processing function - the only one responsible, in the device of claim 1, for the stepwise adaptation of the dose in accordance with step (i) - not be unlocked for execution, thus that the dose of insulin provided by the device be determined in an unknown way, possibly differing from the stepwise adaptation of step (i) as originally disclosed. Furthermore, step (ii) had been fully omitted from claim 1. Claim 1 was therefore based on an inadmissible intermediate generalisation.

Secondly, it was consistently disclosed in the original application that the data with which the first and second processing functions worked was retrieved from storage means of the device. However, this was not defined in claim 1 as granted, where the data were

decoupled from the storage means. Moreover, no storage means at all were defined in claims 8 and 13.

Thirdly, claim 1 as granted encompassed the situation where the insulin dose was stepwise adapted "based on the received blood glucose value data". However, this was not what was originally disclosed. In the original disclosure, only the provision of information for glycemic control was based on the received blood glucose value data, which was different.

The same objections applied *mutatis mutandis* to claims 8 and 13 of auxiliary request 1.

Furthermore, the amendment in claim 8 of auxiliary request 1 that the method was "computer-implemented" was not supported by the application as filed. The computer program and computer program product disclosed in the original description did not contain any code for controlling a blood glucose sensor. The original method was purposefully not defined as being "computer-implemented" because it encompassed the physical step of measuring a blood glucose value (original claim 14), hence it was not limited to steps which could be carried out by a computer only.

Reasons for the Decision

1. The contested patent

1.1 The contested patent relates to a medical device for providing information for glycemic control, namely a dose of insulin to be set (claim 1), and to a corresponding method (claim 8), computer program (claim 13) and computer program product (claim 14).

The device may help a user to achieve good glycemic control, which usually requires increasing the insulin dose from an initial dose to a final dose over a certain period of time until a specific blood glucose value has reached a target range (paragraph [0005]).

For this purpose, as defined in claim 1, profile parameters for different dose adjustment profiles, each comprising a specific initial dose value, a specific time interval for increasing the dose, a specific dose increase step and a specific low blood glucose threshold value, are stored in the device. Moreover, the device comprises data processing means arranged to execute:
- a first processing function for adjusting profile parameters for a selected dose adjustment profile, and
- a second processing function for stepwise adapting the insulin dose based at least on the selected dose adjustment profile and thereby determining the value for the insulin dose to be set based on a received blood glucose value data.

1.2 In order to prevent an unauthorised person from modifying the device (in particular modifying the dose adjustment profiles) or using it in a way which could be harmful to the user, the device is configured to prohibit the execution of one or both of the processing functions until successful validation of some security data, such as an activation key or a password (paragraphs [0157], [0192]-[0193]). For this purpose, the device further comprises validating means arranged to validate a received security data and to provide validation data corresponding to the validation of the received security data, and safety means arranged to unlock at least one predetermined function of the first

and second processing functions for execution based on the validation data.

2. Main request - exclusion from patentability under Article 52(2)(c) EPC

Although, as argued by the appellant, the method steps recited in claim 8 as granted are phrased using terminology commonly encountered in the field of computer-implemented methods, the Board shares the respondent's view that all these steps can also be carried out by the sole human brain and that they do not necessarily require the use of technical means, even implicitly.

The example scenario presented by the respondent in this respect is convincing. As submitted by the respondent, all the adjustment and adaptation steps of claim 8 could indeed be performed mentally by a user, e.g. on the basis of profile parameters memorised by the user. Obtaining and checking a password or a passport amounts to receiving and validating security data. A step of "unlocking a function for execution" takes place when the user decides to perform certain actions, such as the above-mentioned adjusting or adapting steps, only after having successfully validated the identity of another person, whereas the execution of these actions remains prohibited if the person is considered to be unauthorised.

The Board therefore concurs with the respondent that claim 8 as granted relates to a method for performing mental acts as such, which is excluded from patentability pursuant to Article 52(2)(c) EPC.

3. Auxiliary request 1 - exclusion from patentability under Article 52(2)(c) EPC

Claim 8 of auxiliary request 1 explicitly stipulates that the method is "computer-implemented". As acknowledged by the respondent, the method has therefore a technical character and is not excluded from patentability under Article 52(2)(c) EPC.

4. Auxiliary request 1 - exception to patentability under Article 53(c) EPC

Paragraph [0160] of the patent discloses that, while "the dose setting unit 1930 activates the respective dose setting mechanism for setting the dose according to the received signals", the delivery of the dose to be administered is performed by a distinct "dose delivering unit 1940", which is "either activated by the user (...) or automatically activated". Hence, the step of "setting" a dose of insulin defined in claim 10 does not encompass the step of actually "delivering" it to the patient. Merely setting a dose has no effect on the latter.

It follows that, contrary to the respondent's view, the claimed method does not involve a therapeutic step and therefore does not fall within the exception to patentability of Article 53(c) EPC.

5. Auxiliary request 1 - clarity

5.1 The respondent objected that it was unclear how the computer-implemented method of claim 8 of auxiliary request 1 could encompass the step of physically "measuring a blood glucose value" defined in dependent claim 9. Even assuming that the measurement involved

some additional *ad hoc* sensor, the claimed method was still unclear because claim 9 did not define which sub-steps were carried out by each of the computer and this additional sensor, and how both interacted. Claims 8 and 9 were therefore unclear.

5.2 The Board disagrees. It is common ground that physically performing a blood glucose measurement cannot be performed by a computer or generic data processing means alone, but instead requires additional dedicated technical means, such as the blood glucose measurement unit 110 disclosed in Figure 1 and paragraph [0071] of the patent.

The step of claim 9 thus implicitly involves the interaction of the computer on which the claimed method is implemented with such a dedicated blood glucose measurement unit.

In this context, and given that the method of claim 9 is also computer-implemented by virtue of the dependency on claim 8, the person skilled in the art who reads claim 9 with a mind willing to understand understands that the claimed step of "measuring a blood glucose value" only comprises sub-steps performed by the computer which, in combination with those - not claimed - performed by the dedicated measurement unit, enable a blood glucose value to be measured. Thus, like the other steps of claim 8, the measuring step of claim 9 exclusively comprises computer-implemented sub-steps, such as processing steps or steps in which the computer sends or receives signals or data to or from the measurement unit. In other words, the subject-matter of claim 9 covers a computer-implemented method in which the computer triggers or controls the measurement of a blood glucose value by a distinct

measurement unit, but does not extend to what is performed (in particular physically) by the measurement unit itself.

The Board notes that this interpretation is supported by the description, according to which the blood glucose measurement is "triggered" by the receiving unit 120 which "sends a respective signal to the blood glucose measurement unit 110" (paragraph [0076]), and the receiving unit "forwards control signals" to this unit and receives data from it (paragraphs [0077]-[0078]).

In the Board's view, there is no lack of clarity arising from the fact that the interaction between the computer and the measurement unit is not specified in detail in claim 9. Contrary to the respondent's argument, this view is not inconsistent with the Guidelines F-IV, 3.9.2, which merely state that "[a]n objection under Art. 84 *may* also arise if the claims do not define which steps are carried out by the data processor or by the additional devices involved, as well as their interactions" (emphasis added by the Board), thereby leaving the question of clarity to be decided on a case-by-case basis.

The Board thus concludes that claims 8 and 9 are clear.

6. Auxiliary request 1 - added subject-matter

6.1 In essence, claim 1 of auxiliary request 1, i.e. claim 1 as granted, is based on the combination of original independent claim 1 with original dependent claims 4 and 7, with the following additional amendments:

(a) the profile parameters which are adjusted by the first processing function and on the base of which the insulin dose is stepwise adapted by the second processing function as defined in original claim 7 have been specified as profile parameters for different dose adjustment profiles "each comprising a specific initial dose value, a specific time interval for increasing the dose, a specific dose increase step and a specific low blood glucose threshold value"; and

(b) the explicit definition in original claim 1 that, when used in the first and second processing functions, this data is retrieved from the storage means of the device, has been deleted.

Claims 8 and 13 of auxiliary request 1 are based on original claims 13 and 20, respectively, with substantially the same amendments as made in original claim 1. In addition, claim 8 of auxiliary request 1 specifies that the method is "computer-implemented".

The respondent's objections that claims 1, 8 and 13 as granted contain added subject-matter in breach of Article 123(2) EPC do no convince the Board. Unless otherwise stated, the considerations set out below for claim 1 apply *mutatis mutandis* to claims 8 and 13.

6.2 As put forward by the respondent, the selection of the specific four parameters recited in the amendment (a) is not disclosed as such in the original claims. The original dependent claim 8 contains a much longer list of parameters (including these four), all of which being parameters of dose adjustment profiles that can be adjusted by the first processing function. Instead, the combination of the four parameters appears in the

original description, in particular on page 8, lines 13-22, albeit in the context of a specific method.

This method is a method "for configuring a process for *determining a dose of insulin to be administered for glycemic control, wherein the dose is stepwise adapted*" (emphasis added by the Board). It comprises, *inter alia*, the steps of "defining different dose adjustment profiles *for stepwise adapting the dose*, wherein each of the different dose adjustment profiles is based at least on a specific initial dose value, a specific time interval for increasing the dose, a specific dose increase step and a specific low blood glucose threshold value" and "selecting one of the stored different dose adjustment profiles based on specific requirements *for stepwise adapting the dose*" (emphasis added by the Board).

Irrespective of the fact that this method is disclosed as a "further aspect" of the invention of the patent and that it includes additional steps, as argued by the respondent, the person skilled in the art infers from this passage that the stepwise adaptation of the insulin dose defined in original claim 7 can be based on dose adjustment profiles comprising only the selection of the four parameters involved in the amendment (a), and not necessarily the other parameters further listed in original claim 8.

6.3 The respondent also argued that the stepwise adaptation of the insulin dose based on these four specific parameters was only disclosed, in the context of that method, in combination with the step of "personalizing the selected dose adjustment profile by defining at least a specific target blood glucose value for a specific user". However, the respondent did not provide

any explanations why the selection of these four parameters for the stepwise adaptation would be inextricably linked to this personalisation step. The Board sees no such inextricable link. The omission of the personalisation step from claim 1 as granted therefore does not infringe Article 123(2) EPC.

6.4 The respondent also argued that claim 1 as granted encompassed situations in which the second processing function was not unlocked for execution, i.e. was not executed at all. Since the second processing function was the only one responsible for the stepwise adaptation of the insulin dose, it was therefore possible, in the respondent's view, that the insulin dose to be set provided by the device of claim 1 as granted was determined in a different way from the stepwise adaptation originally disclosed. According to the decision under appeal (point 2.1.3 of the reasons, third paragraph), this even implied that, in this situation, the first processing function itself had to be configured to determine an insulin dose to be set. This was also considered to constitute added subject-matter.

The Board is not convinced by this objection. The fact that, in the situation considered by the respondent and the Opposition Division, the second processing function remains locked for execution does not mean that "information for glycemic control, namely a dose of insulin to be set" is nevertheless provided, either by executing the first processing function or by determining this information in some unspecified way. Indeed, it follows from the wording of the claim that such information is provided by the device only if the security data received has previously been successfully validated, so that the second processing function is

unlocked for execution: in this case, the determination of the insulin dose to be set is then carried out in accordance with the second processing function, i.e. by stepwise adaptation, as originally disclosed. It follows that, contrary to the respondent's view, the insulin dose to be set provided by the device of claim 1 as granted is always determined by stepwise adaptation - as is in fact the case for the device according to the combination of original claims 1, 4 and 7.

6.5 Contrary to the view of the respondent and the Opposition Division in the decision under appeal (point 2.1.3 of the reasons, second paragraph), the amendment (b) does not infringe Article 123(2) EPC either.

From the original application as a whole, the person skilled in the art infers that what is important for the dose adjustment profiles is that (i) the profile parameters for a selected profile can be adjusted (via the first processing function), and (ii) the selected profile is used for stepwise adapting the dose of insulin based, among others, on the parameters of that profile (via the second processing function). Adjusting and using parameters in the context of a computer-implemented invention necessarily requires, at least implicitly, these parameters to be stored in a storage means and retrieved from the latter when needed. However, *where* the storage means is provided, e.g. in the device or in an external unit, is irrelevant for the execution of the first and second processing functions.

In any event, the Board notes that claim 1 as granted explicitly defines that the device comprises a storage

means in which profile parameters are stored. For the person skilled in the art it is implicit in the claim wording that the profile parameters referred to in the first and second processing functions are retrieved from this storage means.

6.6 The respondent also objected to the phrase "based on received blood glucose value data" appearing in the definition of the second processing function in claim 1 as granted. In the respondent's view, this phrase could be read as referring to the stepwise adaption of the insulin dose. However, in the original disclosure, only the provision of information for glycemic control was "based on the received blood glucose value data" (see original claim 7), which was different.

The Board disagrees. This phrase merely follows from the specification in granted claim 1 that the second processing function, originally defined as "for providing information for glycemic control based on the blood glucose value data and data retrieved from the storage means" in original claim 1, is "for stepwise adapting a dose of insulin based at least on the selected dose adjustment profile and thereby determining the value for the dose of insulin to be set" according to original claim 7. Even though the disputed phrase does not appear in original claim 7, it is clear from to the dependence of claim 7 on claim 1 that the determination of the value for the dose of insulin to be set by stepwise adaptation is also implicitly "based on [the] received blood glucose value data". This phrase therefore does not add anything to the claim that was not originally disclosed.

6.7 The respondent also objected that the amendment in claim 8 of auxiliary request 1 that the method was

"computer-implemented" was not supported by the application as filed. This objection is based on the argument that the method originally claimed was purposefully not defined as being "computer-implemented" because it included the physical step of measuring a blood glucose value (see original claim 14) and was therefore not limited to steps that could only be performed by a computer.

The Board disagrees. Contrary to the respondent's assertion, the original description discloses that, in an embodiment, the method and corresponding computer program according to original claims 13 and 20 (see page 6, line 20 to page 7, line 8) may "further comprise measuring a blood glucose value and providing the blood glucose value data corresponding to the measured blood glucose value" (page 7, lines 9-11). Notwithstanding any potential clarity issues (which the Board does not find justified, see point 5. above in this respect), the person skilled in the art derives from this passage of the original disclosure that the method of original claim 13, on which claim 8 of auxiliary request 1 is based, is a "computer-implemented" method.

6.8 The Board therefore concludes from the above considerations that claims 1, 8 and 13 of auxiliary request 1 do not contain added subject-matter, as required by Article 123(2) EPC.

7. Remittal to the Opposition Division

7.1 Under Article 111(1) EPC, the Board may either exercise any power within the competence of the department which was responsible for the decision appealed, in the present case the Opposition Division, or remit the case

to that department for further prosecution. Article 11 RPBA 2020 provides that the Board shall not remit the case for further prosecution, unless special reasons present themselves for doing so.

7.2 The grounds on which the decision under appeal was based have been reviewed by the Board in view of the respective requirements of the EPC. However, the Opposition Division did not consider the other grounds for opposition of lack of novelty, lack of inventive step and insufficiency of disclosure, also raised by the respondent in its notice of opposition, on which the decision is silent. Both parties requested that the case be remitted to the Opposition Division for consideration of these further grounds for opposition if the decision were to be set aside.

For these reasons, and in view of the fact that the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (Article 12(2) RPBA 2020), the Board considers that special reasons within the meaning of Article 11 RPBA 2020 exist for remitting the case to the Opposition Division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Opposition Division for further prosecution.

The Registrar: The Chairman:

A. Chavinier-Tomsic M. Alvazzi Delfrate

Decision electronically authenticated