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**Datasheet for the decision
of 17 August 2022**

Case Number: T 1780/20 - 3.4.02

Application Number: 17157248.0

Publication Number: 3190393

IPC: G01F1/72, G01F1/34, G01F1/46,
G01F1/50

Language of the proceedings: EN

Title of invention:

EMISSION FLOW RATE MEASURING METHOD AND APPARATUS

Applicant:

Horiba, Ltd.

Headword:

Relevant legal provisions:

EPC Art. 54, 56
RPBA 2020 Art. 12(4), 12(6), 13(2), 13(1)

Keyword:

Novelty - (no)
Inventive step (no)
Amendment to case - exercise of discretion - amendment
admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1780/20 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 17 August 2022

Appellant: Horiba, Ltd.
(Applicant) 2 Miyanohigashi-cho, Kisshoin
Minami-ku
Kyoto-shi, Kyoto 601-8510 (JP)

Representative: Müller Hoffmann & Partner
Patentanwälte mbB
St.-Martin-Strasse 58
81541 München (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 17 April 2020
refusing European patent application No.
17157248.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Decker
Members: C. Kallinger
H. von Gronau

Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the examining division refusing European patent application No. 17 157 248.0.
- II. The decision refusing the application cited the following documents:
- D1 WO 97/11336 A
 - D2 US 5 493 512 A
 - D3 US 4 796 651 A
 - D4 US 5 086 655 A
 - D5 EP 0 672 893 A2
 - D6 EP 0 255 056 A2
- III. During the first-instance examination proceedings and in preparation for the oral proceedings before the examining division, the applicant filed, with a letter dated 7 October 2019, a main request and auxiliary requests I, II, III and IV.
- IV. In a letter dated 6 November 2019 the applicant replaced the claims of auxiliary requests III and IV.
- V. During the oral proceedings before the examining division all requests then on file were discussed. The examining division concluded that the subject-matter of the claims according to the main request and auxiliary requests I to III was not inventive in view of document D2 as closest prior art. The subject-matter of the claims according to auxiliary request IV was found to be novel and inventive.

- VI. In response to the examining division's subsequent communication under Rule 71(3) EPC, the applicant did not approve the text specified in the communication (i.e. the claims according to auxiliary request IV) and requested to grant a patent based on the claims of the main request as filed on 7 October 2019.
- VII. In the appealed decision, the examining division held that the subject-matter of claim 1 of the main request was not inventive in view of document D2 as closest prior art. In an obiter dictum the examining division found that the subject-matter of auxiliary requests I to III also did not involve an inventive step.
- VIII. With the statement of grounds of appeal the appellant requested to set aside the examining division's decision and to grant a patent on the basis of the claims according to the main request on which the appealed decision was based. As an auxiliary measure, the appellant requested that a patent be granted on the basis of the claims according to auxiliary requests 1 to 11, all filed with the statement setting out the grounds of appeal dated 21 August 2020. Auxiliary requests 5, 6 and 10 correspond to auxiliary requests I to III dealt with by the examining division in the obiter dictum of the decision under appeal.
- IX. In a communication according to Article 15(1) RPBA 2020 the board agreed with the examining division's conclusion that the subject-matter of claim 1 of the main request was not inventive in view of document D2 as closest prior art. The board also raised two clarity objections.

In addition, the board cited the additional document

D7 US 6 094 993 A

which was known to the board from the appeal case T 1059/17 concerning the parent application No. 07002436.9. It informed the appellant about its preliminary opinion that the subject-matter of claim 1 according to the main request and auxiliary request 5 lacked novelty in view of document D7 and that the subject-matter of claim 1 according to auxiliary requests 6 and 10 was not inventive in view of document D7.

The appellant was also informed that the board intended not to admit auxiliary requests 1 to 4, 7 to 9 and 11 into the proceedings.

- X. In a letter dated 15 July 2022 the appellant provided further arguments and filed auxiliary requests 0A to 11A to overcome one of the clarity objections raised by the board in its communication.
- XI. On 17 August 2022 oral proceedings took place.
- XII. The appellant's final requests were as a main request that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request filed with the statement of grounds of appeal, or, alternatively, on the basis of the claims of auxiliary requests 0A, 1, 1A, 2, 2A, 3, 3A, 4, 4A, 5, 5A, 6, 6A, 7, 7A, 8, 8A, 9, 9A, 10, 10A, 11 and 11A, auxiliary requests 1 to 11 being filed with the statement of grounds of appeal and auxiliary requests 0A to 11A being filed with the letter dated 15 July 2022.
- XIII. At the end of the oral proceedings the chairman announced the board's decision.

XIV. Independent claim 1 of the main request reads as follows.

"A pulsating emission flow rate measuring apparatus (40) including a total pressure detector (68) and a static pressure detector (69) adapted to be provided in a passage of emission exhausted from an engine (2), characterized by

providing a differential pressure sensor (73) connected to said total pressure detector (68) and said static pressure detector (69), wherein the differential pressure sensor (73) outputs a differential pressure signal at a response frequency and the emission flow rate is calculated from this differential pressure signal,

wherein the differential pressure indicated by the differential pressure signal is once converted into a flow rate on the basis of the phenomenon that the square root of the differential pressure is proportional to the emission flow rate, and is averaged, so that the average flow rate of emission is determined."

XV. Independent claim 1 of auxiliary request 5 differs from claim 1 of the main request in that the following text is added at the end:

"..., and wherein, when the differential pressure signal of the differential pressure sensor (73) is negative, a backward flow rate is obtained by multiplying the square root of the absolute value of the differential pressure signal by -1."

XVI. Independent claim 1 of auxiliary request 6 differs from claim 1 of auxiliary request 5 in that the following text is added at the end:

"..., and wherein the total pressure detector (68) and the static pressure detector (69) are provided respectively in a tail pipe attachment (65) adapted to be detachably connected to a downstream end of an exhaust pipe (64)."

XVII. Independent claim 1 of auxiliary request 10 differs from claim 1 of the main request in that the following text is added at the end:

"..., and wherein a response difference adjustment mechanism (76) is provided between the total pressure detector (68) and the differential pressure sensor (73) and/or between the static pressure detector (69) and the differential pressure detector (73)."

Reasons for the Decision

1. Main request - Novelty (Article 54 EPC)

The subject-matter of claim 1 of the main request is not new in view of document D7.

1.1 Document D7 discloses an emission flow rate measuring apparatus (see column 1, lines 4 to 6) including a pitot tube to measure differential pressure (see figure 1 and column 2, lines 1 to 10). A pitot tube for measuring differential pressure necessarily comprises a total pressure detector and a static pressure detector and a differential pressure sensor connected to said

total pressure detector and said static pressure detector. D7 explicitly discloses that the differential pressure sensor outputs a differential pressure signal at a frequency of preferably 25 samples per second (see column 2, lines 43 to 45 and claims 5 and 6). This frequency is chosen such that the pressure sampling "is fast enough to follow the pressure and velocity perturbations in the moving fluid" (see column 2, lines 45 to 48). Based on this (real-time) differential pressure signal, the emission flow rate is calculated on the basis of the square root of the differential pressure and subsequent averaging (see column 2, lines 48 to 56).

1.2 The appellant argued that the invention was directed to a flow rate measuring apparatus for measuring emission exhausted from an automotive engine, where a measuring error due to pulsation caused by the engine was corrected. This was not disclosed in D7, as D7 was directed to measuring a flow rate in a smokestack (see column 2, lines 66 and 67). Therefore, the claimed apparatus was novel in view of D7.

1.3 The board is not convinced by this argument.

D7 describes as an exemplary application the use of the disclosed measuring apparatus for determining the amount of pollutants that an electric utility emits into the air (see column 1, lines 27 to 64). However, D7 is not restricted to this application. D7 very generally relates to the field of emission monitoring where the flow rate of a fluid, particularly stack gases through a conduit, is measured (see column 1, lines 3 to 6, "Field of the invention"). Furthermore, D7 describes, without any restriction to power plants or the like, the problem of a pulsating flow (see

column 1, lines 17 to 19) and describes the same solution as defined in claim 1 (see column 2, lines 41 to 56: "Summary of the invention").

Furthermore, although the description of the application refers to automotive engines, claim 1 is not restricted to automotive engines but defines that the flow rate measuring apparatus is adapted to be provided in a passage of emission exhausted from an engine. The board is of the opinion that the measuring apparatus disclosed in D7 is likewise adapted to be provided in a passage of emission exhausted from an engine as claimed.

2. Auxiliary request 0A

Claim 1 of auxiliary request 0A differs from claim 1 of the main request in that the word "once" was replaced by the word "first" in order to overcome a clarity objection raised by the board in its communication under Article 15(1) RPBA 2020. This amendment is the same for all auxiliary requests labelled "A". Auxiliary requests 0A to 11A are dealt with under point 9. below.

3. Auxiliary requests 1 to 4 - Admission (Article 12(4) RPBA 2020)

3.1 Auxiliary requests 1 to 4 were filed for the first time with the statement of grounds of appeal.

3.2 In comparison to the main request, claim 1 of auxiliary request 1 defines in addition that the differential pressure is *"corrected according to the pulsation"*. In

claim 1 of auxiliary requests 2, 3 and 4, the claimed correction is "... according to the amplitude of pulsation", "... according to the frequency and the amplitude of pulsation" or "... according to each frequency obtained by frequency resolution and the amplitude of pulsation", respectively.

- 3.3 The appellant argued that these requests provided further limitations to the subject-matter of the main request. In addition, the requirements of Article 123(2) EPC were met and the claimed subject-matter was suitable to establish novelty and inventive step.
- 3.4 In the case at hand, the Rules of Procedure of the Boards of Appeal in their version of 2020 apply in accordance with Article 25(2) RPBA 2020.
- 3.5 Since auxiliary requests 1 to 4 were filed for the first time with the statement of grounds of appeal, they did not serve as a basis for the decision under appeal. They are thus to be regarded as an amendment to the appellant's case and may be admitted only at the discretion of the board, Article 12(4) RPBA 2020. According to the fifth sentence of this provision, the board should exercise its discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy.
- 3.6 In this respect, the board considered the following aspects.
- 3.6.1 The subject-matter of the independent claims of auxiliary requests 1 to 4 has been amended by

introducing features (defining a correction according to the pulsation) from the description. In the board's view, these amendments *prima facie* present new issues with respect to the requirements of Articles 84 and 123(2) EPC. It is not clear how the flow rate is corrected "... according to the pulsation", "... according to the amplitude of pulsation", "... according to the frequency and the amplitude of pulsation" or "... according to each frequency obtained by frequency resolution and the amplitude of pulsation", respectively. Furthermore, the board cannot see *prima facie* a basis for the amendments in the passages cited by the appellant (description, page 22, "Item 2." and page 28, penultimate paragraph).

3.6.2 In addition, the subject-matter of these claims has not been examined with respect to novelty and inventive step during the first-instance proceedings so that in the event of admittance, remittal of the case to the examining division would be necessary. This would be against the principle of procedural economy.

3.7 During the oral proceedings, the appellant additionally argued that auxiliary requests 1 to 4 became "retroactively" admissible, as the board's introduction of novelty-destroying document D7 with its communication under Article 15(1) RPBA 2020 confronted the appellant with a "fresh case", and as the auxiliary requests were clearly new with respect to D7. Therefore, had the appellant filed the auxiliary requests at issue in response to the board's new novelty objection, this objection would have constituted exceptional circumstances within the meaning of Article 13(2) RPBA 2020, leading to the admission of the requests into the proceedings.

3.8 The question of whether or not a request may become "retroactively" admissible if reasons for its admission arise only after its filing does not need to be decided in the case in hand. Even if it were to be assumed, for discussion purposes, that the appellant's considerations are acceptable, they would not lead to the admission of auxiliary requests 1 to 4 into the proceedings under Article 13(2) RPBA 2020. When exercising its discretion under Article 13(2) RPBA 2020, the board may rely on the criteria set out in Article 13(1) RPBA 2020 (see Document CA/3/19, section VI, explanatory remarks on Article 13(2), fourth paragraph, and Case Law of the Boards of Appeal, 10th edition 2022, V.A.4.5.10 b)). Consequently, the board may consider whether the amendment is detrimental to procedural economy or whether the amendment, prima facie, does not give rise to new objections. In this regard, the same considerations as set out in points 3.6.1 and 3.6.2 above apply. It follows that the board would not admit auxiliary requests 1 to 4 under Article 13(2) and (1) RPBA 2020, either.

3.9 Therefore, the board, in exercising its discretion under Article 12(4) RPBA 2020, did not admit auxiliary requests 1 to 4 into the appeal proceedings.

4. Auxiliary request 5

4.1 Admission, Article 12(4) RPBA 2020

Auxiliary request 5 has not been dealt with in the reasons of the first-instance decision, since the appellant had maintained solely its main request (see point V above). However, current auxiliary request 5 is identical to auxiliary request I which was discussed

during the oral proceedings before the examining division (see points II to IV above) and for which the examining division provided an "Obiter Dictum" in its decision. Consequently, the appellant did not present a fresh case with this auxiliary request. Rather, the situation does not substantially differ from that described in Article 12(2) RPBA 2020 (*"In view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based"*). Therefore, the board, in the exercise of its discretion under Article 12(4) RPBA 2020, admitted auxiliary request 5 into the appeal proceedings.

4.2 Amendments

In comparison to claim 1 of the main request, the following feature has been added to claim 1:

"... and wherein, when the differential pressure signal of the differential pressure sensor (73) is negative, a backward flow rate is obtained by multiplying the square root of the absolute value of the differential pressure signal by -1."

4.3 Novelty - Document D7

4.3.1 The appellant argued that the author of document D7 was not aware of why their proposed solution worked (see column 4, lines 54 to 62). Therefore, this document did not provide an enabling disclosure and in particular did not disclose the added feature.

4.3.2 The board is not convinced by this argument. It is true that the added feature is not explicitly disclosed in D7. However, D7 explicitly discloses that negative pressure readings can occur due to perturbations in the velocity (see column 4, lines 50 to 63 and Figure 2). As D7 teaches to use the square root of the pressure readings before averaging, D7 necessarily has to take this into account by multiplying the square root of the absolute value of the differential pressure signal by -1. Otherwise the calculation would not be possible. D7 therefore provides an enabling disclosure necessarily including the added feature which is implicitly disclosed.

4.3.3 In conclusion, the board is of the opinion that the subject-matter of claim 1 of auxiliary request 5 is not new in view of the disclosure of D7.

5. Auxiliary request 6

5.1 Admission, Article 12(4) RPBA 2020

Auxiliary request 6 has not been the subject of the first-instance decision. However, the examining division has nevertheless expressed its opinion on the then auxiliary request II, which is identical to the current auxiliary request 6, in an "Obiter Dictum" in the decision.

For reasons analogous to those set out in point 4.1 above, the board, in the exercise of its discretion under Article 12(4) RPBA 2020, admitted auxiliary request 6 into the appeal proceedings.

5.2 Amendments

In comparison to claim 1 of auxiliary request 5, the following feature has been added to claim 1:

"... and wherein the total pressure detector (68) and the static pressure detector (69) are provided respectively in a tail pipe attachment (65) adapted to be detachably connected to a downstream end of an exhaust pipe (64)".

5.3 Inventive step in view of document D7

5.3.1 The appellant argued that the additional feature enabled the use of the measuring apparatus as an on-board system in an automobile also while driving. In addition, it was now clearly defined that the measuring apparatus was used in the tail pipe of an engine. As D7 related to measuring flow rates in a smokestack (see column 2, lines 66 and 67), the skilled person would not consult D7 when searching for a solution for a precise and easy measurement of automobile exhaust gas. Therefore, the measuring apparatus as defined in claim 1 of auxiliary request 6 was inventive.

5.3.2 The board is not convinced by this argument. As argued already above for the main request, D7 is not restricted to the emission measurement in electric power plants or the like. With respect to the added feature, the board notes that the definition of a tail pipe attachment does not restrict the claim to the application in automotive engines. As D7 (see title, column 1, lines 4 to 6, column 2, line 66 to column 3, lines 3 and figure 1) very generally aims at monitoring emission in a passage (D7: conduit) of an exhaust pipe (D7: smokestack), the use of an attachment for detachably connecting the flow rate measuring apparatus to an exhaust pipe is merely a straightforward

attachment possibility which the skilled person would select, depending on the circumstances, without exercising inventive skill.

5.3.3 In conclusion, the board is of the opinion that the subject-matter of claim 1 of auxiliary request 6 does not involve an inventive step in view of document D7 in combination with the common general knowledge of the person skilled in the art.

6. Auxiliary requests 7 to 9 - Admission (Article 12(4) and (6) RPBA 2020)

6.1 Auxiliary requests 7 to 9 were filed with the statement of grounds of appeal. The decision under appeal was not based on these requests. Thus, they are to be regarded as an amendment to the appellant's case and may be admitted only at the discretion of the board, Article 12(4) RPBA 2020.

6.2 To claim 1 of auxiliary request 7 (in comparison to claim 1 of the main request) and to claim 1 of auxiliary request 8 (in comparison to claim 1 of auxiliary request 6), the following feature has been added:

"... and wherein a response difference adjustment mechanism (76) is adapted to regulate via signal processing of the difference in response frequency between total pressure and static pressure."

To claim 1 of auxiliary request 9 (in comparison to claim 1 of the main request), the following feature has been added:

"... wherein the pulsating emission flow rate measuring apparatus is adapted to eliminate, via signal processing, the difference in response time between total pressure and static pressure."

6.3 The appellant argued that auxiliary requests 7 and 8 were based on auxiliary request IV as filed during the first-instance proceedings with the letter dated 7 October 2019 but did not contain the features with respect to the backward flowrate and the tail pipe attachment. This adaptation had been considered admissible by the examining division with regard to auxiliary request III dated 6 November 2019 (see minutes of oral proceedings before the examining division, page 1, last line). In addition, the amendment concerning the *"response difference adjustment mechanism"* had already been discussed in the decision (see decision under appeal, point 3, relating to then auxiliary request III). Furthermore, auxiliary request 9 was based on auxiliary request 7 with a slight rewording based on the description as originally filed (see paragraph bridging pages 21 and 22). Therefore, auxiliary requests 7 to 9 were "in line" with subject-matter of claims which had already been in the procedure before the examining division and thus were not an amendment to the appellant's case.

6.4 In respect of its discretionary power according to Article 12(4) RPBA 2020, the board considered in particular the following aspects.

6.4.1 The subject-matter of the independent claims of auxiliary requests 7 to 9 has been amended by introducing from the description features relating to the adjustment/elimination of differences in response

frequency/time via signal processing. In contrast to the appellant's argument, these features were not present in any of the claims discussed in the decision under appeal (see also point 6.5 below). Therefore, the subject-matter of these auxiliary requests was not examined with respect to novelty and inventive step during the first-instance proceedings so that in the event of admittance, remittal of the case to the examining division would be necessary. This would be against the principle of procedural economy.

- 6.4.2 In addition, in the board's view, the amendments in auxiliary requests 7 and 8 *prima facie* present new issues with respect to the requirements of Articles 123(2) and 84 EPC. The passage indicated by the appellant (paragraph bridging pages 21 and 22 of the originally filed description) fails to disclose that the difference in response frequency is used. Furthermore, it is not clear which response difference is adjusted via signal processing and in particular how this can be achieved on the basis of the difference in response frequency between total and static pressure.
- 6.5 Moreover, according to Article 12(6) RPBA 2020, the board should not admit requests which were no longer maintained in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

In contrast to the appellant's argument, auxiliary request III dated 6 November 2019 does not contain the added features relating to the regulation via signal processing. The board notes, however, that auxiliary requests 7 and 8 correspond in substance to a request (namely auxiliary request IV as filed with the letter dated 7 October 2019) which also included the added

features relating to the regulation via signal processing of the difference in response frequency. However, this request was no longer maintained in the proceedings leading to the appeal (see letter dated 6 November 2019 in which the claims according to auxiliary request IV were replaced with claims no longer containing the regulation of the response difference via signal processing). As a result, the examining division was prevented from giving its opinion on the features in question, an opinion which could then have been reviewed by the board.

6.6 For these reasons, the board, exercising its discretion under Article 12(4) and (6) RPBA 2020, did not admit auxiliary requests 7 to 9 into the appeal proceedings.

7. Auxiliary request 10

7.1 Admission, Article 12(4) RPBA 2020

Auxiliary request 10 has not been the subject of the first-instance decision. However, the examining division has nevertheless expressed its opinion on the then auxiliary request III, which is identical to the current auxiliary request 10, in an "Obiter Dictum" in the decision.

For reasons analogous to those set out in point 4.1 above, the board, in the exercise of its discretion under Article 12(4) RPBA 2020, admitted auxiliary request 10 into the appeal proceedings.

7.2 Amendments

In comparison to claim 1 of the main request, the following feature has been added to claim 1:

"... and wherein a response difference adjustment mechanism (76) is provided between the total pressure detector (68) and the differential pressure sensor (73) and/or between the static pressure detector (69) and the differential pressure detector (73)."

7.3 Inventive step in view of document D7

7.3.1 The appellant argued that, by using a response difference adjusting mechanism, the response difference between total pressure and static pressure in the differential pressure sensor could be eliminated. Thus, a phase error could be decreased significantly or even eliminated. This functionality was clearly defined in the description of the application as originally filed (see page 19, last paragraph to page 20, third paragraph). As D7 did not disclose any hint to provide a response difference adjusting mechanism having the same functionality as the mechanism as claimed, the subject-matter of claim 1 of auxiliary request 10 was inventive.

7.3.2 The board is not convinced by this argument. D7 discloses a pitot tube measuring differential pressure (see figure 1 and column 2, lines 1 to 10), which necessarily comprises a total pressure detector and a static pressure detector which are connected via respective pipings to a differential pressure sensor. The board agrees with the examining division's assessment and is of the opinion that these pipings automatically serve as *"response difference adjustment mechanism"* as their lengths necessarily define the response difference. No further restrictions of this feature are present in the claim and the passages of the description referred to by the appellant cannot

further restrict the functionality of the *"response difference adjustment mechanism"*.

7.3.3 Even if the *"response difference adjustment mechanism"* were to be interpreted such that it served to decrease a phase error which results from response differences, the skilled person would be aware of such phase errors and that they could be eliminated by providing a mechanism to adjust and possibly minimise the response difference.

7.3.4 In conclusion, the board is of the opinion that the subject matter of claim 1 of auxiliary request 10 is not new or at least does not involve an inventive step view of document D7 in combination with the common general knowledge of the person skilled in the art.

8. Auxiliary request 11

8.1 Auxiliary request 11 was filed with the statement of grounds of appeal. The added features constitute a combination of the features added to auxiliary requests 5, 6 and 10 (see points 4.2, 5.2 and 7.2 above). The decision under appeal was not based on this request. Thus, it is to be regarded as an amendment to the appellant's case and may be admitted only at the discretion of the board, Article 12(4) RPBA 2020.

8.2 The appellant argued that auxiliary request 11 was based on auxiliary request IV as filed during the first-instance proceedings with the letter dated 7 October 2019 but did not contain the limitation that the response difference adjustment mechanism regulates via a signal processing.

During the oral proceedings, the appellant further argued that, since claim 1 of auxiliary request 11 combined the amendments present in current auxiliary requests 5, 6 and 10 and since the board had announced during the oral proceedings that all these requests should be admitted into the appeal proceedings, also auxiliary request 11 should be admitted into the proceedings.

8.3 In respect of its discretionary power according to Article 12(4) RPBA 2020, the board considered that the additional features solved independent problems and that, for the reasons set out above for auxiliary requests 5, 6 and 10, the subject-matter of independent claim 1 of auxiliary request 11 lacks inventive step and is therefore *prima facie* not allowable.

8.4 Furthermore, according to Article 12(6) RPBA 2020, the board should not admit requests which were no longer maintained in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

The board notes in this respect that claim 1 of auxiliary request 11 corresponds essentially to that of auxiliary request III as filed with the letter dated 7 October 2019. However, this claim was no longer maintained in the proceedings leading to the appeal, as it was replaced by a different claim 1 according to auxiliary request III which was filed with the letter dated 6 November 2019 and no longer contained the combination of the features at issue. As a result, the examining division was prevented from giving its opinion on inventive step based on this combination of features, an opinion which then could have been reviewed by the board.

8.5 For these reasons, the board, exercising its discretion under Article 12(4) and (6) RPBA 2020, did not admit auxiliary request 11 into the appeal proceedings.

9. Auxiliary requests 0A to 11A

The board notes that claims 1 of auxiliary requests 0A through 11A are identical to those of the main request and auxiliary requests 1 through 11, respectively, except for the replacement of the word "once" with the word "first", to overcome a clarity objection raised by the board for the first time in its communication under Article 15(1) RPBA 2020.

For the same reasons as discussed above for the corresponding main request (see point 1 above) and the corresponding auxiliary requests 1 to 11 (see points 2 to 8 above), the board is therefore of the opinion that:

- auxiliary requests 0A, 5A, 6A and 10A, while admissible under Article 13(2) RPBA 2020, are not allowable for lack of novelty or inventive step
- auxiliary requests 1A to 4A, 7A to 9A and 11A are not to be admitted into the appeal proceedings (Article 13(2) RPBA 2020 in conjunction with Articles 13(1), 12(4) and (6) RPBA 2020).

10. As none of the admitted requests is allowable, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Voyé

G. Decker

Decision electronically authenticated