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**Datasheet for the decision
of 30 January 2024**

Case Number: T 1442/22 - 3.2.05

Application Number: 11760442.1

Publication Number: 2617112

IPC: F16L5/14, H01R13/52, H02G3/22,
F16L5/08

Language of the proceedings: EN

Title of invention:

Modular connector for cables or pipes and system comprising
such modular connector

Patent Proprietor:

Roxtec AB

Opponent:

Hauff-Technik GmbH & Co. KG

Relevant legal provisions:

EPC Art. 54, 56

EPC R. 115(2)

RPBA 2020 Art. 12(3), 12(5), 12(6), 13(2), 15(3), 15(6)

Keyword:

Oral proceedings - held in absence of party (appellant II)
Late-filed request - main request - admitted (yes)
Amendment after summons - exceptional circumstances (yes)
Novelty - main request (yes)
Inventive step - main request (yes)
Late-filed evidence - document D12 - should have been submitted
in first-instance proceedings (yes)
Late-filed objection - inventive step in view of documents D8
and D12 - should have been submitted in first-instance
proceedings (yes)
Discretion not to admit submission - inventive step in view of
documents D10 and D11 - requirements of Art. 12(3) RPBA 2020
met (no)

Decisions cited:

T 0522/91, T 0759/91, T 0736/99, T 0457/02, T 0241/10,
T 1830/11



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Case Number: T 1442/22 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 30 January 2024

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 April 2022 concerning maintenance of the
European Patent No. 2617112 in amended form.**

Composition of the Board:

Chairman P. Lanz
Members: M. Holz
F. Blumer

Summary of Facts and Submissions

I. The patent proprietor (appellant I) and the opponent (appellant II) appealed against the interlocutory decision of the opposition division finding that, account being taken of the amendments made by the patent proprietor during the opposition proceedings in accordance with auxiliary request 1, European patent No. 2 617 112 ("the patent") and the invention to which it related met the requirements of the EPC.

II. The following documents submitted during the opposition proceedings are cited in this decision:

D7: WO 2006/130104 A1

D8: WO 98/44515 A1

D9: DE 90 04 554 U1

D10: EP 0 590 410 A1

D11: WO 2010/089286 A2

Appellant II submitted the following document with its statement of grounds of appeal dated 12 August 2022:

D12: DE 101 50 429 A1

III. The parties were summoned to oral proceedings scheduled for 30 January 2024.

In a communication under Article 15(1) RPBA, the board set out its preliminary opinion on the case, *inter alia* that the subject-matter of claim 1 as granted was new and based on an inventive step.

By letter of 16 January 2024, appellant II withdrew its (auxiliary) request for oral proceedings and announced that it would not be attending the oral proceedings scheduled for 30 January 2024.

- IV. Oral proceedings before the board were held on 30 January 2024 in the absence of appellant II. After the chairman set out the board's conclusion that the subject-matter of claim 1 as granted was disclosed in the application as filed, on which the patent was based, but that this was not the case for granted claim 7, appellant I filed claims 1 to 19 of the current main request.
- V. Appellant I requested that the decision under appeal be set aside and that the patent be maintained as amended on the basis of claims 1 to 19 filed during the oral proceedings before the board (main request) or on the basis of one of auxiliary requests 1 to 8 filed with the reply to the opponent's statement setting out the grounds of appeal.

Appellant II requested that the decision under appeal be set aside and that the patent be revoked.

- VI. Claim 1 of the main request is identical to claim 1 as granted and reads (the feature references employed by the board are included in square brackets):

"**[1.1]** A modular connector (100, 200, 300, 400, 700, 800) for cables or pipes, **[1.2]** having at least one compressible body with an axial groove (232, 332, 432) provided therein for arrangement of a shielded or armored cable or a pipe extending from a first end to a second end, **[1.3]** wherein the groove is dimensioned or dimensionable to sealingly fit around a circumference

of the shielded or armored cable, or pipe, [1.4] wherein the at least one compressible body comprises a flexible conductor arrangement (110, 210, 310, 410, 710, 810) [1.5] which conductor arrangement comprises at least two conductors [1.6] arranged to follow a non-linear path, [1.7] arranged between the first end and the second end, [1.8] and wherein the conductor arrangement is also arranged to be sandwiched between the compressible body and a cable screen or armor of the cable, or the pipe, [1.9] and the conductor arrangement further extends to an outside of the modular connector for cables or pipes characterized in that [1.10] the conductor arrangement (110, 210, 310, 410, 710, 810) having at least two conductors arranged to follow a non-linear path is selected from the group comprising: a braided wire, a knitted wire, woven wire, a wire mesh, and a wire cloth, [1.11] that at least one peelable sheets (105, 205, 305, 405, 705, 805) of material are arranged in the axial groove (232, 332, 432), for adjusting the diameter to the dimensions of the shielded or armored cable or the pipe, and [1.12] that at least one peelable sheet of material is arranged in two or more sections (305, 305', 405, 405', 405'', 805, 805', 805'') along the axial extension of the modular connector, adjacent sections being separated from each other."

VII. The parties' relevant arguments can be summarised as follows.

(a) *Unallowable amendment (Article 123(2) EPC)*

(i) *Appellant I*

The objection raised by appellant II against claim 1 as granted did not form part of the opposition

proceedings. This (clarity?) objection could have been submitted before the opposition division and should not form part of the appeal proceedings. Features 1.4 and 1.5 were disclosed by the embodiments shown in Figures 1 to 4, 7 and 8 of the application as filed. In view of feature 1.10, the "macroscopic" view suggested by appellant II was incorrect. The "microscopic" view suggested by appellant II was the only technically reasonable interpretation. The opposition division's view on feature 1.4 (see page 8 of the Reasons for the decision under appeal) was correct.

(ii) *Appellant II*

The subject-matter of claim 1 as granted extended beyond the content of the application as filed in view of features 1.4 and 1.5. The claims of the application as filed specified that it was the modular connector that comprised the at least two conductors, and not the compressible body. A compressible body comprising two conductors was not disclosed in the application as filed. In a "microscopic" view, the conductor could be a single wire. In a "macroscopic" view, the conductor could be a braided wire. Applying the "macroscopic" view, the compressible bodies 208, 308, 408 and 808 disclosed in the application as filed were only equipped with a single conductor.

The subject-matter of claim 7 as granted involved an unallowable intermediate generalisation.

(b) *Novelty (Article 54 EPC)*

(i) *Appellant I*

The subject-matter of claim 1 as granted was new over document D7. Document D7 did not disclose, *inter alia*, feature 1.4.

(ii) *Appellant II*

The subject-matter of claim 1 as granted was not new over document D7. The term "comprises" used in feature 1.4 must, according to established case law, be interpreted in such a way that the features were present, but that the presence of other characteristics was not excluded (see, for example, T 759/91, T 522/91 or T 457/02). Feature 1.4 only required that, in addition to the compressible body, a flexible conductor arrangement must be present, without defining a spatial relationship between the compressible body and the flexible conductor arrangement. In view of Figure 8 of the patent, the compressible body did not need to be in one piece. In Figure 3 of document D7, the combination of modules on the left-hand and right-hand sides could be considered a compressible body. It was not apparent why the skilled person would consider that the term "comprise" in feature 1.4 covered a conductor arrangement extending through a recess in the compressible body (see claims 4 and 5 of the patent as granted) but not a conductor arrangement arranged axially next to the compressible body (as shown in Figure 3 of document D7).

(c) *Inventive step (Article 56 EPC)*

(i) *Appellant I*

The subject-matter of claim 1 as granted involved an inventive step. Document D8 did not disclose features 1.5 and 1.10. The objective technical problem

suggested by appellant II was incorrect. The objective technical problem was to provide a modular connector that met requirements for electrical safety grounding where low resistance and high current-carrying capability were the focus. The skilled person would not have applied any teachings of document D9 to document D8 since these documents did not belong to the same technical field, document D9 was not concerned with this objective technical problem and the teachings of these documents were not compatible. Document D12 could have been submitted before the opposition division and should not be admitted into the appeal proceedings. The objection of lack of inventive step raised in view of a combination of documents D10 and D11 did not meet the requirements of Article 12(3) RPBA. This objection was insufficiently substantiated. It was, *inter alia*, not explained which component of document D10 would correspond to the compressible body of the granted claim 1.

(ii) *Appellant II*

The subject-matter of claim 1 as granted did not involve an inventive step in view of a combination of document D8 and document D9 or D12 or a combination of documents D10 and D11.

Document D8 did not disclose features 1.5 and 1.10. Feature 1.5 was implied by feature 1.10. The objective technical problem was to select a design for the conductive tape, generically disclosed in document D8, which was sufficiently flexible to wrap and be pressed by the compressible bodies and at the same time ensured good electrical contact with the cable shield. Document D9 disclosed a conductive belt 25 made of braided metallic conductive wires to be securely

electrically connected to the shielding (see page 8, second paragraph). An elastic member 27 could be provided to increase the contact pressure. However, page 11, penultimate paragraph of document D9 suggested that the elastic member 27 was optional.

Document D12 should be admitted into the appeal proceedings. It had been filed as a reaction to appellant I's late-filed auxiliary request 1 and the opposition division's view on page 17, lines 7 and 8 of the Reasons for the decision under appeal that the plastic outer part of the plastic clamp of document D9 did not conduct electricity. In accordance with the principles set out in decisions T 736/99 and T 241/10, prior art filed in response to a late-filed auxiliary request could not be considered late filed. This was true even if the amendment was based on a granted dependent claim (see decision T 1830/11).

Document D10 disclosed feature 1.2 since it was directed to modules inserted into a frame and used to seal against cables. Features 1.6 to 1.9 were disclosed in Figures 5 and 6 of document D10. With the exception of features 1.11 and 1.12, document D10 disclosed all the features of the contested claim 1. Starting from document D10 as the closest prior art, the technical problem was to further develop the module in such a way that it could be adapted to different cable diameters. It was known to the skilled person from document D11 that modules for adapting to different cable diameters could be fitted with removable layers (see page 4, lines 24 to 26). As could be seen from Figure 1 of document D11, the module was divided into several functionally different axial sections (see also page 6, lines 21 to 26; page 3, lines 12 to 16; page 8, lines 3 to 9; and page 4, lines 27 and 28). The person skilled

in the art would easily transfer this configuration to the arrangement in accordance with document D10.

Reasons for the Decision

1. Oral proceedings in the absence of appellant II

In accordance with Rule 115(2) EPC, if a party duly summoned to oral proceedings before the EPO does not appear as summoned, the proceedings may continue without that party. Pursuant to Article 15(3) RPBA, the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of a party duly summoned, who may then be treated as relying only on its written case.

In the case at hand, both parties requested oral proceedings as an auxiliary measure. By letter of 16 January 2024, appellant II withdrew its auxiliary request for oral proceedings and announced that it would not be attending the oral proceedings scheduled for 30 January 2024. The oral proceedings before the board were held in the absence of appellant II.

By not attending these oral proceedings, appellant II effectively chose not to avail itself of the opportunity to present its observations and counter-arguments orally but instead to rely on its written submissions. The board was in a position to announce a decision at the conclusion of the oral proceedings, in accordance with Article 15(6) RPBA.

2. **Admittance of appellant I's main request**

Appellant I filed the current main request during the oral proceedings before the board.

In accordance with Article 13(2) RPBA, any amendment to a party's appeal case made after notification of a communication under Article 15(1) RPBA is, in principle, not taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

The claims of appellant I's main request differ from the claims as granted essentially by the deletion of dependent claim 7 as granted. By this straightforward amendment, the objection of an allegedly unallowable intermediate generalisation raised by appellant II against claim 7 as granted is clearly overcome. The deletion of this claim does not give rise to new objections. The claims of the new main request were filed at a stage where the board had expressed its view that the subject-matter of claim 1 as granted was new, involved an inventive step and was disclosed in the application as filed. The deletion of claim 7 as granted thus clearly overcame the only remaining objection, such that the new main request was clearly allowable.

Exercising its discretion under Article 13(2) RPBA, the board decided to admit appellant I's main request filed during the oral proceedings before the board into the appeal proceedings.

3. **Main request - allegedly unallowable amendment
(Article 123(2) EPC)**

3.1 *Claim 1 of the main request*

Claim 1 of the main request is identical to claim 1 as granted. Appellant II submits that the subject-matter of claim 1 as granted extended beyond the content of the application as filed, on which the patent was based, in view of features 1.4 and 1.5. The claims of the application as filed defined that it was the modular connector that comprised the at least two conductors, and not the compressible body. A compressible body comprising two conductors was not disclosed in the application as filed. In a "microscopic" view, the conductor could be a single wire. In a "macroscopic" view, the conductor could be a braided wire. Applying the "macroscopic" view, the compressible bodies 208, 308, 408 and 808 disclosed in the application as filed were equipped with only one conductor.

According to appellant I, the objection raised by appellant II related to clarity and did not form part of the opposition proceedings. This objection could have been submitted before the opposition division and should not form part of the appeal proceedings.

In section 4.2 of its statement of grounds of appeal, appellant II objects that claim 1 as granted involves an unallowable amendment, referring to the ground for opposition under Article 100(c) EPC. That section does not include an objection of lack of clarity. Appellant II submits that the subject-matter of claim 1 of auxiliary request 1, which the opposition division considered allowable, extends beyond the content of the

application as filed with respect to features 1.4 and 1.5.

The same objection was raised with respect to the same features in the opposition proceedings (see pages 6 and 7 of the notice of opposition). In the decision under appeal, the opposition division considered that features 1.4 and 1.5 were disclosed in Figures 2, 3, 4 and 7 and page 7, second and third paragraphs, page 14, lines 19 to 29 and page 15, lines 9 to 11 of the application as filed (see pages 7 and 8 of the Reasons for the decision). In section 4.2 of its statement of grounds of appeal, appellant II raises the same objection on which the decision under appeal is based and submits reasons why, in its view, the passages of the application as filed cited by the opposition division in the reasons for the decision do not disclose features 1.4 and 1.5.

There are no reasons apparent why appellant II's submission should not form part of the appeal proceedings. Since claim 1 of the main request is identical to claim 1 as granted, the same objection (under Article 123(2) EPC) applies to claim 1 of the main request.

Regarding feature 1.5, the skilled person will understand that a single wire (which is, for example, part of a braided wire) is a conductor (see also the "microscopic" view set out by appellant II). Figures 2, 3, 4 and 7 of the application as filed disclose embodiments in which a conductor arrangement comprises a braided wire and thus at least two conductors as defined in feature 1.5.

Appellant II's submission that the term "conductor" in feature 1.5 could also be understood as a more complex structure such as a braided wire does not alter this view. Even assuming that claim 1 as granted covered embodiments which were not specifically disclosed in the application as filed, this, in itself, would not allow the conclusion that the claimed subject-matter extended beyond the content of the application as filed.

Regarding feature 1.4, appellant II submits that, in the application as filed, the "at least two conductors" referred to the "modular connector" as a whole, not to the individual compressible body. Appellant I refers to Figures 2, 3, 4 and 7 of the application as filed and to page 8 of the Reasons for the decision under appeal. In the latter passage, the opposition division concluded that the expression that the "*compressible body comprises a flexible conductor arrangement*" was a correct wording for the location of the conductor arrangement as disclosed by Figure 2 (reference sign 210), Figure 3 (reference sign 310), Figure 4 (reference sign 410) and Figure 7 (reference sign 710) and further on page 14, lines 19 to 29 of the application as filed. Appellant II has not contested this view. The opposition division's interpretation is consistent with the interpretation of the term "comprising" set out in decision T 457/02 (cited by appellant II in the context of novelty, see point 4. below) as "including", "containing" or "comprehending" (see decision T 457/02, point 4.3 of the Reasons). The board thus has no reason to diverge from the opposition division's view set out above.

3.2 *Claim 7 as granted*

Claim 7 as granted is not present in the claims of appellant I's main request. The objection raised by appellant II against claim 7 as granted is therefore overcome by the main request.

3.3 *Summary on Article 123(2) EPC*

Appellant I's main request complies with Article 123(2) EPC.

4. **Main request - novelty (Article 54 EPC)**

Appellant II submits that the subject-matter of claim 1 as granted is not new in view of document D7. Claim 1 of the main request is identical to claim 1 as granted. The parties disagree as to whether document D7 discloses feature 1.4.

According to appellant II, feature 1.4 only requires that, in addition to the compressible body, a flexible conductor arrangement must be present. However, appellant II has not provided any support for this view. Nor does this view find support in decisions T 759/91, T 522/91 and T 457/02 cited by appellant II. The issue at hand does not hinge on the question of whether claim 1 covers embodiments in which the compressible body comprises elements in addition to the flexible conductor arrangement: the question is whether document D7 discloses that a compressible body comprises a flexible conductor arrangement.

The board in decision T 457/02 took the view that in patent claims the term "comprising" was interpreted as

"including", "containing" or "comprehending" (see point 4.3 of the Reasons). However, appellant II has not convincingly shown that the skilled person would have unambiguously and directly derived from Figure 3 of document D7 that module 2 includes, contains or comprehends layer 8 of conductive material.

Appellant II refers to Figure 8 of the patent and takes the view that the compressible body does not need to be in one piece. In Figure 3 of document D7, the combination of modules on the left-hand and right-hand sides could be considered a compressible body.

The modules on the left-hand and right-hand sides of Figure 3 of document D7 are separated by a void and by a layer 8 of conductive material. Appellant II has not convincingly shown that the skilled person would consider these modules as forming a (single) compressible body. Even if a compressible body may comprise multiple parts, this does not imply that the skilled person considers that modules that are spaced apart (as shown in Figure 3 of document D7) are parts of the same compressible body. This view is not altered by appellant II's reference to Figure 8 of the patent. According to column 16, lines 22 to 27 of the patent, that figure shows two compressible bodies, one on either side of the section of conductive material.

Appellant II also raises the question of why the skilled person would consider that the term "comprise" in feature 1.4 covered a conductor arrangement extending through a recess in the compressible body (see claims 4 and 5 of the patent as granted) but not a conductor arrangement arranged axially next to the compressible body (as shown in Figure 3 of document D7).

However, these are two different questions. The issue of novelty (Article 54 EPC) hinges on the question of whether the claimed subject-matter is disclosed in document D7. The question of unallowable amendment (Article 123(2) EPC) hinges on the question of whether the subject-matter defined by claim 1 extends beyond the content of the application as filed. For the question of novelty, the burden is on appellant II to show that the subject-matter of claim 1, including feature 1.4, is disclosed in document D7. For the reasons set out above, the board is not convinced by appellant II's submission in this regard.

The subject-matter of claim 1 of the main request is new in view of document D7 (Article 54 EPC).

5. Main request - inventive step (Article 56 EPC)

Appellant II submits that the subject-matter of claim 1 as granted does not involve an inventive step in view of a combination of document D8 and document D9 or D12 or a combination of documents D10 and D11. Claim 1 of appellant I's main request is identical to claim 1 as granted.

5.1 *Combination of document D8 and document D9*

It is common ground between the parties that document D8 does not disclose features 1.5 and 1.10. According to appellant II, the objective technical problem is to select a design for the conductive tape, generically disclosed in document D8, which is sufficiently flexible to wrap and be pressed by the

compressible bodies and at the same time ensures good electrical contact with the cable shield.

The board is not convinced by this formulation of the objective technical problem. The arrangement shown, for example, in Figure 2 of document D8 provides for electrical contact between the conductive part-screen 141 and the earthed screen of the cable (see page 3, lines 19 to 22 of document D8). The conductive tape in document D8 is thus sufficiently flexible to cause this technical effect. The technical problem suggested by appellant II is therefore solved in the closest prior-art document D8.

However, even if the formulation of the objective technical problem suggested by appellant II were to be accepted, the objection would not be persuasive. When considering whether or not claimed subject-matter constitutes an obvious solution to an objective technical problem, the question to be answered is whether or not the skilled person, in the expectation of solving the problem, would have modified the teaching in the closest prior-art document in the light of other teachings in the prior art so as to arrive at the claimed invention (see "Case Law of the Boards of Appeal of the European Patent Office", 10th edition, July 2022, I.D.5.).

Document D9 does not suggest feature 1.10 as a solution to the technical problem of selecting a design for a conductive tape which is sufficiently flexible to wrap and be pressed by the compressible bodies and at the same time ensures good electrical contact with the cable shield. The skilled person will derive from page 8, second paragraph of document D9 that the good electrical contact is the result of the conductive tape

always being pressed onto the cable 2b by the elastic member 27. Page 11, penultimate paragraph of document D9 does not suggest that the elastic member 27 is optional, but discloses that elasticity of the conductive member is optional. In document D9, the technical effect of good electrical contact with the cable screen is achieved by clamping the cable using an arrangement of a conductive member and an elastic member as shown, for example, in Figures 1, 2 and 3. Document D9 does not suggest the isolated use of a braided wire to solve the objective technical problem suggested by appellant II.

The subject-matter of claim 1 of the main request involves an inventive step in view of a combination of documents D8 and D9.

5.2 *Combination of documents D8 and D12*

With its statement of grounds of appeal, appellant II submitted document D12 and raised an objection of lack of inventive step against claim 1 of auxiliary request 1 in view of a combination of documents D8 and D12. In its reply, appellant II raised an objection of lack of inventive step against claim 1 as granted in view of a combination of these documents.

Appellant I submitted that document D12 could have been submitted before the opposition division and should not be admitted into the appeal proceedings.

In accordance with Article 12(6), second sentence, RPBA, the board does not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal,

unless the circumstances of the appeal case justify their admittance.

Appellant II submits that document D12 was filed as a reaction to the opposition division's view expressed on page 17, lines 7 and 8 of the Reasons for the decision under appeal that the plastic outer part of the plastic clamp from document D9 would not conduct electricity.

However, appellant II's submissions regarding document D12 do not address the opposition division's concerns regarding the disclosure of document D9. Nor do they relate to the question of whether it would have been obvious to the skilled person to combine documents D8 and D9.

Document D12 and the objection of lack of inventive step in view of a combination of documents D8 and D12 against claim 1 as granted could and should have been submitted in the opposition proceedings. No circumstances of the appeal case are apparent that might justify their admittance into the appeal proceedings. The mere fact that the opposition division was not convinced by the objection of lack of inventive step raised in view of a combination of documents D8 and D9 does not justify raising a new objection in the appeal proceedings.

This view is unaffected by the case law cited by appellant II. Appellant II submits that, in accordance with the principles set out in decisions T 736/99 and T 241/10, prior art filed in response to a late-filed auxiliary request could not be considered late filed. This was true even if the amendment was based on a granted dependent claim (see decision T 1830/11).

The board first notes that Article 12(6) RPBA applies to appellant II's statement of grounds of appeal, as it is applicable as from 1 January 2020. At the time the cited decisions were taken, Article 12(6) RPBA was not in force. Secondly, it cannot be derived from any of the cited decisions that prior art filed in response to a late-filed auxiliary request could not be considered late filed as suggested by appellant II. Thirdly, the fact that appellant I filed auxiliary request 1 at a late stage of the opposition proceedings does not retroactively justify appellant II's failure to raise objections against claim 1 as granted in the opposition proceedings. Fourthly, unlike in decision T 1830/11, claim 1 of the main request is not based on a granted dependent claim, but is identical to independent claim 1 as granted.

The board exercised its discretion under Article 12(6), second sentence, RPBA, and did not admit document D12 and the objection of lack of inventive step relying on document D12 into the appeal proceedings.

5.3 *Combination of documents D10 and D11*

Appellant I submits that the objection of lack of inventive step in view of documents D10 and D11 does not meet the requirements of Article 12(3) RPBA and that this objection is insufficiently substantiated. It was, *inter alia*, not explained which component of document D10 would correspond to the compressible body of granted claim 1.

Nor can the board derive from appellant II's submissions why it considers feature 1.2 to be disclosed in document D10. Feature 1.2 does not merely define that modules are inserted into a frame and used

to seal against cables passing through them (see point 4.2 of appellant II's reply), but requires the modular connector to have at least one compressible body with an axial groove.

In accordance with Article 12(3) RPBA, the statement of grounds of appeal and the reply must contain a party's complete appeal case. Accordingly, they must set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on. In accordance with Article 12(5) RPBA, the board has discretion not to admit any part of a submission by a party which does not meet the requirements of Article 12(3) RPBA.

For the above reasons, the objection of lack of inventive step raised by appellant II in view of a combination of documents D10 and D11 does not meet the requirements of Article 12(3) RPBA. Nor is it self-explanatory that feature 1.2 is disclosed in document D10. This also holds true in view of the embodiments shown in Figures 5 and 6 of document D10.

The board exercised its discretion under Article 12(5) RPBA and did not admit the objection of lack of inventive step in view of documents D10 and D11 into the appeal proceedings.

5.4 *Summary on inventive step*

The subject-matter of claim 1 of the main request involves an inventive step (Article 56 EPC).

6. **Conclusion**

Since appellant I's main request meets the requirements of the EPC, the decision under appeal has to be set aside and the patent has to be maintained in amended form on the basis of the claims of the main request.

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 with the order to maintain the patent in amended form on the basis of the following documents:
 - claims 1 to 19 as filed during the oral proceedings before the board;
 - description and figures of the patent specification.

The Registrar:

The Chairman:



N. Schneider

P. Lanz

Decision electronically authenticated