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Datasheet for the decision of 22 September 2025

Case Number: T 0981/23 - 3.2.03

Application Number: 15155052.2

Publication Number: 2907930

IPC: E03D9/08, G08C17/02

Language of the proceedings: EN

Title of invention:
Remote control device

Patent Proprietor:
Toto Ltd.

Opponent:
Geberit International AG

Relevant legal provisions:
EPC Art. 100(c), 84, 123(2)
RPBA 2020 Art. 12(2), 12(4), 12(6), 11

Keyword:

Main request - added subject-matter (yes)
Auxiliary request 1 - clarity (no) - added subject-matter (yes)
Auxiliary request 4 - admittance of request not admitted by the opposition division (yes) - added subject-matter (no) - clarity (yes)
Remittal to the department of first instance - (yes)

Decisions cited:

G 0007/93, G 0001/24, G 0003/14, T 1202/19, T 0873/23, T 2048/22, T 1473/19, T 1866/22

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Case Number: T 0981/23 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 22 September 2025

Appellant: (Patent Proprietor)	Toto Ltd. 1-1, Nakashima 2-chome, Kokurakita-ku Kitakyushu-shi, Fukuoka 802-8601 (JP)
Representative:	Bandpay & Greuter 11 rue Christophe Colomb 75008 Paris (FR)
Respondent: (Opponent)	Geberit International AG Schachenstraße 77 8645 Jona (CH)
Representative:	Szynka Smorodin Patentanwälte Partnerschaft mbB Zielstattstraße 38 81379 München (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 20 March 2023 revoking European patent No. 2907930 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	B. Miller
Members:	M. Olapinski
	N. Obrovski

Summary of Facts and Submissions

I. Decision under appeal

The appeal was filed by the patent proprietor (appellant) against the opposition division's decision revoking the patent in suit (hereinafter "the patent").

The opposition division decided that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted and that auxiliary request 1 did not meet the requirements of Articles 84 and 123(2) EPC. Auxiliary requests 2 to 5 filed during the oral proceedings were not admitted, and auxiliary requests 6 to 10 then on file were found to infringe the requirements of Article 123(2) EPC.

II. At the end of the oral proceedings before the Board, the parties' requests were as follows.

The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted (main request). As an auxiliary measure, it requested that the patent be maintained in the form of one of auxiliary requests 1 and 4 to 13 submitted with the statement of grounds of appeal. It further requested that, if one of its claim requests was found to satisfy the requirements of Article 123(2) EPC, the case be remitted to the opposition division for further prosecution.

The respondent (opponent) requested that the appeal be dismissed and that the case not be remitted to the opposition division.

III. Claim 1 as granted (main request) reads as follows, with feature denominations in square brackets as per the decision under appeal (notably, there is no Feature F) and with the amendments compared with claim 1 as originally filed highlighted:

"[**A**] A remote control device (10) for controlling a toilet device (100), the remote control device (10) comprising:

[**B**] a plurality of operation buttons (12) being movable between an ordinary position and a lowermost position and configured to move from the ordinary position to the lowermost position in response to a push operation;

[**C**] a power generator (22) configured to generate a power in response to the push operation of one of the operation buttons;

[**D**] a controller (26) driven by the power from the power generator (22),

[**E**] the controller (26) being configured to determine the pushed operation button based on a detection result of each of the detectors (20),

[**G**] the controller (26) remotely controlling, in use, thea toilet device (100) by transmitting

[**H**] a wireless signal toward the toilet device (100),

[**I**] the wireless signal corresponding to the determined operation button; and

[**J**] an output unit configured to produce an output when the power generator (22) has generated the power,

characterized in that

the remote control device (10) further comprises:

[**K**] a plurality of detectors (20) associated respectively with the plurality of operation buttons and configured to detect the respective push operation of the operation buttons (12);

[**L**] wherein the power generator (22) comprises a power supply section (24) including an electric storage element (50) for storing power generated by the power generator (22)."

IV. Claim 1 of auxiliary request 1 additionally specifies that:

"the power supply section (24) is configured to supply the power stored in the electric storage element (50) to the controller (26) and activate the controller (26) when a voltage of the electric storage element (50) becomes more than or equal to a prescribed value."

V. Claim 1 of auxiliary request 4 differs from claim 1 as granted in that

the power supply section further includes

"a rectifier (52) electrically connected to an output of the power generator (22), and configured to rectify the power outputted from the power generator (22); and

a voltage detector (54) configured to detect a voltage of the electric storage element (50)",

and in that

"the electric storage element (50) is electrically connected to an output of the rectifier (52) and configured to store the power outputted from the rectifier (52), and

the voltage detector (54) is configured to pass a current to the controller (26) when the voltage of the electric storage element (50) detected by the voltage detector (54) becomes more than or equal to a prescribed value, thus the power stored in the electric storage element (50) is supplied to the controller (26) to activate the controller (26)."

VI. The wording of the other auxiliary requests is not relevant for this decision.

VII. The appellant's arguments can be summarised as follows.

Main request – Article 100(c) EPC

The subject-matter of claim 1 as granted did not extend beyond the content of the application as filed. In particular, Feature L did not involve an unallowable intermediate generalisation.

Auxiliary request 1

Auxiliary request 1 was correctly admitted in the opposition proceedings and dealt with in the decision under appeal. It was thus to be considered in the appeal proceedings.

The additional features of claim 1 of auxiliary request 1 overcame the unallowable intermediate

generalisation in the main request, was clear and did not extend beyond the content of the application as filed.

Auxiliary request 4

The opposition division incorrectly decided not to admit the request corresponding to current auxiliary request 4. The circumstances of the case justified auxiliary request 4 being admitted into the appeal proceedings.

The claims of auxiliary request 4 fulfilled the requirements of Articles 84 and 123(2) EPC.

Remittal

The case should be remitted to the opposition division as the outstanding objections were not discussed in the decision under appeal. In view of the primary object of the appeal proceedings under Article 12(2) RPBA, special reasons for a remittal presented themselves.

VIII. The respondent essentially argued as follows.

Main request – Article 100(c) EPC

The subject-matter of claim 1 as granted had been taken from the embodiment disclosed in the detailed description and involved several unallowable intermediate generalisations.

Auxiliary request 1

The opposition division's decision to admit auxiliary request 1 was incorrect and not balanced. Auxiliary

request 1 thus should not be considered in the appeal proceedings.

As the additional features of claim 1 were presented in a different order compared with the description, the subject-matter of claim 1 of auxiliary request 1 was unclear and also extended beyond the content of the application as filed.

Auxiliary request 4

The opposition division correctly decided not to admit the request corresponding to current auxiliary request 4. In accordance with the RPBA, auxiliary request 4 should not be admitted into the appeal proceedings.

The claims of auxiliary request 4 violated the requirements of Articles 84 and 123(2) EPC in several regards.

Remittal

In view of the meaning and purpose of Article 11 RPBA and as no special reasons presented themselves, the case should be concluded in the appeal proceedings and not remitted to the opposition division.

Reasons for the Decision

1. Main request – Article 100(c) EPC

1.1 Feature L of claim 1 as granted was added during the examination proceedings based on the description of the application as filed. Feature L specifies that "the power generator (22) comprises a power supply section (24) including an electric storage element (50) for storing power generated by the power generator".

1.2 A power supply section is disclosed on page 10, lines 21 to 23 of the application as filed, as part of the remote control device shown in Figure 3. The connection lines in Figure 3 show that the power generator 22 is connected to the controller 26 via a power supply section 24. In the Board's view, defining the power supply section as a part of the power generator ("the power generator comprises a power supply section") in claim 1 does not extend beyond the content of the application as filed. Figure 3 depicts a capacitor symbol 50 in the power supply section. Page 13, lines 9 to 11 discloses that the power supply section 24 includes an electric storage element 50 for storing power generated by the power generator 22. Hence, as submitted by the appellant, this passage discloses Feature L (almost) literally.

1.3 The quoted sentence on page 13, lines 9 to 11 of the application as filed is presented in the "detailed description" (see page 3, line 20) of "embodiments" of the invention (see page 2, line 24 to page 3, line 18), according to which at least Figures 3 and 4 and the

corresponding description passages belong to "the" same embodiment.

1.4 According to the decision under appeal, incorporating Feature L in claim 1 represents an unallowable intermediate generalisation because the power supply section and the electric storage element were functionally closely linked to further features of the embodiment described on page 13 which were not incorporated in claim 1, for example those disclosed on page 13, lines 11 to 15:

"*When the voltage of the electric storage element 50 becomes more than or equal to a prescribed value, the power supply section 24 supplies the power stored in the electric storage element 50 to the controller 26 and activates the controller 26.*"

Accordingly, claim 1 omitted the features whereby the power supply section was configured to supply the power stored in the storage element to the controller, configured to activate the controller and configured to carry out these steps under the condition "when the voltage of the electric storage element becomes more than or equal to a prescribed value".

1.5 The appellant submitted that the application as filed did not contain a general description part and that the expression "the embodiment" did not mean that everything was disclosed in combination. The skilled person understood that the "detailed description" disclosed not only a single detailed embodiment but also individual features further specifying the invention in general. The sentence on page 13, lines 11 to 15 was independent of the feature incorporated in claim 1.

More specifically, this sentence related to two separate aspects: first, that the power stored in the electric storage element is supplied to the controller, and second, that the power supply section activates the controller.

The first aspect was implicit in claim 1, which disclosed that the controller was driven by "the" power from the power generator, that the power generator comprised a power supply section and that this section had an electric storage element for storing power from the generator. It was thus clear that the power from the generator stored in the storage element was supplied to the controller. Hence, there was no room for speculating that the power stored in the electric storage element was used for a different purpose and was not supplied to the controller.

The second aspect, i.e. how the controller was activated, was independent of the simple fact that power was stored in the electric storage element. Hence, omitting the conditional activation was allowable.

Furthermore, claim 1 related to an apparatus that defined all the essential apparatus features. It was thus not necessary to further specify the activities performed by the apparatus features.

1.6 These arguments are not convincing.

The fact that the application as filed does not comprise a "general description" part describing separate optional features of the invention in general does not mean that the features in the "detailed

description" part are separate and independent of each other. Although determining which features are understood to be disclosed in combination is a technical question, the manner in which the text is presented and structured, e.g. whether the features are presented in the same or different paragraphs and as part of the same or different embodiments, also has a bearing on the skilled person's understanding.

In this case, the sentence on page 13, lines 11 to 15, directly following the feature on page 13, lines 9 to 11 incorporated in claim 1, is not only presented in the same paragraph and as part of the same embodiment, the embodiment in Figures 3 and 4, but it also concerns the functions of the power supply section included in Feature L. These are expressed in terms of activities: to supply the power stored in the electric storage element to the controller and to activate the controller, both under the condition of "[w]hen the voltage of the electric storage element becomes more than or equal to a prescribed value", i.e. when sufficient energy ("power") is stored (see page 13, lines 11 to 21).

It is true that claim 1 is directed to an apparatus, which cannot and need not be specified by the above-mentioned *activities* in terms of *method steps*.

However, the disclosure of the conditional activities carried out by the power supply section in the application as filed implies a particular functional limitation of the power supply section. Accordingly, on page 13, lines 11 to 15, the application discloses a configuration of the power supply section for both supplying the power stored in the electric storage element to the controller and activating the controller

when the voltage of the electric storage element becomes more than or equal to a prescribed value.

As is evident, the power supply section and its particular configuration and function, including its interaction with the electric storage element, are disclosed together and are inextricably linked to each other in the second paragraph of page 13 of the application as filed. In fact, checking the condition and then establishing the power supply and activating the controller is precisely the purpose and function of the power supply unit as originally disclosed.

Irrespective of whether claim 1 already implies that at least some of the power stored in the electric storage element is supplied to and drives the controller, claim 1 at least does not specify the configuration of the power supply section for powering and activating the controller when the disclosed condition is met. Hence, omitting this function and configuration of the power supply section extends beyond the content of the application as filed.

1.7 Therefore, the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted according to the main request.

2. Auxiliary request 1

Claim 1 of auxiliary request 1 additionally specifies:

"the power supply section (24) is configured to supply the power stored in the electric storage element (50) to the controller (26) and activate the controller (26) when a voltage of the electric storage element (50) becomes more than or equal to a prescribed value."

2.1 Admittance

2.1.1 The respondent requested that auxiliary request 1 not be admitted and submitted that the opposition division should not have admitted auxiliary request 1. First, the only reason the opposition division admitted auxiliary request 1 was because it had changed its view by comparison with the preliminary opinion. Second, the division had exercised its discretion in an unbalanced manner as it did not admit a new objection raised by the opponent at the oral proceedings.

2.1.2 This argument is not convincing. First, auxiliary request 1 was filed at the oral proceedings in opposition and admitted by the opposition division, and the decision under appeal is based on it. Therefore, the Board does not have any discretion under Article 12(4), first sentence, RPBA not to admit it into the appeal proceedings.

2.1.3 Positive admittance decisions by departments of first instance are not regulated in Article 12(6), first sentence, RPBA. Having said this, in this Board's opinion such decisions are still subject to a board's limited power to review discretionary decisions of departments of first instance (see G 7/93, Reasons 2.6; for claim requests, see also T 1202/19, Reasons 39 to 43).

In the case in hand, there was no error in the opposition division's exercise of discretion. The opposition division admitted the request because of a deviation from its preliminary opinion and a corresponding change in the course of the proceedings, and also because it considered the request's filing to

be an adequate reaction that was *prima facie* suitable to overcome the objection against the main request (see section II.3.1 of the decision under appeal and section 4.2 of the minutes). The opposition division was unconvinced by the initial objections under Article 100(c) EPC submitted with the notice of opposition. These objections were refined in the opponent's letter of 21 November 2022 along the same lines. However, the opponent's submissions did not address the general technical effects and functions of the power supply section and the electric storage element as disclosed on page 13, lines 11 to 15. Thus, the facts on which the opposition division's decision is based (section II.2.1.1.2) were only discussed for the first time at the oral proceedings (see minutes, in particular points 4.1.10 to 4.1.14).

Hence, the opposition division had admitted auxiliary request 1 not only because it had changed its opinion, but also because of a change in the course of the proceedings resulting from the facts and arguments discussed for the first time at the oral proceedings, with the admittance of a new claim request as a reaction thus being justified. This applies even more so given that the amendment in claim 1 *prima facie* adequately addressed the previous deficiency.

Moreover, the Board does not agree that the opposition division's decision not to admit a new objection submitted by the opponent at the oral proceedings (see decision under appeal, section II.2.1.1.1) constituted an unbalanced use of discretion. Different circumstances apply to these two discretionary decisions. In particular, the submission of a new objection was not justified by a change in the course

of the proceedings plus the objection was found *prima facie* unconvincing.

2.1.4 The Board thus concluded that auxiliary request 1 was to be considered in the appeal proceedings.

2.2 Articles 84 and 123(2) EPC

2.2.1 The opposition division found that the additional feature of claim 1 of auxiliary request 1 was ambiguous and extended beyond the content of the application as filed. It was not clear whether the condition "when" in claim 1 applied only to the power supply section's configuration to "activate the controller" or also to its configuration to "supply the power" to the controller, i.e. to both. In the former, the power supply was not restricted to the condition, it thus being left open when and under which conditions the controller was supplied with power. This even included a continuous power supply to the controller. This was in contrast to the original disclosure on page 13, which required the power supply section to supply power and activate the controller, i.e. do both things, "when" the condition is fulfilled.

2.2.2 The appellant submitted that it should not make a difference whether the condition ("when") was placed at the beginning of the expression or moved to the end. Moreover, the interpretation that the condition did not apply to the power supply was not technically sensible as supplying power was a prerequisite in the sequence of controller activation. The additional feature incorporated in claim 1 of auxiliary request 1 was thus not ambiguous.

Furthermore, even if it was ambiguous, the description had to be consulted to interpret the claim. It was clear that the purpose of the storage element was to store and build up power until it became sufficient for activating the controller. Hence, the skilled person understood that the control element both supplied the power and activated the controller only when the voltage was sufficiently high. Hence, in view of the patent as a whole, claim 1 specified what was originally disclosed and its subject-matter was clear.

Moreover, supplying power and activating were understood to refer to the same activity, not to separate steps – the controller was activated by power being supplied to it. Accordingly, it was clear that both activities were carried out at the same time under the specified condition as originally disclosed.

Even if the incorporated feature was construed to only cover the conditional activation of the controller irrespective of when and how power was supplied to it, this was also the key aspect of the application as filed, as disclosed on page 13, lines 17 to 21, page 24, lines 7 to 11 and page 27, line 36 to page 28, line 3. These passages referred only to the conditional activation of the controller, not to supplying power. Accordingly, even if the condition only applied to the configuration for activating the controller, this alternative was also supported in the application as filed.

2.2.3 The Board agrees with the opposition division that the meaning of the additional feature in claim 1 is ambiguous. This is because the order in which the condition ("when" clause) and the two activities (to

supply power and activate) are presented in claim 1 has been reversed with respect to the original disclosure.

In the original formulation with the structure "when X, then A and B", both "A and B" are presented as the consequence of the condition being fulfilled. In the reverse order "A and B when X", especially without a comma, the question of grouping arises, i.e. whether "and" separates the two parts "A" and "B when X" (such that the condition X only applies to B) or whether the condition "when" refers to both "A and B". This applies irrespective of the fact that "configured to" is only recited once before "supply power […] and activate". When reversing the order of the clauses, the ambiguity could have been avoided by clarifying that "both" activities are carried out "when" the condition is fulfilled.

It is true that power supply is a prerequisite for activating the controller. However, activation and power supply are not necessarily the same and need not occur at the same time or under the same conditions, plus claim 1 is not limited to this (i.e. claim 1 does not specify that the controller is activated *by* power being supplied to it). As set out by the respondent, power is available as soon as it is generated by the power generator (driven by an operation button being pressed) and thus before the predetermined voltage of the electric storage element is reached. Moreover, according to page 13, lines 17 to 21, reaching the predetermined voltage of the power storage element is necessary not only for activating the controller but also for transmitting a wireless signal. Hence, in the Board's view, it is a technically reasonable alternative to the original disclosure to keep the power supply to the controller unmanaged (continuous,

uninterrupted) and to control only the activation of the controller (for example by an enable or wakeup signal to a pin of the microprocessor) by the power supply section according to the specified condition. Accordingly, this broader, alternative interpretation of the additional feature in claim 1 is not ruled out from a technical point of view.

Article 84 EPC requires claims to be clear, and the meaning of a claim feature should be clear for the person skilled in the art from the wording of the claim alone (G 1/04, Reasons 6.2). The correct response to any lack of clarity in a claim is amendment (G 1/24, Reasons 20, second sentence, referring *inter alia* to the last sentence of paragraph 135 of the comments of the President of the EPO on G 1/24, in which it is stated that in the interest of legal certainty for the public, the EPO will, as far as possible, require the claims to be amended so that their meaning is clear from the wording of the claims alone).

As the additional feature in claim 1 allows for two different interpretations which are both technically reasonable for the person skilled in the art, its meaning is not clear for the person skilled in the art from the wording of the claim alone. Accordingly, claim 1 does not comply with the requirements of Article 84 EPC.

Hence, auxiliary request 1 is not allowable, and there is no need to address the further objection against claim 1 under Article 123(2) EPC.

With regard to the latter, the Board thus only notes for completeness that according to the order in G 1/24, the description and drawings are always to be consulted

to interpret the claims, and not only if the person skilled in the art finds a claim to be unclear or ambiguous. The Board considers this to be true not only for the question of "patentability of an invention under Articles 52 to 57" but also for the issue of Article 123(2) EPC (see T 873/23, Reasons 1.6.1; see also T 2048/22, Reasons 1.2). G 1/24 otherwise confirms most of the established case law (Reasons 10), including the principle of the primacy of the claims (see G 1/24, order, first sentence: "the claims are the starting point and the basis"; see also T 1473/19 cited in G 1/24, Reasons 11). The primacy of the claims prohibits a feature which is only disclosed in the description or the drawings from being read into a claim (see T 1473/19, Reasons 3.16.1 and Case Law of the Boards of Appeal, 11th edition, 2025 (hereinafter: "Case Law"), II.A.6.3.4). In the present case, the expression incorporated in claim 1 is worded differently from the description. In the Board's view, it would be inconsistent with the principle of the primacy of the claims to automatically give the claimed expression the exact same meaning as the expression in the description despite the appellant's different choice of wording in the claim. Therefore, following the established practice to interpret a disputed claim more broadly rather than more narrowly (see T 1886/22, Reasons 4.1.1, last sentence), the Board would, for the purposes of assessing Article 123(2) EPC, interpret the feature in question such that the "when" condition is only required for the activation. This would result in added subject-matter.

As to the appellant's references to the application as filed, it is true that the passages on page 13, lines 17 to 21, page 24, lines 7 to 11 and page 27, line 36 to page 28, line 3 focus on the conditional *activation*

of the controller and do not refer to *supplying power* under the same condition. However, the mere fact that supplying power is not mentioned there anymore does not provide a basis for generalising the explicit disclosure on page 13, lines 11 to 15, according to which the power is also supplied only "when" the condition is fulfilled. Hence, the Board does not agree that unconditional power supply is disclosed in the application as filed.

3. Auxiliary request 4

Claim 1 of auxiliary request 4 differs from claim 1 as granted in that

(i) the power supply section further includes

"a rectifier (52) electrically connected to an output of the power generator (22), and configured to rectify the power outputted from the power generator (22); and

a voltage detector (54) configured to detect a voltage of the electric storage element (50)"

and in that

(ii) "the electric storage element (50) is electrically connected to an output of the rectifier (52) and configured to store the power outputted from the rectifier (52), and

the voltage detector (54) is configured to pass a current to the controller (26) when the voltage of the electric storage element (50) detected by the voltage detector (54) becomes more than or equal to a prescribed value, thus the power stored in the electric

storage element (50) is supplied to the controller (26) to activate the controller (26)."

3.1 Admittance

Auxiliary request 4 corresponds to auxiliary request 3 in the decision under appeal submitted at the oral proceedings in opposition. This request was not admitted by the opposition division because it did not specify the two-step AC-DC conversion, in which "the rectifier 52 rectifies the AC power outputted from the power generator 22 and converts it to pulsating power" and "the electric storage element 50 converts the pulsating power of the rectifier 52 to DC power", as disclosed on page 14, lines 9 to 10 and 14 to 16 of the application as filed. The opposition division thus considered this auxiliary request *prima facie* not allowable in view of the requirements of Article 123(2) EPC.

With the statement of grounds of appeal, the appellant re-filed the former auxiliary request 3 as auxiliary request 4. Under Article 12(6) RPBA, the "Board shall not admit requests […] which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance".

In the Board's view, the opposition division exercised its discretion not to admit former auxiliary request 3 then on file on the basis of the correct criteria and in a reasonable manner. Hence, its decision did not suffer from an error in the use of discretion within the meaning of Article 12(6) RPBA.

However, for the following reasons, circumstances of the appeal case justify the admittance of auxiliary request 4 into the appeal proceedings. As already indicated in the communication under Article 15(1) RPBA, according to its preliminary opinion the Board did not agree with the opposition division's objection under Article 123(2) EPC, this objection being the reason why the request was not admitted into the opposition proceedings, and considered that auxiliary request 4 prima facie overcame all issues under Articles 84 and 123(2) EPC. At the oral proceedings before the Board, for reasons of procedural economy in view of the Board's preliminary opinion, all the outstanding objections under Articles 84 and 123(2) EPC were thus discussed fully in substance before the Board deliberated on the admittance and allowability of auxiliary request 4. The Board then confirmed its preliminary opinion that none of the outstanding objections prejudiced the maintenance of the patent on the basis of auxiliary request 4 (see below for detailed reasoning) and decided to admit auxiliary request 4 into the appeal proceedings under Article 12(6) RPBA.

3.2 The respondent pursued the following objections under Article 84 EPC and Article 123(2) EPC with regard to auxiliary request 4.

In relation to Article 84 EPC, the respondent submitted that claim 1 of auxiliary request 4 was not clear for the following reasons.

a) Inconsistent terminology had been used. Specifically, in addition to the term "power" used for the energy stored in the electric storage element and

the "voltage" of the electric storage element, claim 1 also referred to passing "a current" without any further specification and without explaining the relationship between these terms.

b) The broad relation "more than or equal to" did not specify an upper limit and covered not only the predetermined value but also any arbitrary larger values. Therefore, the point at which the condition was met was not clearly defined.

c) Providing a rectifier together with a general power generator that was not restricted to AC power generation was inconsistent and unclear.

d) The last two lines of claim 1 defined features using "method language", casting doubt on the subject-matter for which protection was sought.

In relation to Article 123(2) EPC, the respondent submitted the following.

e) Omitting the pulsating output of the rectifier and the smoothing function of the storage element (converting the pulsating power into DC power) in claim 1 represented an unallowable intermediate generalisation.

f) The equivalence between the two activities "supplying power" and "activating" expressed by the wording "power […] is supplied […] to activate" in claim 1 extended beyond the content of the application as filed.

g) Due to the method language in the last two lines of claim 1, the means for activating the controller (i.e.

the power supply section according to page 13, lines 11 to 15) had been generalised.

h) Claim 1 did not specify that the power stored in the electric storage element was supplied to the controller as disclosed on page 13, lines 11 to 15.

3.3 The Board does not agree with these objections for the following reasons.

a) As correctly observed by the respondent, the patent uses the term "power" for the physical quantity of "energy" stored in the electric storage element. This inconsistency was already present in the claims as granted and therefore may not be examined in opposition (appeal) proceedings (G 3/14). Claim 1 specifies that the voltage detector is configured to pass "a current" to the controller and "thus" the power stored in the electric storage element is supplied to the controller. Accordingly, it is clear that "a current" relates to the energy stored in the electric storage element and supplied to the controller when the "voltage" of the electric storage element satisfies the claimed condition. Accordingly, the terms "current", "voltage" and "power" (or energy) all relate to the electric storage element and address different well-defined physical quantities which are related to each other in a well-known manner. According to this relationship, "voltage" is a measure of the energy stored in the element, and it is well known that supplying electric "power" (or energy) to the controller involves passing a corresponding electric current. Thus, the use of the terms "current", "voltage" and "power" is not a matter of inconsistent terminology and does not give rise to a lack of clarity.

b) The expression "more than or equal to" corresponds to a mathematically well-defined inequality relation used for determining when to supply power to the controller and activate the controller. It specifies that the condition is met when the voltage reaches or exceeds the prescribed value as a threshold value. This is to ensure that sufficient energy ("power") is stored in the electric storage element to activate the controller and transmit a wireless signal (see page 13, lines 17 to 21 of the application as filed). The respondent's objection is directed to the part referring to "more than" the prescribed value. While it is true that this does not define an upper limit, it does not mean that claim 1 encompasses different inequality relations with different, unspecified threshold values, either. Claim 1 is limited to a configuration of the voltage detector for verifying the specified inequality relation with the prescribed value. Accordingly, the power is supplied and the controller activated as soon as the condition is met. Whether the voltage threshold is exceeded depends on the specific implementation and how often the condition is checked (i.e. a potential time interval between iterative verification steps), while the voltage rises continually as long as power is being stored from the power generator. In the Board's view, the "more than" part of the condition is therefore defined in order to cover various implementations of the verification without the risk of missing the point in time at which the transition with the threshold value occurs. It thus does not cover arbitrary deviations from either this point in time or the "prescribed value". For these reasons, the meaning of this feature is clear for a skilled person.

c) While it is true that claim 1 does not explicitly restrict the power generator to provide AC output, it does specify a rectifier. A rectifier is used to convert alternating current (AC) into direct current (DC). Claim 1 further specifies that the rectifier is configured to rectify "the power" output from the power generator. In this context, the skilled person understands that "the power" must be AC power, and the general power generator is implicitly limited to an AC power generator. Hence, no lack of clarity arises. Furthermore, it is noted that a rectifier is not incompatible with a DC or general power generator either.

d) Although it is true that method language in an apparatus claim can sometimes lead to a lack of clarity as to the subject-matter for which protection is sought, that is not the case here. The last two lines of claim 1 state that the power stored in the electric storage element "is supplied" to the controller "to activate" the controller. This definition is provided in a clause starting with "thus", which indicates a conclusion or a consequence of the preceding feature, i.e. the "voltage detector is configured to pass a current to the controller". Accordingly, power "is supplied" as the result of the activity of "passing a current", for which the voltage detector is configured. By the same token, "to activate" defines the purpose and consequence of supplying power. Hence, in their grammatical context, the verbal expressions in the last two lines of claim 1 do not represent "method language" but provide a clear further limitation on the configuration of the apparatus features.

e) Claim 1 specifies that the power supply section comprises a rectifier and a voltage detector in

addition to the electric storage element, and also defines the connections and power flow between these elements. The basis for these features is found in Figure 4 and the corresponding description on page 14, lines 4 to 7 of the application as filed. The respondent submitted that claim 1 contained an unallowable intermediate generalisation because it did not specify the distributed DC conversion disclosed on page 14, lines 9 to 16, in which the rectifier output pulsating power that was converted to DC power by the electric storage element. In the Board's view, these additional features need not be explicitly specified. First, it is well known that a rectifier usually outputs currents flowing in only one direction – by inverting currents flowing in the opposite direction – and thus typically outputs pulsating "power". The inherent smoothing function of electric storage elements is also well known and thus implicit. Second, the generic term "rectifier" is not limited to a diode bridge and could also refer to a device that already includes filters or a voltage regulator and therefore does not output "pulsating power". This implies that the disclosed distribution of the functions of current inversion and smoothing between the rectifier and the electric storage element is not inextricably linked to the specification of a rectifier, electric storage element and voltage detector as disclosed in Figure 4 and incorporated in claim 1. Either way, omitting the more specific features from page 14, lines 9 to 17 does not extend beyond the content of the application as filed.

f) The Board concurs with the unanimous submission from both parties that the formulation "power […] is supplied to the controller to activate the controller" in claim 1 expresses a correspondence or equivalence

between power supply and activation in the sense that the controller is activated in response to power being supplied to it. On page 13, lines 11 to 15 of the application as filed, supplying power "and" activating the controller are referred to as individual actions. Apart from the fact that power must always be available before the controller is activated, this passage does not disclose any correspondence or equivalence in the above-mentioned sense. The same applies to the passage on page 13, lines 17 to 21. Accordingly, the application as filed is not restricted to such correspondence and leaves it open whether the controller is activated by supplying power or whether the activation represents a separate action. However, page 23, lines 32 to 33, discloses that "the controller is activated in response to power supply from the power supply section". In the Board's view, this disclosure does not restrict the application as a whole but represents an optional specification that provides a basis for the expression "supply power to activate" in claim 1.

g) and h) The "thus" clause in claim 1 specifies that "the power stored in the electric storage element is supplied to the controller" as required on page 13, lines 11 to 15. In view of the "thus" clause (see points (a) and (d) above) and the restriction in claim 1 that power supply and activation are equivalent (see point (f) above), power supply and activation are "thus" carried out by the voltage detector (or its configuration). Accordingly, the respondent's objections under points (g) and (h) are unfounded.

3.4 In the written proceedings, the respondent had submitted a number of further objections under Articles 84 and 123(2) EPC against higher-ranking

requests, which were largely addressed in the Board's communication under Article 15(1) RPBA but no longer pursued by the respondent against auxiliary request 4 at the oral proceedings. Hence, these objections are briefly dealt with below merely for the sake of completeness.

3.4.1 Unlike the opposition division (see section II.2.1.1.2 of the decision under appeal), the Board does not consider it necessary to specify the "configuration aspects" described on page 24, lines 7 to 12, according to which (i) "the controller is not activated until the voltage of the electric storage element becomes more than or equal to the prescribed value" and (ii) "there is no need that the controller 26 monitors the charge amount of the electric storage element". The first statement is already expressed in claim 1 of auxiliary request 4, which specifies that, when the voltage condition is met, "thus the power stored in the electric storage element is supplied to the controller to activate the controller". The second statement merely describes an implicit advantage or effect of the first statement and as such need not be explicitly incorporated in claim 1.

3.4.2 The respondent argued that claim 1 extended beyond the content of the application as filed because it did not specify a toilet device associated with the remote control, i.e. a *set* comprising *both*, to which original claim 1 was allegedly directed. Irrespective of the question of admittance and the review of the opposition division's discretionary decision not to admit this objection, the Board does not agree with it. Original claim 1 is not - contrary to its wording - directed to a combination of a remote control device with a toilet device merely due to the mention of a method step in an

apparatus claim ("the controller remotely controlling a toilet device by transmitting a wireless signal"). In the quoted feature of original claim 1, remotely controlling a toilet device is equated with transmitting a wireless signal, and the skilled person thus understands that the method language refers to a corresponding configuration of the controller. Accordingly, original claim 1 specifies a remote control device, not a toilet device, and claim 1 of auxiliary request 4 does not involve an unallowable generalisation of the toilet device. This finding is not changed by the inconsistency in original claims 4 and 7 either, which define details of a toilet device that is not specified in the claims on which these claims depend.

3.4.3 Moreover, the Board does not agree with the objection raised for the first time in the reply to the statement of grounds of appeal that, if it was found that original claim 1 related to a remote control device alone, there was no basis in the original application for a system comprising a toilet device and the remote control device according to claim 2 as granted (corresponding to claim 2 of auxiliary request 4). Although original claim 1 is directed to a remote control device alone (see the previous point), the references to the co-operation with (and control of) a toilet device in claim 1 represent direct and unambiguous original disclosure for a system comprising both.

3.4.4 The Board also does not agree with the respondent's further objections regarding intermediate generalisations in Feature L due to the omission of the following further features of the detailed embodiment

(submitted against claim 1 as granted but still relevant to claim 1 of auxiliary request 4):
- the "toilet device" and the functional link between the operation buttons and functions of the toilet device
- a "microcomputer"
- the further specification that the "prescribed value" is "set depending on the power consumption in the controller" to safeguard "the power necessary for activating the controller" and for "transmitting a wireless signal" even "a plurality of times"

There is no functional or structural link between the internal operations of power storage, power supply and activation of the controller and the fact that the remote control is suitable for controlling a "toilet device". The internal power management is not inextricably linked to the control functions assigned to the operating buttons either. Hence, the interaction with a toilet device and its functions can be omitted without infringing the requirement of Article 123(2) EPC.

As submitted by the appellant, the "microcomputer" 40 is only disclosed as an optional feature ("e.g."; see page 12, third paragraph). It is true that a controller usually has a microcomputer or similar data processing device, but the embodiment is not limited to the specific form of a microcomputer. Therefore, the optional further features referred to in this paragraph need not be incorporated in claim 1.

As the "predetermined value" in claim 1 relates to the voltage, the skilled person understands that it refers to the amount of energy (termed "power" in the application) stored in the electric storage element.

And as the comparison with the predetermined value forms the condition for supplying power and activating the controller, it is implicit that the predetermined value is set such as to achieve "the power necessary for activating the controller" and for all further activities of the controller in the remote control device. The optional transmission of a wireless signal a plurality of times is only one of several factors to be considered when selecting the "prescribed value". It is thus clear that the embodiment in the application as filed is limited neither to the case of multiple transmissions of the wireless signal nor to a specific predetermined value, considering that the value also depends, for example, "on the power consumption in the [unspecified] controller". Accordingly, not further specifying the "predetermined value" neither leads to a lack of clarity nor extends beyond the content of the application as filed.

3.5 Accordingly, the subject-matter of auxiliary request 4 meets the requirements of Articles 84 and 123(2) EPC.

4. Remittal

The appellant requested that the case be remitted to the opposition division for further prosecution because the decision under appeal only dealt with objections under Articles 100(c), 123(2) and 84 EPC and in view of the primary objective of the appeal proceedings under Article 12(2) RPBA. The respondent requested that the case not be remitted to the opposition division, to avoid a "ping-pong" effect between the boards and the departments of first instance and an undue prolongation of the proceedings (see Case Law, V.A.9.1.2). It submitted that no special reasons presented themselves for remitting the case under Article 11 RPBA.

In the Board's view, the objective underlying Article 11 RPBA of concluding proceedings quickly and efficiently must be weighed against the primary objective of the appeal proceedings to review the decision under appeal in a judicial manner, which generally implies a restriction to the matter on which the decision under appeal was based (Article 12(2) RPBA). In the current case, the opposition division explicitly stated in the decision under appeal that it had not formed a final opinion with respect to sufficiency of disclosure, novelty and inventive step. Auxiliary request 4 is a request which meets the requirements of Articles 123(2) and 84 EPC but for which the other issues have not been examined. In view of the primary objective of the appeal proceedings under Article 12(2) RPBA, this should be done in first-instance proceedings. Accordingly, special reasons within the meaning of Article 11 RPBA present themselves, and the Board therefore decided to remit the case to the department of first instance 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:

D. Grundner B. Miller

Decision electronically authenticated