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Datasheet for the decision of 30 April 2026

Case Number: T 1378/23 - 3.4.03

Application Number: 17841135.1

Publication Number: 3503205

IPC: H01L31/00, G05D1/00, H02S20/00, A01D34/00, H02S40/38, H02S50/00

Language of the proceedings: EN

Title of invention:
AUTOMATIC WORKING SYSTEM

Patent Proprietor:
Positec Power Tools (Suzhou) Co., Ltd

Opponent:
Husqvarna AB

Relevant legal provisions:
EPC Art. 100(c), 123(2), 123(3)
RPBA 2020 Art. 12(3), 12(5), 12(4)

Keyword:

Grounds for opposition - claim 1 as granted - added subject-matter (yes)
Amendments - auxiliary requests 1 to 11 - extension beyond the content of the application as filed (yes) - auxiliary request 12 - extension of the protection conferred (yes)
Statement of grounds of appeal - auxiliary requests 13 to 15 - reasons set out clearly and concisely (no)
Late-filed auxiliary requests 16 and 17 - should have been submitted in first-instance proceedings - admitted (no)

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Boards of Appeal

Chambres de recours

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

Case Number: T 1378/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 30 April 2026

Appellant: (Patent Proprietor)	Positec Power Tools (Suzhou) Co., Ltd No. 18 Dongwang Road Industrial Park Suzhou, Jiangsu 215123 (CN)
Representative:	Mishcon de Reya LLP Africa House 70 Kingsway London WC2B 6AH (GB)
Respondent: (Opponent)	Husqvarna AB Drottninggatan 2 561 82 Huskvarna (SE)
Representative:	Schröer, Gernot H. Meissner Bolte Patentanwälte Rechtsanwälte Partnerschaft mbB Bankgasse 3 90402 Nürnberg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 10 May 2023 revoking European patent No. 3503205 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	T. Häusser
Members:	M. Ley
	E. Mille

Summary of Facts and Submissions

I. The appeal is against the decision of the opposition division revoking European patent No. 3 503 205 pursuant to Articles 101(2) and 101(3)(b) EPC.

II. The following documents were filed during the opposition proceedings by the opponent (now: *the respondent*):

D21 Machine translation of WO 2018/033163 A1
D22 Certified translation of WO 2018/033163 A1
D23 Certified translation of the Chinese patent application CN 201610693265, i.e. the priority document of WO 2018/033163 A1
D24 Business license and Certificate of Global Tone Communication Technology Co., Ltd., Certificate of Sun Bing, Translator from Global Tone Communication Technology Co., Ltd.

III. The opposition division held that claim 1 as granted extended beyond the content of the application as originally filed so that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent. Moreover, respective claim 1 of auxiliary requests 1 to 11 did not meet the requirements of Article 123(2) EPC for the same reason.

Auxiliary request 12 did not meet the requirements of Article 123(3) EPC.

Auxiliary request 24 to 26 then on file were admitted into the opposition proceedings, but auxiliary request 24 was found not to comply with the requirements of Article 123(2) EPC and auxiliary requests 25 and 26

were found not to comply with the requirements of Article 123(3) EPC.

IV. The appellant requests that the impugned decision be set aside and the opposition be rejected (i.e. that the patent be maintained as granted).

As an auxiliary measure, the appellant requests that the impugned decision be set aside and a European patent be granted on the basis of one of auxiliary requests 1 to 17, all filed with the statement setting out the grounds of appeal.

With the statement setting out the grounds of appeal, the appellant also submitted the following documents:

E1 Certificate by Jiangsu Sunyu Information Technology Co., Ltd.
E2 Explanation by Liu Yunlong, translator
E3 CV of Liu Yunlong
E4 Business licence of Jiangsu Sunyu Information Technology Co., Ltd.
E5 Explanation by Qiang Li, translator
E6 CV of Qiang Li

V. The respondent requests that the appeal be dismissed.

The respondent also requests not to admit unsubstantiated auxiliary requests 13 to 15, late filed auxiliary requests 16 and 17 and late filed documents E1 to E6 into the appeal proceedings.

With its reply to the statement of the grounds of appeal, the respondent submitted the following documents:

D25 Statement of Jianping Lu
D25a Patent agent's license of Jianping Lu
D25b Education certificate of Jianpin Lu

D26 Statement of Qianqian Han
D26a Patent agent's license of Qianqian Han
D26b Education certificate of Qianqian Han

D27 Statement of Bing Sun
D27a Patent agent's license of Bing Sun
D27b Education certificate of Bing Sun

As requested by the respondent, D25a, D25b, D26a, D26b, D27, D27b were not published in the European patent register.

VI. Claim 1 **as granted** has the following wording (feature labelling according to the impugned decision):

(1a) *An automatic working system (100) comprising a self-moving device, configured to move and work in a working area, wherein:*
(1b) *the self-moving device comprises a housing (3), a moving module, and a control module to control the moving module to actuate the self-moving device to move;*
(1c) *the self-moving device comprises an energy consumption device, wherein the energy consumption device comprises a device that consumes energy for actuating the self-moving device to move and work; and the self-moving device further comprises:*
(1d) *a photoelectric conversion unit (11), wherein the photoelectric conversion unit (11) receives optical energy and converts the received optical energy into electric energy; and*

(1e) *an energy storage unit, configured to store the electric energy obtained by conversion by the photoelectric conversion unit (11),*
(1f) *wherein the self-moving device is configured to operate when effective working electric energy that is received by the energy consumption device from the photoelectric conversion unit (11) and that is converted by the photoelectric conversion unit (11) is greater than or equal to energy consumed by the energy consumption device to actuate the self-moving device to move and work,*
(1g) *wherein the self-moving device further comprises a positioning module, configured to output positioning information of the self-moving device, and*
(1h) *characterized in that the control module receives positioning information at one or more locations of the self-moving device when the self-moving device moves in the working area, receives illumination intensity information at one or more locations of the self-moving device when the self-moving device moves in the working area, and generates an illumination map of the working area based on the received positioning information and illumination intensity information.*

In claim 1 of **auxiliary request 1**, feature (1h) is amended and feature (1i) is added after feature $(1h)_{AR1}$ as follows:

$(1h)_{AR1}$ *wherein the control module receives positioning information at more than one location of the self-moving device when the self-moving device moves in the working area, receives illumination intensity information at more than one location of the self-moving device when the self-moving device moves in the working area, and generates an illumination map of the*

working area based on the received positioning information and illumination intensity information;
(1i) *wherein the control module receives illumination condition information of the working area, formulates or adjusts a working plan of the self-moving device based on the illumination condition information of the working area, and controls the self-moving device to carry out the working plan.*

Claim 1 of **auxiliary request 2** corresponds to claim 1 of auxiliary request 1 with the following additional feature (1j) after feature (1i):

(1j) *wherein the control module records a time period of receiving the positioning information and the corresponding illumination intensity information, and generates the illumination map that is based on time.*

Claim 1 of **auxiliary request 3** corresponds to claim 1 of auxiliary request 2 with the following additional features (1k), (1l) and (1m) after feature (1j):

(1k) *wherein when a voltage of the energy storage unit is less than or equal to a first threshold voltage, the control module controls the self-moving device to stop working until the voltage of the energy storage unit is greater than or equal to a second threshold voltage, and the second threshold voltage is greater than or equal to the first threshold voltage,*
(1l) *such that the working voltage of the energy storage device is stabilized close to the maximum power point voltage of the photoelectric conversion unit, and the output power of the photoelectric conversion unit is stabilized close to a maximum point voltage of the photoelectric conversion unit; and*
(1m) *wherein the energy storage device is a battery*

pack.

Claim 1 of **auxiliary request 4** has features (1a) to (1g), $(1h)_{AR1}$, (1i), (1j), (1k) and the additional feature (1n) after feature (1k):

(1n) *wherein the self-moving device comprises a charging management unit, and the charging management unit comprises a voltage converter; the photoelectric conversion unit (11) has a maximum power point voltage, and the maximum power point voltage is an output voltage of the photoelectric conversion unit (11) when a conversion power of the photoelectric conversion unit (11) reaches a maximum; and the voltage converter is electrically connected between the photoelectric conversion unit (11) and the energy storage unit, to enable the output voltage of the photoelectric conversion unit (11) to be maintained at the maximum power point voltage.*

Claim 1 of **auxiliary request 5** corresponds to claim 1 of auxiliary request 3 with the following additional feature (1o) after feature (1m):

(1o) *wherein the automatic working system is a lawn mower.*

Claim 1 of **auxiliary request 6** corresponds to claim 1 of auxiliary request 4 with feature (1o) after feature (1n).

Claim 1 of **auxiliary request 7** has features (1a) to (1g), $(1h)_{AR1}$ and (1j).

Claim 1 of **auxiliary request 8** has features (1a) to (1g), $(1h)_{AR1}$, (1j), (1k), (1l) and (1m).

Claim 1 of **auxiliary request 9** has features (1a) to (1g), $(1h)_{AR1}$, (1j), (1k) and (1n).

Claim 1 of **auxiliary request 10** corresponds to claim 1 of auxiliary request 8 with feature (1o) after feature (1m).

Claim 1 of **auxiliary request 11** corresponds to claim 1 of auxiliary request 9 with feature (1o) after feature (1n).

Claim 1 of **auxiliary request 12** corresponds to the main request with feature (1h) amended as follows:

$(1h)_{AR12}$ *characterized in that the control module receives positioning information of one or more locations of the self-moving device when the self-moving device moves in the working area, receives illumination intensity information of one or more locations of the self-moving device when the self-moving device moves in the working area, and generates an illumination map of the working area based on the received positioning information and illumination intensity information.*

Claim 1 of **auxiliary request 13** corresponds to claim 1 of auxiliary request 12 with the following additional features (1p), (1q) and (1r) after feature $(1h)_{AR12}$:

(1p) *the self-moving device comprises an illumination intensity detection unit, configured to receive illumination intensity information, and*
(1q) *the control module determines an illumination intensity level at a current location of the self-moving device based on the illumination intensity*

information received by the illumination intensity detection unit; and
(1r) *the self-moving device comprises a charging mode, and when the self-moving device enters the charging mode, the control module determines an illumination intensity level at a current location of the self-moving device, and controls the self-moving device to stay at or moves to a location at which illumination intensity satisfies a preset level to be replenished with electric energy.*

Claim 1 of **auxiliary request 14** corresponds to claim 1 of auxiliary request 12 with the following additional feature (1s) after feature $(1h)_{AR12}$:

(1s) *wherein the self-moving device comprises an illumination sensor, and the illumination intensity information received by the control module is output from the illumination sensor.*

Claim 1 of **auxiliary request 15** corresponds to claim 1 of auxiliary request 12 with feature (1i) after feature $(1h)_{AR12}$ and the following features after feature (1i):

(1t) *wherein the self-moving device comprises an illumination sensor, configured to output illumination intensity information currently received by the self-moving device; and*
(1u) *the illumination condition information of the working area comprises the current illumination intensity information, and*
(1v) *the control module formulates or adjusts the working plan based on the current illumination intensity information.*

Claim 1 of **auxiliary request 16** corresponds to the main

request with feature (1h) amended as follows:

(1h)$_{AR16}$ *characterized in that the control module receives positioning information for one or more locations of the self-moving device when the self-moving device moves in the working area, receives illumination intensity information for one or more locations of the self-moving device when the self-moving device moves in the working area, and generates an illumination map of the working area based on the received positioning information and illumination intensity information.*

Claim 1 of **auxiliary request 17** corresponds to the main request with feature (1h) amended as follows:

(1h)$_{AR17}$ *characterized in that the control module receives positioning information corresponding to one or more locations of the self-moving device when the self-moving device moves in the working area, receives illumination intensity information corresponding to one or more locations of the self-moving device when the self-moving device moves in the working area, and generates an illumination map of the working area based on the received positioning information and illumination intensity information.*

VII. The **appellant** mainly argued that claim 1 as granted was a combination of claim 1, 11 and 12 of the international application as originally filed and that the wording of feature (1h) was a correct translation from Chinese of claim 12 of said international application.

Feature (1h)$_{AR12}$ in claim 1 of auxiliary request 12 was not an amendment that extended the protection of the

opposed patent so that the requirements of Article 123(3) EPC were met.

Auxiliary requests 16 and 17 should be taken into account in the appeal proceeding and only contained clarifications.

The **respondent** argued essentially that the decision under appeal was correct.

Reasons for the Decision

1. Procedural issues

In preparation for the oral proceedings the board issued its preliminary opinion on the case. The board was of the preliminary view there were issues under Article 123(2) EPC for the main request and auxiliary requests 1 to 11, that there were issues under Article 123(3) EPC for auxiliary request 12 and that auxiliary requests 13 to 17 were not to be admitted into the appeal proceedings.

The appellant replied by withdrawing its request for oral proceedings and by declaring that it would not attend the oral proceedings.

As the appellant chose not to comment on the preliminary opinion issued by the board in preparation of the oral proceedings and as it withdrew its request for oral proceedings, the board does not see any reason to deviate from its preliminary opinion and concludes that the case is ready for decision. The oral proceedings were thus cancelled by the board.

2. The invention relates to an automatic working system such as a lawn mower, and, particularly, to a solar-powered automatic working system.

Automatic mowers can automatically mow and be charged in lawns of users by a fixed charging station nearby a working area. When an automatic mower has low battery power, it automatically returns to the charging station to be replenished with electric energy, see paragraph [0002] of the opposed patent. Conventional solar-powered mowers were also known, see paragraphs [0003] and [0004] of the opposed patent.

According to the invention, a control module of the self-moving device receives positioning information and illumination intensity information and generates an illumination maps based thereon.

Although not explicitly claimed in claim 1, when the self-moving device enters the charging mode, the control module controls the self-moving device to move, based on the illumination map, to a location at which illumination intensity satisfies a preset level to be replenished with electric energy, see paragraphs [0021] or [0155] of the opposed patent.

3. Admission of documents E1 to E6, D25 to D27b

3.1 The respondent requested not to admit documents E1 to E6 into the appeal proceedings as they should have been filed during the opposition proceedings.

The issue of added subject-matter in relation of the prepositions "of" and "at" had already been raised on page 13 of the notice of opposition. It was discussed in point 4.5 of the opposition division's preliminary

opinion, which was in favour of the appellant's position. In the respondent's view, the appellant should have expected that further evidence might be filed and that the opposition division might change their view. More than two months prior to the oral proceedings, the respondent provided documents D21 and D22.

According to the respondent, the appellant should have filed E1 to E6 instead of ignoring the issue until the opposition division declared during oral proceedings that granted claim 1 contained added subject-matter.

3.2 For the board, documents E1 to E6 constitute an appropriate reaction to the opposition division's position taken during the oral proceedings after the respondent filed documents D21 to D22. In any case, they only support the appellant's position that a correct translation of the Chinese international application was filed with the entry into the regional phase before the EPO.

Documents E1 to E6 as well as documents D25 to D27b (filed by the respondent) are admitted into the appeal proceedings (Article 12(4) RPBA).

4. Main request - Article 100(c) EPC

4.1 The application was initially filed as international application PCT/CN2017/098364 in Chinese, which was published as WO 2018/033163 A1.

The application entered the regional phase before the EPO as EP 17 841 135. A translation into English was filed and was published as EP 3 503 205 A1 in accordance with Article 153(4) EPC.

It is undisputed that claim 1 corresponds to a combination of claims 1, 11 and 12 of the set of translated claims filed with entry into the regional phase before the EPO, with the exception that the term "wherein the self-moving device is configured to operate" had been added at the beginning of feature (1f).

It is also undisputed that the term "application as filed" in Articles 100(c) and 123(2) EPC refers to the international application in Chinese, see also the Case Law of the Boards of Appeal, 11th Edition, 2025, II.E. 1.2.3, third paragraph.

4.2 According to the appellant, granted claim 1 was a combination of claims 1, 11 and 12 of the internal application PCT/CN2017/098364 as originally filed in Chinese. The appellant argued that the wordings "the control module receives positioning information at one or more locations of the self-moving device" and "receives illumination intensity information at one or more locations of the self-moving device" in feature (1h) were correct translations of the Chinese text of claim 12 of the international application. In particular, the term "at" was a correct translation of the Chinese symbol 的.

The appellant disagreed with the opposition division in that document D22 was the most accurate translation of the international application; D22 using the terms "positioning information of one or more locations of the self-moving device" and "illumination intensity information of one or more locations of the self-moving device".

The proposition "of" clearly qualified the information, leaving it open "as where to where" that information was received. "of" could grammatically not qualify the receiving. The preposition "at" could be interpreted grammatically as qualifying either the receiving or the information, i.e. the positions in space might be "a property of where" the act of receiving occurred or "a property" of the information itself. The opposition division was not correct when taking the view that "at" necessarily qualified the receiving.

In the context of generating an illumination map of a working area based on received positioning information and illumination intensity information, a map was a representation of some information/data in a physical space, i.e. it tied some information/data to positions, see also point 2.2 of the Reasons of the impugned decision. Hence, in this context, the term "at" (like the preposition "of") must qualify the information rather than the "receiving". Otherwise, there was no link between the information and the location and possibility of generating a map.

Understanding the preposition "at" to qualify the receiving would lead to a nonsensical reading in which the self-moving device must move around the working area in order to receive positioning and illumination information from otherwise arbitrary other locations.

Hence, for the appellant, it made no difference between using "at" or "of" in claim 1, both being equivalent to "associated with" or "corresponding to". At most there would be a lack of clarity between two possible interpretations of "at" ("receiving at" or "information at"), but clarity was not a ground for opposition.

This view was further supported by documents E1 to E3 from the translation company and the translator having provided the translation into English of the claims of the international application on entry of the regional phase before the EPO, and by documents E4 to E6 of a second translation company not involved in the initial translation in question.

According to E2, the Chinese proposition "的" could be translated differently depending on the context. The term qualified the preceding term "positioning information". It was also identified that this related to the noted information at the location, a certain locating having corresponding coordinate information. The use of "at" or "of" had no impact on the meaning in the given context. "Illumination intensity information of one ore more locations" was less preferred as a translation, because a certain location could not have "its own light". Using terms such as "corresponding to" or "relates to" were considered unnecessary, while both were appropriate translations.

According to E5, while "at" or "or" were possible translations of said Chinese preposition, the term "at" was preferred, because there were no illumination information "of a location".

In other words, the English text of claim 12 as filed was a correct translation of the original Chinese text so that there was no issue with Article 100(c) EPC.

4.3 The respondent agreed with the opposition division that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent as granted.

D21 and D22 showed that the terms "positioning information of one or more locations of the self-moving device" and "illumination intensity information of one or more locations of the self-moving device" were the correct translations of the Chinese text.

This view was confirmed by the statements in documents D25 to D27. When the words before and after the character "的" were both nouns, the noun after said character (e.g. "one or more locations") belonged to the noun before it (e.g. "positioning information"). Said character must qualify the information, and not the "receiving" and meant e.g. the positioning information "belonging to" one or more locations of the self-moving device. Hence, "at" was an incorrect translation, as evidenced by D21, D22, D24 to D27.

The meaning of the wording to claim 1 as granted was different, with the term "at" qualifying the receiving, see also items 4.3.6 to 4.3.12 of the Reasons of the impugned decision.

For the respondent, it is claimed in claim 1 as granted where any positioning information and illumination/ light intensity information is received and not whether said information is "of said one or more locations", contrary of claim 1 of the international application as originally filed.

The difference of the meaning of "at" and "of" was further illustrated by extracts of online dictionaries, see pages 13 to 15 of the reply to the grounds of appeal. The preposition "at" defined where an action (e.g. receiving of information) happened, qualified the "receiving", i.e. the place of receiving the information" and could not refer to the information

itself. Moreover, in paragraphs [0005], [0018], [0021], [0152] and [0153] of the opposed patent, the term "at" qualified the receiving.

Paragraph [0152] also disclosed the link between positioning information and corresponding illumination intensity information.

Hence, for the respondent, the terms "at" and "of" did not have the same meaning and the content of claim 12 as originally filed in Chinese was not reflected in feature (1h) of granted claim 1 so that there was an issue with added subject-matter.

4.4 The board agrees with the opposition division and the respondent that the subject-matter of claim 1 of the opposed patent extends beyond the content of the application as filed.

An "illumination map" is information about the working area (e.g. a graphical representation of the working area) with one or more locations within the working area and their associated illumination intensity.

Both parties agree that the generation of an illumination map according to claim 12 of the international application as originally filed requires that position information (e.g. coordinates) and illumination or light intensity information associated with the same location(s) within the working area are to be provided to the control module.

When the self-moving device (e.g. a mower) moves within the working area (e.g. a lawn) to a first place, positioning information are acquired (e.g. by using a satellite positioning signal, see paragraphs [0119],

[0151] of the patent specification). At the same first place, illumination intensity information are acquired (e.g. by using the photoelectric conversion unit or by estimating the strength of said satellite positioning signal, see paragraphs [0095], [0142], [0152]). When the self-moving device then moves within the working area to a second place, the same operations are repeated. To generate an "illumination map", said information collected at the first, second and possibly further locations are received by the control module.

The board agrees with the opposition division that the skilled person would understand that generating an "illumination map" requires that positioning information and illumination intensity information related to a same geographic location are necessary. As argued by the respondent, this aspect is not necessarily explicitly stated in the wording of claim 1 and a more specific formulation might have been desirable. However, the board accepts that the skilled person would understand that, when the self-moving device moves in the working are, positioning information and illumination information are acquired at a same position of the self-moving device and provided to the control module for generating said illumination map.

The appellant mainly argued that the wording of feature (1h) reflected this teaching of claim 12 of the application as originally filed, because the expression "at one or more locations" did not relate to the step of receiving information, i.e. to the place where the information was *received* by the control module, but to the place where the (positioning/illumination intensity) *information* was collected.

The board disagrees. A skilled person would understand from the English text of feature (1h) or of claim 12 as filed with entry into the regional phase before the EPO that the step of *receiving* the positioning information and the illumination intensity information are performed at "one or more locations", while the said information were not necessarily acquired or collected at said location. Hence, the term "at" specifies where positioning and illumination intensity information were received by the control module, but not that the respective pieces of information correspond to those locations, i.e. were collected at those locations.

Hence, the term "at" used in feature (1h) is not equivalent to "of", "for", "corresponding to", "belonging to" or "associated with", etc. Insofar, the board agrees with the respondent that the wording of feature (1h) does not correspond to the wording of claim 12 of the international application as originally filed in Chinese and introduces subject-matter going beyond said application as originally filed. The application as a whole does not specify at which place the information is received by the control module.

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

5. Auxiliary requests 1 to 11 - Article 123(2) EPC

Auxiliary requests 1 to 11 correspond to auxiliary requests 1 to 11 filed during the opposition proceedings. Respective claim 1 of auxiliary requests 1 to 11 contains feature $(1h)_{AR1}$, which is essentially equivalent to feature (1h). Hence, for the same reasons as for the main request the claimed subject matter of

auxiliary requests 1 to 11 extends beyond the content of the international application as originally filed so that the requirements of Article 123(2) EPC are not met.

The appellant did not provide any specific arguments in that respect.

6. Auxiliary request 12 - Article 123(3) EPC

6.1 Auxiliary request 12 corresponds to auxiliary request 12 filed during the opposition proceedings.

In claim 1 of auxiliary request 12, feature (1h) has been replaced by feature $(1h)_{AR12}$ and thus modified in accordance with the translation provided in document D22.

It is undisputed that the requirements of Article 123(2) EPC are met, as claim 1 is a combination of claims 1, 11 and 12 of the application as originally filed in Chinese.

6.2 The appellant argued that the term "at" used in granted claim 1 might be considered ambiguous, but it already encompassed the meaning that the "positioning information" and the "illumination intensity information" were "of the one or more locations", because claim 1 as granted covered two options: "1) feature of receiving at the location" and "2) the information being at the location". The amendments made were not more than a clarification.

Thus, being restricted to the second option, claim 1 of auxiliary request 12 had a narrower scope so that there

was no issue with Article 123(3) EPC.

6.3 Contrary to the appellant, the board is of the view that the amendments made to claim 1 extend the protection the patent confers, because the wording of claim 1 leaves it open where the control module receives the positioning information and the illumination intensity information.

As pointed out before, the board considered that the wording of feature (1h) of claim 1 as granted is not ambiguous, but has a meaning different from claim 12 of the international application as originally filed. The amendments made to claim 1 of auxiliary request 12 are therefore not merely a clarification, but shift the scope of claim 1.

Insofar, board agrees with the opposition division and the respondent that the amendments of auxiliary request 12 extend the protection conferred by the patent contrary to the requirements of Article 123(3) EPC.

7. Auxiliary requests 13 to 15 - admittance under Article 12(3) and (5) RPBA

Auxiliary requests 13 to 15 correspond to auxiliary requests 24 to 26 filed during the opposition proceedings. The opposition division held that claim 1 of former auxiliary request 24 (present auxiliary request 13) did not comply with the requirements of Articles 123(2) EPC, that claim 1 of former auxiliary requests 25 and 26 (present auxiliary requests 14 and 15) did not comply with the requirements of Article 123(3) EPC, see points 11.3, 14.3, 17.3 of the Reasons of the decision under appeal.

The appellant did not provide any specific arguments why the opposition division's decision regarding these requests should be overturned.

Hence, the board takes the respondent's view that these unsubstantiated requests are not to be admitted into the appeal proceedings under Article 12(3) and (5) RPBA.

8. Auxiliary requests 16 to 17 - admittance under Article 12(4) RPBA

8.1 Auxiliary requests 16 and 17 were filed for the first time with the statement setting out the grounds of appeal.

8.2 The appellant submitted that auxiliary requests 16 and 17 should be admitted into the appeal proceedings because the appellant only became "aware of the subtlety of the preposition language when obtaining extra evidence", and therefore could not have introduced these requests earlier. There would be no additional burden on the board, because they were substantially the same as auxiliary request 12.
The appellant argued that the amendments made to claim 1 of auxiliary requests 16 and 17 were not more than a clarification. Thus, respective claim 1 of auxiliary requests 16 and 17 had a narrower scope so that there was no issue with Article 123(3) EPC.

8.3 The board agrees with the respondent that auxiliary requests 16 and 17 should not be admitted into the appeal proceedings (Article 12(4) RPBA). The appellant should have filed auxiliary requests 16 and 17 in response to the opposition division's conclusions regarding the translation of the Chinese text.

In any case, if both auxiliary requests were "substantially the same as auxiliary request 12", as argued by the appellant, they are not suitable for addressing the objection under Article 123(3) EPC.

9. As no allowable and admissible request is on file, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

S. Sánchez Chiquero T. Häusser

Decision electronically authenticated