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**Datasheet for the decision
of 16 December 2025**

Case Number: T 0116/24 - 3.2.02

Application Number: 14161383.6

Publication Number: 2783972

IPC: B62M6/55, B62M11/02

Language of the proceedings: EN

Title of invention:

Driving unit and electric assist bicycle

Patent Proprietor:

Yamaha Hatsudoki Kabushiki Kaisha

Opponent:

Höhfeld, Jochen

Headword:

Relevant legal provisions:

EPC Art. 54, 56

RPBA 2020 Art. 12(6)

Keyword:

Novelty - (yes)

Inventive step - (yes)

Late-filed objection - should have been submitted in first-
instance proceedings (yes) - admitted (no)

Decisions cited:

Catchword:



Beschwerdekammern
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Case Number: T 0116/24 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 16 December 2025

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 November 2023 concerning maintenance of the
European Patent No. 2783972 in amended form.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: T. Rosenblatt
S. Ruhwinkel

Summary of Facts and Submissions

- I. The appellant (opponent) filed an appeal against the interlocutory decision of the opposition division finding that European patent No. 2 783 972 in amended form as according to auxiliary request 1 met the requirements of the EPC.
- II. The parties were summoned to oral proceedings before the Board of Appeal. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the parties were informed of the Board's provisional opinion. The content of that communication will also be referred to in the following as the "provisional opinion" of the Board.
- III. Oral proceedings before the Board were held on 16 December 2025.
- IV. The appellant requested that the decision under appeal be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed, i.e. that the patent be maintained in the form found allowable by the opposition division based on the then pending auxiliary request 1 (the present main request), or, in the alternative, that the patent be maintained according to one of auxiliary requests 2 to 8 submitted with the reply to the statement of grounds of appeal.

- V. Independent claim 1 according to auxiliary request 1, i.e. the request found allowable in the impugned decision, reads as follows (with feature numbering in square brackets as according to pages 2 and 3 of the

decision). This claim wording will also be referred to in the following as "the amended claim 1 of the patent".

"[1.1] A driving unit for use in an electric assist bicycle, comprising:

a housing (52)
a crankshaft (54) positioned to extend through the housing (52);
a motor (60) located within the housing (52); and
a transmission shaft (82) located within the housing (52) and extending parallel to a central axis (L1) of the crankshaft (54),

[1.2] the motor (60) including:

a rotor (72);
an output shaft (74) configured to rotate together with the rotor (72) and extending parallel to the central axis (L1) of the crankshaft (54); and
an output gear (76) located on the output shaft (74),

[1.3] the driving unit further comprising:

a first transmission gear (84) located on the transmission shaft (82) and configured to engage the output gear (76), the first transmission gear (84) including more cogs than the output gear (76) does;
a second transmission gear (86) located on the transmission shaft (82); and
a driven gear (104) positioned within the housing (52), located on the crankshaft (54) and configured to engage the second transmission gear (86), the driven gear (104) including more cogs than the second transmission gear (86) does,
wherein,

[1.4] if out of the motor (60), first transmission gear (84) and driven gear (104), a first component (104) is

a component with the largest diameter as viewed in an axial direction of the crankshaft (54), a second component (60) is a component with the second largest diameter, and a third component (84) is a component with the smallest diameter,

[1.5] one of the first and second components is the driven gear (104), as viewed in an axial direction of the crankshaft (54), at least part of the first component (104) overlaps the second component (60), at least part of the third component (84) overlaps an area where the first and second components (104,30)

overlap, [1.6] a first line segment (S1) connecting a rotational center (C1) of the first component (104) with a rotational center (C2) of the second component (60), a second line segment (S2) connecting the rotational center (C2) of the second component (60) with a rotational center (C3) of the third component (84), and a third line segment (S3) connecting the rotational center (C3) of the third component (84) with the rotational center (C1) of the first component (104) form a triangle, and

[1.7] the first line segment (S1) is longer than the second line segment (S2) and longer than the third line segment (S3),

[1.8] the second transmission gear (86) being positioned within the housing (52), wherein

[1.9] the first component is the driven gear (104)."

The wording of the amended claim 1 of each of auxiliary requests 2 to 8 is not relevant for the present decision.

VI. The parties referred, *inter alia*, to the following documents.

D1: EP 2 143 628 A1

D3/D3a: CN 2300584 Y and an English machine translation thereof

D4/D4a: JPH 11-227666 and an English machine translation thereof

D5/D5a: JPH 10-250673 and an English machine translation thereof

D7: US 2003/074985 A1

VII. The arguments of the appellant can be summarised as follows.

Novelty

Claim 1 lacked novelty over D1. Contrary to the findings in the impugned decision, features 1.1, 1.3 and 1.8 were already known from D1.

Claim 1 did not exclude the possibility that the housing could be composed of several components, as was the case in the preferred embodiment in the patent. In D1, the drive housing 13 and the shaft housing 52 were joined to or formed integrally with the common base 50, and together they formed a housing (13, 50, 52). D1 thus disclosed the partial feature of feature 1.1 according to which the crankshaft was positioned to extend through the housing. This was also acknowledged by the proprietor, since paragraph 1 of the patent stated that the features in the preamble of granted claim 1, which included features 1.1 and 1.3, were already known from D1.

Feature 1.8 of claim 1 was disclosed by claim 8 of D1, which defined that at least part of the gear mechanism was accommodated in the housing. The skilled person would have understood that in a modification of the embodiment of Figures 3a and 3b of D1, the entire gear

mechanism, including its third gear corresponding to the second transmission gear of claim 1, would also be located in said housing.

Claim 1 did not exclude the possibility that the driven gear could be positioned only partially within the housing, since some parts of the driven gear extended outside of the housing according to the preferred embodiment disclosed in the patent. Figure 3b of D1 showed that the assist-gear 30, which corresponded to the driven gear of claim 1, at least in its upper part, in the area of the saddle tube of the bicycle frame and in the region where it meshed with the second transmission gear 45, was positioned within the housing 13, 52, 50, thereby also disclosing the respective partial feature of feature 1.3 of claim 1.

Inventive step

The opposed patent did not specify any technical effect to be achieved by the partial features of features 1.3 and 1.8. The only effect which could be attributed to these partial features could be seen as the protection of these gears from external influences such as dirt. Thus, the technical problem was to protect the driven gear and/or the second transmission gear from external influences such as dirt.

Claim 8 of D1 already contained a pointer to also locate at least the second transmission gear in the housing. Furthermore, it was common general knowledge in the field of driving units for electric-assist bicycles at the time of priority of the opposed patent to position components of the driving unit in a housing to protect them from dirt. It would thus have been obvious to the skilled person to position the assist-

(driven) gear 30 and/or the second transmission gear 45 of D1 in the housing 13, 52, 50 that is already present, for example by simply enlarging it axially in the direction of said gears. Since the shaft housing 52, the drive housing 13 and the common base 50 of D1 together formed the housing of D1 in which the crankshaft 4 and the other components were located, the skilled person would necessarily have realised feature 1.1.

D3 also provided the skilled person with a hint to solve the identified technical problem as according to the feature combination of claim 1, since this document disclosed a driving unit which was very similar to the one of D1, in which all corresponding components were located in a single housing. Contrary to the reasoning set out in the impugned decision, the driving unit of D1 would not have to be changed entirely to place all the components in a common housing. This could in fact be accomplished easily and without major modifications to the driving unit, for example by (slightly) enlarging the housing shown in Figure 3 of D1. Such a modification of the housing would not affect the manner of attachment of the driving unit to a bicycle body frame as shown in Figure 4 of D1, either.

Similar considerations applied in regard to a combination of D1 with D4 or D5.

Furthermore, claim 1 lacked an inventive step when starting from D3 or D7 as the closest prior art. These objections should be admitted into the appeal proceedings.

In its interlocutory decision, the opposition division did not comment on whether claim 1 of auxiliary

request 1 involved an inventive step starting from D3. However, in its communication enclosed with the summons to oral proceedings, the opposition division set out its preliminary opinion that claim 1 of auxiliary requests 1 to 3 lacked novelty. Under these circumstances, it was not necessary for the opponent to raise any inventive-step objections based on D3 in the written proceedings. Moreover, an inventive-step objection had already been raised in the notice of opposition against granted claim 2. During the oral proceedings before the opposition division, the opponent was not given an opportunity to argue on inventive step starting from D3. The minutes did not correctly reproduce the course of the oral proceedings, at least to the extent that the questions by the chair of the opposition division to the opponent as to whether he had further arguments to present were understood by the opponent to relate to further arguments based on D1 as the closest prior art, rather than to different attacks based on other closest prior-art documents.

As to the objections starting from D7 as the closest prior art, this document was mentioned in the European Search Opinion, and reference was made to it in the notice of opposition and also in the appeal grounds in the objection against claim 1 of auxiliary request 1.

VIII. The arguments of the respondent can be summarised as follows.

Novelty

The findings of the opposition division on the novelty of claim 1 over D1 should be confirmed. Claim 1 specified that the various components were located

within, or extended through, a single, unified housing. The fact that the housing according to the embodiment of the patent consisted of several joined parts did not contradict this understanding since these parts were structurally joined to form a single continuous enclosure. In contrast, D1 disclosed a drive housing 13 that was separate and distinct from the shaft housing 52; these did not form a singular housing.

There was no suggestion in claim 1 or anywhere else in the patent that the driven gear could only be partially contained within a housing. In D1, the second transmission gear was not located in a housing at all. Claim 8 underscored the fact that not all of the components of the gear mechanism were inside the housing. Claim 8 thus related to the embodiment illustrated in Figures 3a and 3b of D1, in which the third gear of the gear mechanism was outside the housing, see also paragraph 27 of D1. The alternative considered by the appellant, implied by the wording of claim 8, according to which the entire gear mechanism could be accommodated in the housing, did not correspond to this embodiment. Furthermore, the assist-gear was not part of the gear mechanism and was therefore not encompassed by claim 8 in any case. The features shown in Figure 3b in proximity to the assist-gear could not form a housing. The presence of the pins 123 which joined the assist-gear in D1 to the sprocket contradicted the possibility of enclosing the assist-gear within a housing.

Inventive step

D1 related to a conversion kit designed for the attachment of an electric driving unit to an existing bicycle. The crankshaft thus remained a part of the

bicycle's original framework and was not integrated into a new housing unit. Enclosing D1's driving unit components within a single housing involved substantial, non-trivial engineering challenges. Moreover, a combination of the teachings of D1 and D3 could not obviously lead to claim 1 since such an integration was not technically feasible and would have required a substantial redesign. For example, integrating the separate crankshaft housing into the drive housing of D1 to form a single housing as disclosed by D3 would contradict the conversion-kit philosophy of D1. Similarly, a combination of D1 and D4 could not lead to the subject-matter of claim 1 either, since D4 disclosed at least two structurally independent housings. All these combinations starting from D1 would require a complete redesign rather than an obvious aggregation.

The objections starting from D3 or D7 as the closest prior art should not be admitted pursuant to Article 12(4) and (6) RPBA. Inventive-step objections based on D3 as the closest prior art had not been raised in the opposition proceedings and since they were raised for the first time in the appellant's appeal grounds, they constituted an amendment of its appeal case. The objections based on D7 were raised for the first time in the appellant's letter dated 27 January 2025. The appellant's reference to the notice of opposition, which only mentioned objections made by an examiner in the European Search Opinion against the dependent claims of the application, could not amount to raising a corresponding objection based on D7. Admitting the objections based on documents D3 and D7 would be contrary to a review of the decision under appeal.

Reasons for the Decision

Background of the invention

Amended claim 1 of the patent in suit is directed to a driving unit intended to be used in an electric assist bicycle, colloquially known as an e-bike. The driving unit comprises an electrical motor and several geared components, arranged or located in a housing. The geared components transmit the mechanical power generated by the motor to the sprocket. The sprocket is located on the bicycle's crankshaft, which extends through the housing in which the motor and the geared components are located. The claim specifies a particular geometrical arrangement of all the geared components involved in the transmission of power from the motor's output shaft to the crankshaft carrying the sprocket.

Article 54 EPC

1. The Board agrees with the findings of the opposition division in the impugned decision that the subject-matter of amended claim 1 of the patent is new over D1 (Article 54(1) and (2) EPC).
- 1.1 The appellant notably contested the opposition division's conclusion that D1 does not disclose partial features of features 1.1, 1.3 and 1.8 of claim 1. However, the Board is not convinced by the appellant's arguments, for the reasons given below.
- 1.2 Document D1 discloses in Figures 3a and 3b an embodiment of a driving unit for use in an electric

assist bicycle. This known driving unit comprises, *inter alia*, a drive shaft (4) corresponding to the crankshaft referred to in feature 1.1 of claim 1. An assist-gear (30), which can be identified with the driven gear referred to in feature 1.3 of claim 1, can be considered to be located on the drive shaft (4). The drive shaft extends through a shaft housing (52). The shaft housing may be installed in a shaft aperture in the body frame of a bicycle (D1, column 7, lines 19 to 21). According to column 7, lines 23 to 24 of D1, the shaft housing is joined to or formed integrally with a common base (50). Also joined to or formed integrally with said common base is a drive housing (13), which covers an electric motor (37). The drive housing further covers a first and a second gear (38,42) of a gear mechanism (40), see column 7, lines 9 to 13, of D1. The gear mechanism transmits mechanical power between the motor's output shaft (37a) and the assist-gear (30), i.e. the driven gear according to claim 1. Besides the two aforementioned gears (38,42), the gear mechanism also comprises a third gear (45) which engages the assist-gear (30), see paragraph 25 of D1, and which can be identified with the second transmission gear referred to in features 1.3 and 1.8 of claim 1. Figure 3b of D1 shows the third gear (45), i.e. the second transmission gear of features 1.3 and 1.8 of claim 1, as lying outside the drive housing, as also acknowledged by the appellant in its coloured reproduction of Figure 3b, for example, at the top of page 14 of its appeal grounds.

1.3 The case hinges notably on two issues:

- (a) whether the structure established by the shaft housing (52) and the drive housing (13) together with the common base (50) and some additional components identified by (unresolved) reference

signs 54 and 76 in Figure 3b of D1 would be understood by the skilled person as constituting a housing through which the crankshaft extends and which also accommodates, *inter alia*, the motor according to feature 1.1 of amended claim 1; and (b) whether the skilled person would consider D1 to disclose a drive unit in which, in addition to all the other features of claim 1, the driven gear and the second transmission gear are located in a housing as required by features 1.1, 1.3 and 1.8 in combination.

1.4 With respect to the first issue in point 1.3(a) above, the Board explained in point 4.3 of its provisional opinion that claim 1 defines "a housing" in feature 1.1 and refers subsequently only to "the housing". The Board thus agrees with the respondent that the skilled person would consider said housing to refer to a single continuous enclosure accommodating all of the features referred to in claim 1 as being located or positioned therein or extending therethrough, contrary to the case in D1. There is no indication in the claim or in the remaining parts of the patent that the term "housing" should be understood as covering structures having distinct housings or compartments. As pointed out by the appellant, the fact that a housing may be formed of different structural elements, such as components 52R, 52L and cover 77, does not preclude such an understanding.

In the oral proceedings before the Board, the appellant did not submit further arguments on this aspect.

The Board does not agree with the appellant's written argument according to which the driven gear's position within the housing has to be considered disclosed in D1

since paragraph 1 of the patent in suit stated that the features in the preamble of claim 1 are known from D1. As already indicated by the opposition division in section 8.1.1.2 of the impugned decision, the assessment of novelty cannot depend on the question of whether a certain feature is correctly or incorrectly listed in the preamble or characterising portion of a claim or whether it is stated so in the description; it only depends on what the person skilled in the art would directly and unambiguously derive from the prior art in question. Whether or not the relevant features of a claim are indeed disclosed in combination with its remaining features in a particular piece of prior art must be assessed by the competent body of the EPO, in this case by the Board, on its own and independently of the findings in other, preceding proceedings.

As a consequence, the Board agrees with the opposition division and the respondent that the aspect or partial feature of feature 1.1 of claim 1 concerning the location of the motor (37) of the known driving unit in the same housing through which the crankshaft also extends is not disclosed in D1.

1.5 With respect to the second issue set out in point 1.3(b) above, the Board hereby confirms its preliminary opinion that D1 does not disclose the partial features of features 1.3 and 1.8 concerning the positioning of the driven gear (assist-gear 30 in Figure 3b of D1) and the second transmission gear (third gear 45 of the gear mechanism of Figure 3b of D1) relative to the housing portions (13, 52).

1.5.1 In point 4.4.2 of its provisional opinion, the Board stated the following.

"As regards the components identified by the appellant in the coloured drawing based on Figure 3b on top of page 8 of its letter dated 27 January 2025, notably the pink and light blue components adjacent the green assist gear 30 (corresponding to the driven gear according to claim 1), the Board is not convinced that a housing of such gear could be directly and unambiguously derived from this drawing, let alone that such housing would also house (enclose) the other gears specified in claim 1. Therefore feature 1.3 is not disclosed in D1 to the extent that it is required that the driven gear is positioned in the housing in which the motor is located according feature 1.1".

During the oral proceedings, the appellant did not submit any further comments on this aspect. The Board sees no reason to deviate from its provisional opinion in this regard, which is hereby confirmed.

1.5.2 The appellant argued that feature 1.8 was disclosed in claim 8 of D1.

Claim 8 of D1 recites merely that *"said electromotive power output means and at least a part of said gear mechanism are accommodated in a housing"*. Accordingly, while it is true that a hypothetical embodiment comprising feature 1.8 would fall within the scope of claim 8, such a hypothetical embodiment cannot be considered to be directly and unambiguously disclosed by claim 8 of D1. In any event, said hypothetical embodiment would still fail to disclose all the other features of present claim 1. Indeed, this hypothetical embodiment would relate to a different embodiment than the one shown in Figures 3a and 3b on which the

appellant's novelty objection with regard to all the other features of claim 1 is based. The embodiment of Figure 3b shows the third gear 45 of the gear mechanism 40 outside the drive housing 13. The third gear 45 of D1 corresponds to the second transmission gear according to feature 1.3 of claim 1, and therefore does not satisfy the requirement of feature 1.8. The hypothetical embodiment comprising feature 1.8, based on claim 8, would still fail to disclose the assist-gear, which is not a part of the gear mechanism according to claim 8 and which corresponds to the driven gear according to feature 1.3, as being located in the same housing.

- 1.6 In summary, the Board considers the subject-matter of claim 1 to be new over D1 because features 1.1, 1.3 and 1.8 are not disclosed in D1 to the extent discussed above.

Article 56 EPC

2. The Board also concurs with the conclusion of the opposition division that the subject-matter of the amended claim 1 of the patent involves an inventive step over the prior art on file (Article 56 EPC).
- 2.1 It is common ground that the driving unit disclosed in Figures 3a and 3b of D1 can be considered a suitable starting point for the assessment of inventive step of amended claim 1 of the patent in suit.
- 2.1.1 Based on the established distinguishing aspects or partial features of features 1.1, 1.3 and 1.8 of claim 1 as compared with the closest prior art D1, it is necessary to determine the technical effect(s) attributed to these features and to formulate a

corresponding objective technical problem.

2.1.2 The appellant argued that the technical problem was to protect the driven gear and/or the second transmission gear from external influences such as dirt. He failed to explain, however, why this problem would prompt the person skilled in the art to position the motor of the driving unit in the same housing through which the crankshaft also extends, as prescribed by feature 1.1. Indeed, as pointed out by the respondent, this would contradict the principles of D1, which concerns a conversion kit to be placed on an existing bicycle. An existing bicycle has the commonly known frame design in which the crankshaft is anchored in a corresponding opening in the frame, as shown in the drawings of D1. This means that the other components together with the crankshaft could not be forced into such a single enclosure without a complete redesign of the existing frame interface (cf. page 7 of the respondent's letter dated 14 July 2025). Hence, the attack in view of D1 in combination with common general knowledge fails for this reason alone.

2.1.3 Moreover, and disregarding for the sake of argument the appellant's failure to consider the further distinguishing feature, feature 1.1, in its argument on obviousness, the Board is not convinced that the combination of the remaining claimed features could be derived from common general knowledge. Starting from the driving unit known from D1 and faced with the technical problem identified by the appellant of protecting the assist-gear 30 and the gear 45 from external influences such as dirt, the Board cannot see how the skilled person would, "simply by enlarging the housing 13,52,50" axially to the left in Figure 3b of D1, enclose the assist-gear 30 in such a housing

without further modification of the entire structure. The assist-gear 30 is coupled to the sprocket 2 by pins 123, which would preclude its enclosure in this form in a common housing. Enclosing the assist-gear 30 would therefore contradict a "simple enlargement" of the existing housing and would involve considerations exceeding common practice.

As regards a combination with D3, the Board is not convinced that the claimed feature combination would result in an obvious manner when starting from the driving unit according to D1. Even if the skilled person were to recognise that a design according to D3 could protect the components of the driving unit from external influences, which, however, is not mentioned anywhere in D3, the skilled person would face the same difficulties upon trying to "slightly" enlarge the existing drive housing 13 as set out above.

2.1.4 During the oral proceedings before the Board, the appellant argued that, starting from the driving unit of D1, which related to a conversion kit for a conventional bicycle, the skilled person wanting to implement such a known driving unit in an electrically assisted bicycle "*designed from scratch*" would choose to encase all the gear components in a single housing in order to protect them from being deteriorated by dirt and dust. The appellant completely failed, however, to explain why, starting from D1, it would have been obvious to discard the teaching of that document and to start instead to design an electrically assisted bicycle from scratch. Hence, this argument is not persuasive either.

2.2 In point 5.2.5 of its provisional opinion, the Board stated the following.

"Irrespective of the question of admittance, the Board cannot see that the conclusion could be different in regard to the combination of D1 with either of D4 or D5."

The appellant did not submit any further comments in this regard. The Board sees no reason to deviate from this part of its provisional opinion, which is hereby confirmed.

- 2.3 Since the appellant failed to convincingly demonstrate that, starting from the driving unit of D1, the skilled person would arrive in an obvious manner at the subject-matter of claim 1, the Board concludes that amended claim 1 of the patent in suit involves an inventive step over the available prior art.
3. In its statement of grounds of appeal and in its subsequent letter dated 27 January 2025, the appellant raised further objections under Article 56 EPC, based on either D3 or D7 as the closest prior art.
- 3.1 It is undisputed that these objections were raised for the first time on appeal and that their admittance is thus subject to the discretion of the Board (Articles 12(4) and 12(6) RPBA).
- 3.2 In respect of the attack starting from D3, the appellant pointed to the preliminary opinion of the opposition division that only claim 1 of the request then pending as auxiliary request 4 was novel over D1 and D3, and therefore the opponent would not have needed to raise an inventive-step objection based on D3 in the written proceedings. With regard to the course of the oral proceedings as recorded in the minutes, the

appellant submitted that the statements therein did not correctly reflect the situation during the oral proceedings and that they were in fact based on misunderstandings since the opponent was not given the opportunity to argue on inventive step starting from D3.

The Board is not convinced by these arguments, however. In so far as the arguments rely on the opposition division's preliminary opinion on novelty, the Board cannot see that this would have prevented the opponent from formulating possible inventive-step attacks in the event the opposition division changed its mind during the oral proceedings. It should be noted that the opposition division considered claim 1 of auxiliary request 1 to lack novelty over D1 but not over D3, as also acknowledged by the appellant in its appeal grounds. Consequently, the distinguishing feature of claim 1 of auxiliary request 1 over D3 had been identified in the preliminary opinion of the opposition division and a corresponding inventive-step objection starting from D3 could and should have been raised in the written proceedings.

Furthermore, the appellant has not requested a correction of the minutes. They must be assumed to correctly record the course of the oral proceedings before the opposition division. According to pages 9 and 10 of the minutes, the opponent was asked at the beginning of the discussion on inventive step to present its arguments. The opponent presented the objection based on D1 as the closest prior art. The minutes then contain a summary of this objection, followed by the statements set out below.

"The chair summarises the opponent's arguments and asks if they have any further inventive step objections.

The opponent states that they do not have any further inventive step objections."

The minutes then give further details of the discussion of the objection based on D1 as the closest prior art, followed by a question from the chair as to whether *"there are any further arguments"*, to which both parties replied that there were none.

The Board cannot see anything in these statements that could suggest that the appellant was misunderstood by the opposition division or that the questions of the opposition division could have been misunderstood by the appellant. Even after the opposition division's deliberation on the objection based on D1, followed by the announcement that the division was *"of the opinion that Auxiliary Request 1 is inventive over D1 in combination with the skilled person's knowledge and D1 in combination with D3"*, there was, in principle, still an opportunity for the appellant to present further objections. The appellant was also given the opportunity to present arguments on the adaptation of the description and the omission of the two-part form in claim 1. It is not apparent that the appellant tried at any point to raise any further objections under Article 56 EPC or that any such objections were refused by the opposition division. This was also not argued by the appellant.

3.3 With respect to the objections under Article 56 EPC based on D7 as the closest prior art, the appellant did not submit any specific comments in response to the

Board's provisional opinion, which stated the following under point 5.1.5.

"In regard to the objections based on D7 as the closest prior art, the Board cannot see any convincing reason given by the appellant speaking in favour for their admittance. D7 was not part of the opposition proceedings. An unspecific reference to the European Search Opinion is insufficient in this respect. D7 was only referred to in the appeal grounds in the context of a different objection against a lower ranking request. Since D7 was apparently known to the appellant since the very beginning of the opposition proceedings, it is entirely unclear why an objection based on D7 could not have been raised earlier, in particular if the document is so little complex."

The Board sees no reason to deviate from its preliminary opinion.

- 3.4 Under these circumstances, the Board decided not to admit the inventive-step objections starting from D3 and D7 pursuant to Article 12(4) and (6) RPBA.
4. Since none of the objections raised by the appellant and admitted into the appeal proceedings prejudice the maintenance of the patent in the amended form found allowable by the opposition division, the appellant's request that the impugned decision be set aside must be rejected and the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated