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**Datasheet for the decision  
of 19 September 2025**

**Case Number:** T 0781/24 - 3.2.07

**Application Number:** 10716654.8

**Publication Number:** 2421777

**IPC:** B65G47/26

**Language of the proceedings:** EN

**Title of invention:**

ZONED ACCUMULATION CONVEYOR

**Patent Proprietor:**

Intelligrated Headquarters LLC

**Opponents:**

SSI Schäfer Peem GmbH  
Vanderlande Industries B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 112(1)(a), 123(1)  
EPC R. 79(1), 81(3), 116(1)  
RPBA 2020 Art. 12(6) sentence 1

**Keyword:**

Late-filed requests - error in use of discretion at first instance (no) - circumstances of appeal case justify admittance (no) - admitted (no)  
Referral to the Enlarged Board of Appeal - (no)

**Decisions cited:**

T 0027/94, T 0609/94, T 0382/97, T 1630/08, T 0383/11,  
T 0966/17, T 0423/18, T 0221/20, T 0364/20, R 0006/19

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0781/24 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 19 September 2025**

**Appellant:** Intelligrated Headquarters LLC  
(Patent Proprietor) 7901 Innovation Way  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
2 April 2024 concerning maintenance of the  
European Patent No. 2421777 in amended form.**

**Composition of the Board:**

|                 |                 |
|-----------------|-----------------|
| <b>Chairman</b> | G. Patton       |
| <b>Members:</b> | A. Cano Palmero |
|                 | S. Ruhwinkel    |

## **Summary of Facts and Submissions**

- I. The patent proprietor and opponent 2 lodged appeals within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 2 421 777 in amended form on the basis of the then auxiliary request 8.
- II. Two oppositions had been filed against the patent in its entirety on the grounds for opposition pursuant to Articles 100(a) EPC (novelty and inventive step) and 100(b) EPC (sufficiency of disclosure).
- III. In order to prepare the oral proceedings scheduled at the parties' requests, the board communicated its preliminary assessment of the case to the parties by means of a communication pursuant to Article 15(1) RPBA, according to which the appeals were likely to be dismissed.

In response to this communication, opponent 2 withdrew its appeal with letter dated 30 May 2025. The patent proprietor submitted arguments, with letter dated 18 August 2025, in the substance and requested the referral of six questions to the Enlarged Board of Appeal under Article 112(1) (a) EPC.

The opponents additionally announced that they would not attend the oral proceedings, opponent 2 by e-mail on 20 August 2025 and opponent 1 with letter of 9 September 2025.

- IV. As a result of the withdrawal of the appeal of opponent 2, the patent proprietor is the sole appellant and the

opponents have the status of respondents in the present appeal proceedings.

- V. Oral proceedings before the board took place on 19 September 2025 without the participation of the opponents in accordance with Rule 115(2) EPC and Article 15(3) RPBA.

At the conclusion of the proceedings the decision was announced. Further details of the proceedings can be found in the minutes thereof.

- VI. The final requests of the parties are as follows:

for the patent proprietor (appellant):

that the decision under appeal be set aside, and that the patent be maintained in amended form according to the main request submitted with the patent proprietor's statement setting out the grounds of appeal,

or, in the alternative,

that the case be remitted to the opposition division for further prosecution on the basis of the main request,

or, in the alternative,

that the patent be maintained in amended form according to any of auxiliary requests 1 to 7, submitted with the patent proprietor's statement setting out the grounds of appeal,

or, in the alternative,

that the case be remitted to the opposition division for further prosecution on the basis of any of these requests,

and

that six questions formulated in its letter of 18 August 2025 on pages 10 and 18 be referred to the Enlarged Board of Appeal;

for opponent 2 (respondent 2):

that the appeal be dismissed,  
or, alternatively, in the case that the main request or auxiliary requests 1 to 7 were admitted into the proceedings, that the case be remitted to the opposition division for further prosecution.

Opponent 1 (respondent 1) has filed neither submissions nor requests.

- VII. The lines of argument of the parties are dealt with in detail in the reasons for the decision.
- VIII. Since the wording of the main request and of auxiliary requests 1 to 7 is not relevant for the present decision, there is no need to reproduce it here.

## **Reasons for the Decision**

### 1. *Summary of the case*

- 1.1 With decision T 423/18 of 21 June 2022 (in the following: "first appeal proceedings"), the present board in a different composition remitted the case to the opposition division for further prosecution. In its decision, the board found that the subject-matter of claim 1 of the then main request was not novel; that the then auxiliary request 1 was not admitted, while the then auxiliary request 2 was admitted; that the

subject-matter of claim 1 of the then auxiliary request 2 was novel over the disclosure of D1 (US 2007/0119690 A1), whereby a further objection of lack of novelty based on D1, raised at the oral proceedings in the first appeal proceedings, was not admitted.

1.2 After remittal to the opposition division for further prosecution, the patent proprietor submitted a new main request and auxiliary requests 1 to 15, whereby auxiliary request 8 corresponded to auxiliary request 2 decided on during the first appeal proceedings.

1.3 The present appeal proceedings is directed to the decision of the opposition division following the remittal ordered at the end of the first appeal proceedings, namely to maintain the patent in amended form according to auxiliary request 8, which corresponds to auxiliary request 2 of the first appeal proceedings.

2. *Main request and auxiliary requests 1 to 7 -  
Admittance, Article 12(6) RPBA*

2.1 In the decision under appeal, point II.2 of the reasons, the opposition division did not admit the main request and auxiliary requests 1 to 7 into the opposition proceedings.

2.2 According to Article 12(6), first sentence, 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.

2.3 The appellant argued that the decision to not admit the main request and auxiliary requests 1 to 7 after remittal suffered from an error in the use of the discretion applied by the opposition division.

2.4 The appellant disputed that the main request and auxiliary requests 1 to 7 could be considered late-filed.

2.4.1 In particular, these requests were submitted after the case had been remitted to the opposition division for further prosecution and before the opposition division summoned for oral proceedings after remittal, therefore before the final date set under Rule 116(1) EPC. The appellant underlined that the order of the decision T 423/18 did not specify on which request the case should be further prosecuted, so that the remittal was not bound to a particular request or claim. Therefore any amendments in the set of claims, such as the addition of claims, were not to be excluded (see T 1630/08, points 2.1 to 2.3 of the reasons), as long as the *ratio decidendi* of the first appeal proceedings' decision was not contravened (see T 609/94). In the case at hand, the *ratio decidendi* of the first appeal proceedings' decision could not be contravened, since the subject-matter of the requests filed at the outset of the second opposition proceedings was different from the subject-matter of the requests decided upon in the first appeal proceedings.

2.4.2 In view of this, the appellant argued that Article 123(1) EPC in combination with Rule 116 EPC amounted in the present case to an explicit invitation and a right to file additional requests that should be admitted. The appellant further indicated that auxiliary request

1 of the present appeal proceedings corresponded to auxiliary request 4 of the first appeal proceedings, so that this request had been filed even earlier. As a result, this set of claims had to be seen as admissibly raised and maintained such that it could not be seen as an amendment to the appellant's appeal case according to Articles 12(2) and (4) RPBA.

2.5 The board disagrees for the following reasons.

2.5.1 It is established case law that the proprietor's right to file amendments in the course of opposition proceedings is not unlimited in time and that proposed amendments may be disregarded in particular if submitted late in the proceedings (see Case Law of the Boards of Appeal [CLB], 11th edition 2025, IV.C.5.1.4). The opposition division's discretion in deciding whether to admit amended claims emanates in essence from Article 123(1), first sentence, EPC in conjunction with Rules 79(1) and 81(3) EPC (see CLB, *supra*, IV.C.5.1.5.b)), with reference *inter alia* to T 966/17 and R 6/19).

2.5.2 In the present case, the main request and auxiliary requests 1 to 7 were filed before the expiry of the time limit set under Rule 116(1) EPC by the opposition division after remittal, however, these requests were filed after the expiry of the time limit set under Rule 79(1) EPC and after the expiry of the time limit set under Rule 116(1) EPC in the first opposition proceedings before remittal. The fact that the main request and auxiliary requests 1 to 7 in the present appeal proceedings might comprise independent claims that had already been previously filed does not detract from the fact that these requests had not themselves been filed earlier.

2.5.3 This is also true for the particular case of auxiliary request 1. Although this request corresponds to auxiliary request 4 of the first appeal proceedings, this request was filed for the first time with the statement setting out the grounds of appeal of the first appeal proceedings, and thus also after the time limits set under Rules 79(1) EPC and 116(1) EPC in the first opposition proceedings. Moreover, the re-ordering of this request only at the stage of the second opposition proceedings also constitutes an amendment, which prevented the board in the first appeal proceedings from deciding on it (see points 2.10.4 and 2.11 below). In this respect, as far as auxiliary request 1 is concerned, the conditions to be considered in the present second appeal proceedings are those of Article 12(6), first sentence, RPBA as mentioned under point 2.2 above, not those of Article 12(2) and (4) RPBA. As a consequence, the appellant's argument that auxiliary request 1 had been admissibly raised and maintained is to be taken into account only in view of whether the use of the discretionary decision of the opposition division to not admit the main request and auxiliary requests 1 to 7 after remittal suffered from an error.

2.5.4 Whether or not amended sets of claims presented after the expiry of the time limit set under Rule 79(1) EPC should be considered in opposition proceedings does not merely depend on their filing within the time limit under Rule 116 EPC, but also on the specific circumstances of the case. If all new submissions received within the time limit according to Rule 116 EPC were automatically to be considered timely, the time limit set according to Rule 79(1) EPC would be rendered meaningless. Therefore, when determining

whether amended requests, such as the main request and auxiliary requests 1 to 7, submitted within the time limit set under Rule 116 EPC, were filed in due time, it has to be taken into account whether these requests were submitted in direct and timely response to a change in the subject of the proceedings (see also T 364/20, reasons 7.2.4 and 7.2.6).

2.6 With regard to decision T 364/20, the appellant pointed out that in point 7.2.2 the competent board found that requests *"submitted before the date set under Rule 116(1) EPC cannot, as a rule, be considered as being late-filed"*. In addition, the appellant indicated that in point 7.2.14 of said decision, the board considered the requests filed during that time period *"to be a reasonable redefinition of the fallback positions of the respondent to defend its patent against a possible change of mind of the opposition division at the oral proceedings"*.

2.6.1 Even though there had not been any change in the subject of the proceedings, the competent board in decision T 364/20 ultimately admitted those auxiliary requests. According to the appellant, the situation in the case at hand was similar to the situation in case T 364/20.

2.6.2 Therefore, according to the appellant, the main request and auxiliary requests 1 to 7 should have been admitted by the opposition division in the present case, as they were filed before the time limit set under Rule 116(1) EPC and were a reasonable redefinition of fallback positions of the appellant-patent proprietor to defend its patent against a possible change of mind of the opposition division at the oral proceedings, for the same reasons as in case T 364/20.

- 2.7 The board is not persuaded by the appellant's arguments relating to decision T 364/20, for the following reasons.
- 2.7.1 The board considers it necessary to emphasise that, although in case T 364/20 the requests 1 to 4 and 7 to 15 were ultimately admitted, the competent board nonetheless held that those requests were considered to have been filed late during the opposition proceedings (Reasons, point 7.2.5). Accordingly, while requests filed in due time may not be disregarded by the deciding bodies of the EPO, the mere fact that the requests were admitted does not, in itself, establish that they were filed in due time. Rather, their admission reflects the exercise of discretion of the deciding body to admit them notwithstanding their late filing.
- 2.7.2 The board accordingly reiterates (see point 2.5.4 above) that the decisive criterion for determining whether requests filed after the expiry of the time limit set under Rule 79(1) EPC but before the expiry of the time limit set by the opposition division in its summons to attend oral proceedings under Rule 116(1) EPC, are to be considered filed in due time, remains whether such requests were submitted in direct and timely response to a change in the subject of the proceedings. In the present case, the amended requests were even filed after the expiry of the time limit set under Rule 116(1) EPC in the first opposition proceedings and thus at a late stage of the proceedings, making it all the more appropriate to examine whether there was a reason for their late submission, such as a direct and timely response to a change of the subject of the proceedings.

2.7.3 The board is of the view that in the present case there was neither a change in the subject of the proceedings nor a new situation that could justify a response from the appellant in the form of new requests or even a re-ordering of already submitted requests.

2.7.4 Therefore, the board concludes that in the present case the main request and auxiliary requests 1 to 7 are to be considered as not being filed in due time in opposition proceedings, and **that the opposition division had discretion to disregard them.**

2.8 The appellant then argued that the criterion applied in T 364/20 to admit the requests, namely that the requests were a reasonable redefinition of fallback positions of the appellant-patent proprietor to defend its patent against a possible change of mind of the opposition division at the oral proceedings, should have been applied by the opposition division when exercising its discretion. The appellant was further of the view that it was entitled to continue to pursue subject-matter based on claim 7 of the patent as granted (without specifying a third zone) as it had not been decided upon by the board of the first appeal proceedings which had focussed on subject-matters based on claim 1 of the patent as granted (with the specification of a third zone).

2.8.1 The board disagrees for the following reasons.

2.8.2 The board needs to emphasise again that, contrary to the circumstances of the case in T 364/20, the case at hand deals with the judicial review of a decision in post-remittal opposition proceedings. The board is convinced that, in exercising its discretion in such

post-remittal proceedings, the opposition division generally should have due regard to the framework defined in the first appeal proceedings which resulted in the remittal. This requirement serves to safeguard the legitimate interests of other parties and the public.

- 2.8.3 Such considerations may likewise be relevant even where the binding force of the *ratio decidendi* under Article 111(2) EPC is not directly engaged. Although the board agrees that a patent proprietor is generally not barred from submitting requests that are consistent with the principles of *res judicata* and *ratio decidendi*, the patent proprietor is not at absolute liberty to file amended claim requests in opposition proceedings subsequent to a remittal without constraint, even though the order of the first appeal proceedings' decision in T 423/18 merely states that the "[T]he case is remitted to the opposition division for further prosecution", i.e. does not specify on which set(s) of claims this further prosecution is to be performed.
- 2.8.4 The board is of the view that further prosecution of a case after remittal must proceed, as a rule, on the basis of the situation prevailing at the conclusion of the first appeal proceedings that gave rise to the remittal (see also T 383/11, Reasons 1.4). This principle should be observed in post-remittal proceedings when assessing the admissibility of a party's submissions, notably where, as in the present case, the appellant-patent proprietor seeks to justify such requests as constituting a reasonable redefinition of fallback positions.
- 2.8.5 In the present case, the board of the first appeal proceedings remitted the case to the opposition

division after finding that the subject-matter of claim 1 of the then auxiliary request 2 was novel. At the commencement of the post-remittal opposition proceedings, however, the appellant submitted a new main request together with auxiliary requests 1 to 7, in which the subject-matter of claim 1 of all requests no longer defined a third zone, in contrast to claim 1 of auxiliary request 2 of the first appeal proceedings. These requests thereby introduced subject-matter differing from, and broader than, that of auxiliary request 2. In these circumstances, the requests cannot be regarded as legitimate fallback positions relative to the then auxiliary request 2 and the situation following the remittal, even though claim 1 of the main request and auxiliary requests 1 to 7 might relate to another embodiment, *i.e.* based on claim 7 of the patent as granted rather than claim 1 of the patent as granted, as argued by the appellant. In addition, the appellant has ranked the new main request and auxiliary requests 1 to 7 *ahead* of auxiliary request 2 at the very start of the second opposition proceedings, *i.e.* before receiving any preliminary opinion from the opposition division. Therefore, the requests under discussion cannot be regarded as a reasonable fallback position against a possible change of mind of the opposition division in the course of examining auxiliary request 8 (auxiliary request 2 of the first appeal proceedings).

- 2.8.6 Furthermore, as put forward under point 2.10 below, the ranking of the new requests *ahead of* the then auxiliary request 2 would have forced the opposition division to re-open the discussion on novelty over D1 on the basis of the very same feature which led to a finding of novelty in the first appeal proceedings, (see T 423/18, Reasons 5, in particular 5.2 and 5.3). Therefore, these

new requests cannot constitute fallback positions for a request, which in the present case, as a consequence of the first appeal proceedings' decision, should only have been assessed for inventive step when examining patentability issues.

- 2.8.7 In sum, the board concludes that, contrary to the appellant's arguments, the criterion applied in T 364/20 to admit late-filed requests which are a reasonable redefinition of fallback positions of the appellant-patent proprietor to defend its patent against a possible change of mind of the opposition division at the oral proceedings, cannot be translated and applied to the case at hand, dealing with a post-remittal situation.
- 2.9 Decisions T 221/20 and T 382/97, to which the appellant also referred in its letter of 18 August 2025 (see page 7), are likewise not comparable to the present case, in particular because they do not concern a case after remittal.
- 2.10 The case law also establishes that when after remittal a patent proprietor files new requests which require examination to be reopened on issues that have already been judged upon by the board of appeal, **without the justification that might be provided, for example, by the patent proprietor being faced with a new situation**, then such requests should be deemed inadmissible (see CLB, *supra*, V.A.10.1.1.c) with reference to T 383/11). When considering whether to allow amendments at this late stage of the proceedings, the principles of procedural economy, fairness and equity must be taken into account.

- 2.10.1 The appellant argued, making reference to decisions T 383/11, T 609/94, T 27/94, and more particularly to T 1630/08, that the "issues that have already been judged upon" are not the grounds for opposition as such (such as added-matter or novelty) but specific objections of a ground. In the case at hand, the issues that have already been judged upon by the board of appeal of the first appeal proceedings, with regard to novelty, were that the subject-matter of claim 1 of the then main request was not novel and that features a. to c. of claim 1 of the then auxiliary request 2 were anticipated by D1, *i.e.* lack of novelty objections in relation to claims with specific feature combinations. According to the appellant, the admittance of the present main request and auxiliary requests 1 to 7 would not require that a discussion on novelty which had already been decided upon by the board in the first appeal proceedings be re-opened. In particular, the issue of two-zone claims or three-zone claims could not be and was not the issue on which it had been decided upon by the then board of the first appeal proceedings, as it was not decisive for that decision.
- 2.10.2 The board disagrees. As correctly found by the opposition division (see point II.2.7 of the reasons for the decision under appeal), the subject-matter of claim 1 of the main request and auxiliary requests 1 to 7 does not define a third zone - in contrast to claim 1 of auxiliary request 2 of the first appeal proceedings. This has not been contested by the appellant.
- 2.10.3 However, contrary to the appellant's argument, the board of the first appeal proceedings did indeed decide on exactly the issue of two zones or three zones in the claim. Indeed, in points 5.4 and 5.5 of the reasons of decision T 423/18, the board found, following the view

of the appellant-patent proprietor, that step d. of claim 1 of the then auxiliary request 2 related to a single step of the control method and that the claimed method required checking the occupancy of **both** the second and the third zone (step d. reads: "*setting said first zone to active state if said second zone or third zone is not occupied*"). The presence of a third zone was clearly found as distinguishing the claim from the disclosure of D1 according to T 423/18, see also reasons 5.2 and 5.3.

2.10.4 Therefore, the admittance of these requests by the opposition division would have required re-opening the discussion not only on novelty in general, but also on the very feature which had already been decided upon by the board in the first appeal proceedings for the requests submitted by the patent proprietor at that time, *i.e.* whether the absence of a third zone in the claim would confer novelty over D1. The appellant's choice of filing or re-ordering the main request and auxiliary requests 1 to 7 for the first time after remittal resulted in that the board in the first appeal proceedings did not have the opportunity to decide on the admittance and/or novelty of these requests. In sum, the finding of the opposition division that the subject-matter of claim 1 would require a further discussion on novelty on which the board of the first appeal proceedings already decided is correct and based on the correct principle.

2.11 The board further considers that the appellant's behaviour of filing or re-ordering the main request and auxiliary requests 1 to 7 for the first time after remittal in a position *ahead* of auxiliary request 2 decided upon by the board in the first appeal proceedings, is against the principle of procedural

economy. This is all the more true when as in the present case novelty over the same document D1 on the basis of the same feature would have to be re-assessed.

Moreover, and for the sake of completeness, the board also notes that admitting the main request and auxiliary requests 1 to 7 at the stage of the second appeal proceedings would further run counter to the principle of procedural economy since their consideration could involve a second remittal of the case to the opposition division - as alternatively requested by the appellant - and potentially introduce new issues not yet addressed in substance during the first and second opposition proceedings and first appeal proceedings. In this respect, it is referred for instance to the further objection of lack of novelty raised by respondent 1 during the oral proceedings before the board of the first appeal proceedings, which was not admitted and which might have to be re-considered (see T 423/18, Reasons 4).

2.12 In view of the above considerations, the board concludes that the opposition division did not exercise its discretion according to the wrong principles, or without taking into account the right principles, or in an unreasonable way. The board thus sees no error in the exercise of its discretion by the opposition division in not admitting the main request and auxiliary requests 1 to 7, so that these requests are, in the absence of any circumstances of the appeal case justifying their admittance, not admitted under Article 12(6), first sentence, RPBA.

The appeal of the patent proprietor is thus to be dismissed.

3. *Request of the appellant to refer questions to the Enlarged Board of Appeal, Article 112(1) (a) EPC*

3.1 The appellant requested on page 10 of its letter dated 18 August 2025 that the following three questions be referred to the Enlarged Board of Appeal under Article 112(1) (a) EPC (questions numbered as Q1 to Q3 by the board).

**Q1:** *"Can, after remittal for further prosecution, amended claims, which have been submitted within the time limit under Rule 116 EPC, be not admitted based on the criterion to have not been "submitted in direct and timely response"?"*

**Q2:** *"Can, after remittal for further prosecution, amended claims, which have been submitted within the time limit under Rule 116 EPC, be not admitted based on the criterion to have not been "submitted in direct and timely response", even if they had been filed already in the previous appeal and the then Board has not decided about these claims?"*

**Q3:** *"Are, after remittal for further prosecution, amended claims, which have been submitted within the time limit under Rule 116 EPC, allowable as a reasonable redefinition of the fallback positions of the patentee to defend its patent against a possible change of mind of the opposition division at the oral proceedings?"*

3.2 According to Article 112(1) (a) EPC, in order to ensure uniform application of the law, or if a point of law of fundamental importance arises, the Board of Appeal shall, following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if

it considers that a decision is required for the above purposes. In the present case, the board does not see a need to refer questions Q1 to Q3 to the Enlarged Board of Appeal, for the following reasons.

- 3.2.1 As already explained in points 2.5.4 and 2.7.2 above, the criterion developed in the case law, see decision T 364/20, reasons 7.2.3 and 7.2.4, is that requests submitted within the time limit set under Rule 116 EPC are to be regarded as being submitted in due time only when they are submitted in direct and timely response to a change in the subject of the proceedings. As further set out in point 2.7.1 above, only requests that are not filed in due time fall within the deciding body's discretion as to their admittance.
- 3.2.2 Consequently, the criterion set out in questions Q1 and Q2 of the appellant serves solely to determine whether a given request is to be regarded as late-filed; it does not, in itself, provide sufficient grounds to justify the non-admittance of that request. Thus, questions Q1 and Q2 are not relevant to reach a decision in the present case (see CLB, *supra*, V.B. 2.3.3). Furthermore, as explained above in points 2.7 to 2.10, the present decision does not deviate from the case law and therefore these questions do not concern a non-uniform application of the case law by the boards. It is also not apparent that questions Q1 and Q2, which the board is able to answer itself, concern a point of law of fundamental importance. In summary, a referral of these questions is not seen as necessary.
- 3.2.3 With regard to question Q3, the board finds (see point 2.8.5 above) that, in the case at hand, neither a change of mind of the opposition division at the oral proceedings was possible, nor the main request and

auxiliary requests 1 to 7 could serve as possible fallback positions with regard to the then auxiliary request 2, which constituted the initial framework in the post-remittal proceedings. Therefore, question Q3 is not relevant to reach a decision in the present case. For the same reasons, the present decision does not deviate from the case law, in particular not from the findings in decision T 364/20 as discussed above. In summary, there is no need to refer this question either.

3.3 The appellant further requested on page 18 of its letter dated 18 August 2025 that the following additional three questions be referred to the Enlarged Board of Appeal under Article 112(1)(a) EPC (questions numbered as Q4 to Q6 by the board):

**Q4:** *"If, after a remittal for further prosecution and examining novelty by the then Board, the proprietor files additional requests with amended claims, what is meant with the criterion "issues that have already been judged upon by the Board of Appeal" in regard to admitting or not admitting these additional requests?"*

**Q5:** *"Is it admissible for the patentee, in particular in regard to the criterion "issues that have already been judged upon by the Board of Appeal", to file, after such a remittal and within the time limit under Regel [sic] 116, additional requests with amended claims, in particular with independent claims that are broadened in regard to a feature which was not decisive for the then decision?"*

**Q6:** *"Is filing of such requests with amended claims admissible if such a request has already been filed as a subsequent request in the previous appeal?"*

- 3.4 The board does not see a need to refer questions Q4 to Q6 to the Enlarged Board of Appeal, for the following reasons.
- 3.4.1 The board in the case at hand has already found in point 2.10.4 above that not only the ground of novelty in general, but also the anticipation of the particular features by the prior art had already been judged upon by the board of the first appeal proceedings. Consequently, even if it were clarified according to question Q4 that the "issues" in novelty examination refer only to a specific feature combination compared to the prior art and not to the ground in general, the findings of the board in the case at hand would remain unchanged.
- 3.4.2 In contrast to the scenario set out in question Q5, the claims of the main request and auxiliary requests 1 to 7 were further broadened by removing the feature of the third zone, which was decisive for the first appeal proceedings' decision (see for instance points 2.8.5 and 2.8.6 above).
- 3.4.3 Therefore, neither question Q4 nor Q5 is relevant to reach a decision in the case at hand, so that there is no need to refer these questions to the Enlarged Board of Appeal (see CLB, *supra*, V.B.2.3.3).
- 3.4.4 Question Q6 refers to "such requests" (*i.e.* with independent claims that are broadened in regard to a

feature which was not decisive for the then decision of the appeal in view of question Q5).

Since the only request present in the first appeal proceedings is auxiliary request 1 (auxiliary request 4 in the first appeal proceedings) which broadens the decisive feature step d. (see for instance points 2.8.5 and 2.10.3 above), question Q6 is likewise not relevant for the present case, so that there is no need to refer it to the Enlarged Board of Appeal.

**Order**

**For these reasons it is decided that:**

1. The request to refer the six questions, three on page 10 and three on page 18 of the appellant's letter dated 18 August 2025, to the Enlarged Board of Appeal is refused.
2. The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated