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**Datasheet for the decision  
of 9 October 2025**

**Case Number:** T 0866/24 - 3.5.05

**Application Number:** 20733498.8

**Publication Number:** 3900240

**IPC:** H04L43/08, H04L41/50

**Language of the proceedings:** EN

**Title of invention:**  
Smart proxy rotator

**Patent Proprietor:**  
oxylabs, UAB

**Opponent:**  
Bright Data Ltd.

**Headword:**  
Smart proxy rotator/OXYLABS

**Relevant legal provisions:**  
EPC Art. 56, 113(1)

**Keywords:**

Right to be heard - substantial procedural violation by the opposition division (no)

Inventive step - all claim requests (no): effect not made credible within the whole scope claimed

**Decisions cited:**

G 0003/14, G 0001/24

**Catchword:**

As to the legal fiction that all dependent claims are supposed to have been examined in the examination proceedings for their compliance with Article 84 EPC (cf. G 3/14, point 32), see point 9.1.2 of the Reasons.



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 0866/24 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 9 October 2025**

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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 2 May 2024  
revoking European patent No. 3900240 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chair** K. Bengi-Akyürek  
**Members:** P. Tabery  
C. Heath

## Summary of Facts and Submissions

I. The appeal is directed against the opposition division's decision to revoke the present European patent.

The opposition division found that the claimed subject-matter either lacked novelty (main request, auxiliary requests 2A, 3A and 4A) or did not involve an inventive step (auxiliary requests 1A, 1B, 2B, 2C, 3B, 3C, 5A, 6A and 7A) or was unclear (auxiliary request 8A).

II. The prior-art documents referred to by the opposition division included:

**D7:** EP 2863607 A2

**D91:** Wikipedia: "Web scraping", revision of 22 September 2019.

III. Oral proceedings before the board were held on 9 October 2025. The final requests of the parties were as follows:

- The appellant-proprietor ("the proprietor") requested, as its **main request**, that the decision under appeal be set aside and that the opposition be rejected, or, that the patent be maintained in amended form on the basis of one of auxiliary requests 1A, 1B, 2A, 2B, 2C, 3A, 3B, 3C, 4A, 5A, 6A, 7A and 8A (same as in the decision under appeal). Moreover, reimbursement of the appeal fee by dint of an alleged substantial procedural violation was requested.

- The respondent-opponent ("the opponent") requested that the appeal be dismissed.

At the end of the oral proceedings, the board's decision was announced.

IV. Claim 1 of the **main request** reads as follows (board's labelling):

- 1) "A computer-implemented method for dynamically configuring a utilization threshold of a proxy provider, the method comprising:
- 2) running a smart proxy rotator, SPR, on a computing device connected to a network;
- 3) obtaining a proxy from the SPR, according to currently valid SPR operational settings, by a Web Scraper to use for a request for content;
- 4) establishing, by the Web Scraper, an encrypted connection to a target server through the proxy;
- 5) requesting and obtaining the content designated within the request, through the encrypted connection, by the Web Scraper;
- 6) providing, by the Web Scraper, performance and availability information of the proxy to the SPR;
- 7) calculating, at the SPR, a weight for the proxy provider; and
- 8) dynamically configuring utilization threshold of the proxy provider based on the calculation."

V. Claim 1 of **auxiliary request 1A** differs from claim 1 of the main request in that the following feature has been added at the end (board's labelling and emphasis):

- 9) "wherein the utilization threshold indicates the percentage of time the proxy provider is used".

Claim 1 of **auxiliary request 1B** differs from claim 1 of auxiliary request 1A in that feature 1) has been amended as follows (amendment as underlined by the proprietor):

1') "A computer-implemented method for dynamically configuring a utilization threshold of a proxy provider for use in an automatic proxy rotation system, the method comprising".

VI. Claim 1 of **auxiliary request 2A** differs from claim 1 of the main request in that the following feature has been added at the end (board's labelling and emphasis):

10) "wherein the SPR stops using a maximized proxy provider, at least for a period of time, when at least one of the configured maximum threshold is reached".

Claim 1 of **auxiliary request 2B** differs from claim 1 of auxiliary request 2A in that, after feature 10), feature 9) has been added.

Claim 1 of **auxiliary request 2C** differs from claim 1 of auxiliary request 2B in that it comprises the amendment according to feature 1') of auxiliary request 1B.

VII. Claim 1 of **auxiliary request 3A** differs from claim 1 of auxiliary request 2A in that, after feature 10), the following feature has been added (board's labelling and emphasis):

11) "wherein proxy providers' weights are calculated by the SPR based on the evaluation of performance and availability data from at least one proxy belonging

to the provider".

Claim 1 of **auxiliary request 3B** differs from claim 1 of auxiliary request 3A in that, after feature 10), feature 9) has been added.

Claim 1 of **auxiliary request 3C** differs from claim 1 of auxiliary request 3B in that it comprises the amendment according to feature 1') of auxiliary request 1B.

VIII. Claim 1 of **auxiliary request 4A** differs from claim 1 of auxiliary request 3A in that feature 8) has been amended as follows (amendment as underlined by the proprietor, deletion not shown):

8') "dynamically configuring utilization threshold of the proxy provider based on the weight calculated for the proxy provider."

IX. Claim 1 of **auxiliary request 5A** differs from claim 1 of auxiliary request 4A in that feature 4) has been amended as follows (amendment as underlined by the proprietor):

4') "establishing, by the Web Scraper, an encrypted connection to a target server through the proxy, by establishing a HTTPS session between the Web Scraper and the target server."

X. Claim 1 of **auxiliary request 6A** differs from claim 1 of auxiliary request 5A in that feature 4') has been amended as follows (amendment as underlined by the proprietor):

4\*) "establishing, by the Web Scraper, an encrypted connection to a target server through the proxy,

by establishing a HTTPS session between the Web Scraper and the target server so that transmitted data is not readable for the proxy server."

XI. Claim 1 of **auxiliary request 7A** differs from claim 1 of auxiliary request 6A in that, after feature 11), the following feature has been added (board's emphasis):

12) "wherein the SPR returns the proxies of the maximized proxy provider after a cooldown period defined for the proxy provider."

XII. Claim 1 of **auxiliary request 8A** differs from claim 1 of auxiliary request 7A in that, after feature 12), the following feature has been added (board's emphasis):

13) "wherein the SPR lowers the weight for the proxy provider when an error rate (15) is between a minimum error threshold (16) and a maximum error threshold (14)."

### **Reasons for the Decision**

1. The opposed patent concerns a "Smart Proxy Rotator (SPR)" assigning to a client an "HTTP proxy provider" out of a pool of proxy providers, with the aim to "rotate" the use of the proxy providers. The goal is to avoid the problem that, if the same proxy provider is used for too many requests, the client will ultimately be blocked by the proxy provider.

2. Alleged violation of the right to be heard

2.1 The proprietor argued that the decision under appeal did not allow to conclude whether all of the

proprietor's arguments as to claim interpretation were indeed taken into consideration by the opposition division. This resulted in an "essential procedural violation", justifying remittal of the case as well as reimbursement of the appeal fee.

2.2 The board disagrees. In the decision under appeal, the opposition division discusses, in Reasons 9.1 to 9.16, the proprietor's arguments with respect to claim interpretation. In fact, it is explained there that the term "web scraper" is interpreted as defined in document **D91**, first paragraph, whereas the term "proxy provider" is understood as being used interchangeably with the term "proxy". Furthermore, reasons are given as to why the proprietor's arguments were not found to be convincing. Therefore, the board considers that those were indeed heard and taken into account.

2.3 As to the terms "smart proxy rotator", "weight" and "utilisation threshold", it is evident from the opposition division's novelty analysis (see decision under appeal, Reasons 9.17) that these terms have been understood as being descriptive. It follows therefrom that the proprietor's arguments as to why these terms should be given a more specific meaning were found to be illicit attempts of "reading features into the claims which are only present in the description" (see Reasons 9.3 of the appealed decision). Thus, also regarding this aspect, the opposition division's decision is sufficiently reasoned.

2.4 In view of the above, the opposition division indeed considered the proprietor's essential arguments. Hence, the board cannot recognise any violation of the proprietor's right to be heard.

2.5 Moreover, with respect to the opposition division's reasoning on **auxiliary request 3A**, the proprietor argued that not citing a passage on which the arguments were based constituted a "severe procedural violation".

The board however concurs with the proprietor to the extent that citing a passage of document D7 would have rendered the arguments clearer. However, it is sufficiently clear from the opposition division's reasoning that it refers to the passages already cited with respect to feature 7) of claim 1 of the main request, which also deal with a "weight". Thus, no procedural violation has occurred, let alone a substantial one.

2.6 In view of the above and in view of the fact that the board decided to dismiss the appeal for the reasons provided in the following, the proprietor's request to remit the case to the opposition division for further prosecution and to reimburse the appeal fee under Rule 103(1)(a) EPC had to be refused.

3. Main request

3.1 Novelty (Article 54(1) EPC)

3.1.1 In the decision under appeal, the opposition division held that document **D7** disclosed all features of present claim 1.

3.1.2 With respect to the term "proxy provider" used in claim 1, the board concurs with the opponent that this term could well refer to a legal entity or to a person providing at least one proxy, in line with the definition given in paragraph [42] of the underlying description as filed. This definition thus comprises

the case of a "proxy provider" having a *single* proxy as its sole entity, in line with dependent **claim 3** which specifies that there is "at least one proxy belonging to the [proxy] provider". Since the board understands that, *vice versa*, a proxy is always associated with a "proxy provider", it holds that the "proxy" disclosed in document D7 implies and thus anticipates the presence of a "proxy provider".

3.1.3 The board does not subscribe to the proprietor's argument that the claimed "proxy provider" was different from the "proxy" disclosed in document D7, since the "proxy provider" provided access to the proxy. This aspect of what such a provider might also be providing is actually not reflected in present claim 1.

3.1.4 Furthermore, as to claim construction, the proprietor argued that the "currently valid SPR operational settings" according to feature 3) were obtained by the method steps defined in features 6) to 8).

The board disagrees. First, it is evident from the claim's antecedences that features 6) to 8) are only performed after the execution of feature 3). Notably, feature 6) refers to "the proxy" which is obtained in feature 3). This causality however precludes that the "operational settings" of feature 3) could have been obtained beforehand by the method steps defined in features 6) to 8). Moreover, claim 1 does not specify how the "weight for the proxy provider" according to feature 7) is to be determined, thus comprising cases where the "weight" is calculated without using the "performance and availability information" according to feature 6). Lastly, claim 1 does not specify whether the "operational settings" even comprise the

"utilisation threshold" configured in feature 8).

- 3.1.5 Moreover, in paragraph [111] of its statement of grounds of appeal, the proprietor argued that the "acceleration server 32" of document **D7** could not anticipate the claimed "SPR", whose function is defined in features 3), 6) and 7). Notably, paragraph [0278] of D7 did not disclose features 3), 6) and 7).

The board notes that, in the decision under appeal, the term "smart proxy rotator" of claim 1 has evidently been considered by the opposition division as not having a well-recognised meaning. It may thus be legitimately mapped to *any* entity of document D7. Whether the corresponding features of claim 1 defining the steps performed by the "SPR" are indeed known from document D7 is a matter of proper analysis of these steps. Besides, having regard to these corresponding features, the decision under appeal cites passages other than paragraph [0278] of D7. Therefore, the proprietor's argument that the "SPR" is not anticipated by D7 is not persuasive.

- 3.1.6 In addition, the proprietor contested that document D7 disclosed **feature 8)**, as the solution of D7 used pre-set parameters to select proxies.

In that regard, the board notes that, in paragraph [0303] of D7 cited in the decision under appeal, the selection of the "tunnel device" is based on priorities (i.e. "lower priority"/"higher priority"). Since priorities are typically relative, even when all tunnel devices have fairly low priorities, a tunnel device is eventually selected. To the contrary, the term "threshold" is normally known to be "a level, point, or value above which something is

true or will take place and below which it is not or will not" (see e.g. Merriam-Webster dictionary). Thus, when a "threshold" instead of a "priority" is used, a situation may occur where no "tunnel device" is selected at all. In view of these considerations, the board considers that the priority-based selection of document D7 cannot anticipate the "threshold" defined in feature 8). Although actually mentioning a "threshold", paragraph [0262] of D7 relates to a "central load-balancing server" and thus not to the "acceleration server 32" (which is equated with the claimed "SPR" in the above analysis). The same applies to paragraph [0402], where a "threshold" is mentioned, but not dynamically configured.

- 3.1.7 In addition, the proprietor emphasised that, according to document D7, it was the "client device" that selected a "tunnel device". Therefore, **feature 3)** mandating that this was to be performed by the "SPR" was not anticipated by document D7.

However, the board points to paragraph [0328] of document D7 which discloses the following:

"Alternatively or in addition, the tunnel devices may be selected by the acceleration server 32, as part of the 'Select Tunnels' step 101a in the flowchart 90."

Thus, since the claimed "SPR" may be mapped to the "acceleration server 32" of document D7, the disputed aspect of feature 3) is indeed anticipated by document D7.

- 3.1.8 Besides, the proprietor contended that document D7 disclosed **feature 6)** only in combination with the

"acceleration server 32". But since the "acceleration server 32" could not be mapped to the claimed "SPR", feature 6) was not disclosed in document D7.

However, for the reasons provided in point 3.1.5 above, the "SPR" may legitimately be mapped to the "acceleration server 32". Therefore, the board is not convinced by this argument of the proprietor.

3.1.9 Lastly, the proprietor contested that document D7 disclosed the claimed features in a *single* embodiment, since its paragraphs [0173] to [0262] disclosed a whole series of *distinct* embodiments.

In that regard, the board holds that the novelty analysis performed in the decision under appeal relies on the passages starting at paragraph [0278] of D7 and thus not on the paragraphs quoted by the proprietor in paragraph [142] in the statement of grounds of appeal. Therefore, the proprietor's argument fails to convince the board.

3.1.10 For the reason identified in point 3.1.6 above, the subject-matter of claim 1 is novel over the disclosure of document D7.

3.2 Inventive step (Article 56 EPC)

3.2.1 The proprietor argued that **distinguishing feature 8)** solved the problems or had the effects disclosed in paragraph [0020] of the opposed patent:

(a) collecting scraping session quality metrics for encrypted sessions without compromising the privacy of the session, e.g. without introducing a man-in-the-middle construct;

- (b) increasing the service quality for the client requests due to proxy availability changing quickly and adjust configurations without manual intervention;
- (c) preventing proxy providers from being disabled, due to proxy pool exhaustion when all the proxies within the pool are banned.

- 3.2.2 The board disagrees. Claim 1 neither specifies how the "threshold" of distinguishing feature 8) is determined nor how it is actually used. Therefore, claim 1 comprises embodiments where the "threshold" is calculated and used in ways which do not prevent the "proxy provider" from being disabled.
- 3.2.3 As to the effect of "balanc[ing] usage across the multiple proxy providers defined for a particular customer" argued by the proprietor (see also paragraph [0039] of the opposed patent), claim 1 fails to define "multiple proxy providers". Therefore, this effect is not derivable from the wording of claim 1, let alone from distinguishing feature 8). The same applies to the alleged effect of "addressing shortcomings of possible overuse of the proxy provider" argued by the proprietor (see paragraph [0080] of the opposed patent), as claim 1 does not deal with "overuse of the proxy provider" at all.
- 3.2.4 Consequently, the board concurs with the opponent that feature 8) fails to credibly cause a technical effect. However, in the absence of a credible technical effect which is achieved over the entire breadth of claim 1, such a feature must be considered to represent an arbitrary or non-functional modification of the available prior art and thus an inventive step cannot be acknowledged (Article 56 EPC).

- 3.3 In view of the above, the main request is not allowable under Article 100(a) EPC in conjunction with Article 56 EPC.
4. Auxiliary requests 1A and 1B
- 4.1 Inventive step (Article 56 EPC)
- 4.1.1 The board is not convinced by the proprietor's argument that the amendments yield the technical effect of "balancing use of proxy providers". Such an effect is in fact not derivable, since claim 1 according to either claim request mentions only a single "proxy provider".
- 4.1.2 This deficiency is also not remedied by the amendment according to **feature 1')**, which merely limits the method to being suitable "for use in an automatic proxy rotation system". Hence, feature 1') cannot contribute to the alleged technical effect and thus to an inventive step.
- 4.1.3 Moreover, the board concurs with the opponent that **feature 9)** neither defines an actual percentage of time, nor a reference time interval. Thus, for the reasons provided in point 3.2.2 above, also feature 9) cannot contribute to an inventive step.
- 4.1.4 Hence, the subject-matter of claim 1 according to either claim request does not involve an inventive step.
- 4.2 In view of the above, auxiliary requests 1A and 1B are not allowable under Article 56 EPC.

5. Auxiliary requests 2A, 2B and 2C

5.1 Interpretation of feature 10)

5.1.1 The patent description neither mentions the term "maximised proxy provider" nor appears to contain an embodiment having both a "dynamically [configured] utilisation threshold" as well as a "configured maximum threshold". The interaction of these two "thresholds" is thus left to the reader's imagination. Consequently, consulting the description, as mandated by **G 1/24**, fails to provide any useful guidance on how to interpret these particular aspects.

5.1.2 Since an objection as to lack of clarity cannot be raised in the present case in view of **G 3/14**, the board has to accept the wording of feature 10) at face value. Accordingly, the phrase "the SPR stops using" does not exclude usage by the "web scraper". Moreover, the term "maximised proxy provider" refers to a provider which may be different from the "proxy provider" mentioned in claim 1 hitherto, while the "period of time" is of an undefined duration. Lastly, the metric that the "configured maximum threshold" refers to is also left undefined. This "threshold" may thus be relating to something different from a "utilisation threshold".

5.2 Inventive step (Article 56 EPC)

5.2.1 The opposition division held that paragraphs [0301], [0262] and [0402] of document D7 already disclosed **feature 10)** of claim 1.

5.2.2 The board, however, considers that these paragraphs do not actually anticipate feature 10) of claim 1 for several reasons. First, paragraph [0262] of D7 relates

to a "central load-balancing server" and thus not to the "acceleration server 32" (which is equated with the claimed "SPR" in the above analysis). Second, paragraph [0301] of D7 fails to disclose that any kind of "threshold" is used. Lastly, paragraph [0402] does not relate to actually stopping the use of a "proxy provider". Rather, replacement devices are added when a "threshold" is reached.

- 5.2.3 For these reasons and the reasons already provided in point 3.1 above, **features 8) and 10)** constitute the distinguishing features of claim 1 of auxiliary request 2A over document D7.
- 5.2.4 The proprietor argued that **feature 10)** solved the objective technical problem of "how to select proxies for data retrieval while minimising the risk to proxy exhaustion", wherein the proxy selection avoided proxies which are no longer available due to over-utilisation.
- 5.2.5 The board considers that, from the wording of claim 1 of **auxiliary request 2A**, it is not derivable that this alleged objective technical problem is credibly solved. First, claim 1 fails to define how feature 10) actually influences an initial proxy selection by the "SPR". In addition, feature 10) specifies that the "SPR stops using" a proxy and thus may lead to a situation where no proxy at all is available. Finally, the "risk to proxy exhaustion" is not even addressed by feature 10), since it fails to specify how the "configured maximum threshold" has been configured and even to which metric it pertains. Thus, this term is void of any technical meaning. As a result of this lack of clarity, the claimed subject-matter comprises embodiments where the "threshold" is configured such that "proxy exhaustion"

is not prevented. After all, if unclear features are added from dependent claims to the independent claims in order to overcome an objection as to lack of inventive step, the onus to show that this objection is credibly overcome typically lies with the proprietor. On balance, in the absence of an objective technical problem which is credibly solved, feature 10) cannot contribute to an inventive step. Thus, for this reason and those provided in point 3.2 above, the subject-matter of claim 1 of auxiliary request 2A does not involve an inventive step.

5.2.6 For the reasons provided in point 4.1 above, the additional features 9) and 1') comprised in claim 1 of **auxiliary requests 2B and 2C** likewise do not contribute to an inventive step. Hence, for this reason and the considerations already provided with respect to claim 1 of auxiliary request 2A, the subject-matter of claim 1 of auxiliary requests 2B and 2C does not involve an inventive step, either.

5.3 In view of the above, auxiliary requests 2A, 2B and 2C are also not allowable under Article 56 EPC.

6. Auxiliary request 3A

6.1 Inventive step (Article 56 EPC)

6.1.1 The board concurs with the decision under appeal that the "priorities" disclosed in paragraph [0303] of document D7 anticipate the claimed "weights". More specifically, according to the sentence in column 110, lines 16-20, a "higher priority" may be accorded depending on "lower communication errors" (denoted "performance" in the claim) and "higher available bandwidth" ("availability data" in the claim's

parlance). Feature 11) is thus known from document D7.

6.1.2 The board is not convinced by the proprietor's argument that the "priorities" of document D7 could not anticipate the claimed "weights". According to the proprietor, "weights" are for distributing the load across proxy providers, whereas "priorities" are for selecting the "best" proxy providers.

The board disagrees. Rather, it considers that both "weights" and "priorities" are scalars (numbers). Their actual use is however only (somewhat) defined in feature 8), which the board already accepts in point 3.1 above as being a distinguishing feature.

6.1.3 Consequently, the subject-matter of claim 1 differs from the disclosure of document D7 in distinguishing feature 8) identified in point 3.1 above.

6.1.4 Since the reasons provided in point 3.2 likewise apply, the subject-matter of claim 1 of auxiliary request 3A is also not inventive over the disclosure of document D7.

6.1.5 For the reasons provided in point 4.1 above, the additional features 9) and 1') comprised in claim 1 of **auxiliary requests 3B and 3C** cannot contribute to an inventive step, too. Hence, for this reason and the considerations already provided with respect to claim 1 of auxiliary request 3A, the subject-matter of claim 1 of auxiliary requests 3B and 3C does not involve an inventive step, either.

6.2 In view of the above, auxiliary requests 3A, 3B and 3C are likewise not allowable under Article 56 EPC.

7. Auxiliary request 4A

7.1 Inventive step (Article 56 EPC)

7.1.1 Since the reasons provided in point 3.1 above also apply to amended feature 8'), this feature is not anticipated by document D7. For these reasons and the reasons already provided in point 5.2 above, **features 8') and 10)** thus constitute the distinguishing features of claim 1 over document D7.

7.1.2 The board holds that the reasons provided in points 3.2 and 5.2 above also apply to present claim 1 including feature 8'). Therefore, the subject-matter of claim 1 is likewise not inventive over the disclosure of document D7.

7.2 In view of the above, auxiliary request 4A is not allowable under Article 56 EPC, either.

8. Auxiliary requests 5A and 6A

8.1 Inventive step (Article 56 EPC)

8.1.1 The board concurs with the opposition division that paragraph [0561] of D7 already discloses the use of the HTTPS protocol between the network elements including explicitly "clients", "tunnels" and "servers". These are devices which are also disclosed in the embodiments of, notably, paragraphs [0278] and [0328] of D7. Therefore, it is directly and unambiguously disclosed that the HTTPS protocol is used between clients and servers via the tunnels. However, the disclosure of document D7 does not explain whether the "tunnel device" - i.e. the proxy - *forwards* the data underlying the encrypted session or *terminates* it, since these

constitute equally likely alternatives to the skilled person in a system as the one disclosed in document D7.

- 8.1.2 To the benefit of the proprietor, the board interprets the formulation "HTTPS session between the Web Scraper and the target server" as a *single* session involving end-to-end encryption. This interpretation applies to **feature 4')** and **feature 4\*)** alike.
- 8.1.3 The board understands that the skilled person would have been, at the effective filing date, aware of the two alternative methods of operating an "HTTPS proxy", including their advantages and disadvantages. Therefore, depending on the practical circumstances, either of these alternatives would have been selected by the skilled person without employing any inventive skill. Consequently, neither feature 4') nor feature 4\*) may contribute to an inventive step.
- 8.1.4 For these reasons and those provided in point 7.1 above, the subject-matter of claim 1 of auxiliary requests 5A and 6A does not involve an inventive step.
- 8.2 In view of the above, auxiliary requests 5A and 6A are not allowable under Article 56 EPC, either.
- 9. Auxiliary request 7A
  - 9.1 Clarity (Article 84 EPC)
    - 9.1.1 During the oral proceedings before the board, the opponent submitted that the unclear features underlying the amendments made to claim 1, which are based on the patent description, are building up on corresponding unclear formulations taken from dependent claim 6 as granted. Raising an objection under Article 84 EPC

against unclear features stemming from granted dependent claims should be admissible under such circumstances.

- 9.1.2 This board agrees, in principle, with the opponent's concerns. According to the perception of this board, there is a recent tendency that *dependent* claims are less and less examined with respect to clarity in examination proceedings despite the fact that their full examination under Article 84 EPC was not considered "unrealistic" in **G 3/14**, Reasons 32. Such a full examination is even expressly encouraged by the Enlarged Board of Appeal in **G 1/24**, Reasons 20 (i.e. highlighting "*the importance of the examining division carrying out a high quality examination of whether a claim fulfils the clarity requirements of Article 84 EPC*"). The justification for such leniency may be found in the assumption that the protection conferred by a granted patent is defined only by the *independent* claims. Where dependent claims are subsequently added to an independent claim in the course of opposition proceedings, opponents are ultimately faced with unclear claim features which, as in the present case, are deemed to have been examined for clarity, although *de facto* they have not been. Nonetheless, they cannot be objected to under Article 84 EPC due to the conclusions of **G 3/14**.

The Board deems this result unsatisfactory, as an independent claim with unclear features leaves much to the readers' imagination. In addition, unclear features tend to elude a sensible comparison with the respective prior art. On top of that, since opponents may not anticipate with certainty which claim construction will be adopted by the board or a court in infringement proceedings, they may feel obliged to put forward

different lines of argumentation for all of the different potential interpretations. Categorically barring opponents in such cases from raising clarity objections under Article 84 EPC causes undue complexities in the discussion on novelty and inventive step, to the detriment not only of opponents but also of the opposition divisions and the boards of appeal.

9.2 Inventive step (Article 56 EPC)

9.2.1 The proprietor argues that added **feature 12)** provided for a break after a "threshold" had been hit. Although this constituted an extreme measure, it was necessary when no improvement was obtained after adapting the "weights". This helped to restore the proper functioning of the "proxy provider" with respect to the SPR.

9.2.2 The board holds that the formulation "the SPR returns the proxies" used in feature 12) fails to mention *where* the proxies are to be returned to. Furthermore, the unclear term "maximised proxy provider" is undefined and may not necessarily refer to a "proxy provider" where "a threshold had been hit", as opposed to the proprietor's contention. Moreover, the duration of the "cooldown period" is left undefined, too. These unclear formulations of feature 12) do therefore not allow to determine whether the technical effect alleged by the proprietor is indeed achieved.

9.2.3 As a consequence, notwithstanding clarity issues, the subject-matter of claim 1 of auxiliary request 7A does not involve an inventive step for these reasons and the reasons provided in point 8.1 above.

9.3 In view of the above, auxiliary request 7A is likewise not allowable under Article 56 EPC.

10. Auxiliary request 8A

10.1 Inventive step (Article 56 EPC)

10.1.1 The proprietor argued that added **feature 13)** caused, when being in a corridor of error rates, that the "weight" for the proxy provider was lowered. This in turn avoided a "proxy-provider lockout".

10.1.2 The board is not convinced by this argument. Rather, feature 13) concerns an unspecified lowering of a "weight" based on unspecified minimum and maximum thresholds. For this reason alone, it is impossible to derive any technical effect which might be caused by unclear feature 13).

10.1.3 Hence, for these reasons and those provided in point 9.2 above, the subject-matter of claim 1 of auxiliary request 8A does likewise not involve an inventive step.

10.2 In view of the above, auxiliary request 8A is not allowable under Article 56 EPC, too.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated