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**Datasheet for the decision
of 27 January 2026**

Case Number: T 0982/24 - 3.2.05

Application Number: 13848246.8

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Language of the proceedings: EN

Title of invention:
Combination Printer

Patent Proprietor:
Komori Corporation

Opponent:
Koenig & Bauer AG

Relevant legal provisions:
EPC Art. 56, 111(1), 111(2)
RPBA 2020 Art. 11, 12(2), 12(3)
European Convention on Human Rights (ECHR) Art. 6(1)

Keyword:

Inventive step - main request (no)

Binding effect of earlier decision of the board when the facts are the same (yes)

Remittal - (yes)

Decisions cited:

R 0012/09, R 0009/10, T 2561/11, T 1731/19, T 0221/20



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Case Number: T 0982/24 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 27 January 2026

Appellant: Koenig & Bauer AG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
3 July 2024 concerning maintenance of the
European Patent No. 2910374 in amended form.**

Composition of the Board:

Chairwoman A. Bacchin
Members: T. Vermeulen
M. Holz

Summary of Facts and Submissions

- I. The opponent filed an appeal against the interlocutory decision of the opposition division finding that European patent No. 2 910 374 as amended according to auxiliary request 1 met the requirements of the European Patent Convention.
- II. The opposition was filed against the patent as a whole on the basis of the grounds for opposition under Article 100(a) together with Article 56 EPC (lack of inventive step) and under Article 100(b) EPC.
- III. In a first decision by the opposition division issued on 26 November 2019, the opposition was rejected. Against this decision, the opponent filed a first appeal. In reply to the statement of grounds of appeal, the patent proprietor filed claims and an adapted description of auxiliary requests 1 and 2. With decision T 221/20 (hereinafter: the first appeal decision), the present board in a different composition set aside the opposition division's first decision and remitted the case to the opposition division for further prosecution.
- IV. The opposition division subsequently examined the claims of auxiliary request 1. In its second decision issued on 3 July 2024, the opposition division came to the conclusion that the patent as amended according to auxiliary request 1 met the requirements of sufficiency of disclosure, and that the provisions of Rule 80, Articles 84, 123(2) and (3) EPC were complied with. The opposition division further concluded that none of the prior art documents K1 to K8 anticipated the subject-matter of claim 1 of auxiliary request 1 and that the

combination printing press of claim 1 of auxiliary request 1 involved an inventive step when starting from document K3/K3' in combination with document K5/K5' and common general knowledge or in combination with document K5/K5' and document K8. The present appeal is against this second decision by the opposition division (hereinafter: the decision under appeal).

V. In the decision under appeal, the opposition division considered *inter alia* the following documents.

K3 : JP 2000062134 A and "Patent Abstracts of Japan"
K3': Machine translation of document K3
K5 : JP 4619287 B2
K5': Machine translation of document K5
K8 : EP 2 468 506 A1

Documents K3 and K3' will hereinafter be referred to as 'document K3' and documents K5 and K5' as 'document K5'.

VI. Oral proceedings before the board were held on 27 January 2026.

VII. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked. It also requested to remit the case to the opposition division for further prosecution in case the respondent requested to maintain the patent on the basis of auxiliary request 2. In the event that the case was not remitted, the appellant requested that the patent be revoked on the basis of auxiliary request 2.

The respondent (patent proprietor) requested that the appeal be dismissed (main request), or alternatively, that the case be remitted to the opposition division

for further prosecution on the basis of the claims and the adapted description of auxiliary request 2 filed during the oral proceedings held before the opposition division on 14 November 2019. In the event that the case was not remitted to the opposition division on the basis of auxiliary request 2, the respondent requested to set aside the decision under appeal and to maintain the patent in amended form on the basis of the claims and the adapted description of auxiliary request 2 filed during the oral proceedings held before the opposition division on 14 November 2019 (first auxiliary request).

VIII. Claim 1 of the main request, which corresponds to auxiliary request 1 held allowable by the opposition division in the decision under appeal, has the following wording (the feature numbering used by the opposition division appears in square brackets).

"1. [M1] A combination printing press comprising:
[M2] a number printing part including number printing means (116), the number printing means (116) having an impression cylinder (117) configured to hold and convey a sheet (W), a number cylinder (118) being in contact with a lower portion of the impression cylinder (117) and configured to perform number printing on the sheet (W) held by the impression cylinder (117), and ink supplying means (119) for supplying ink to the number cylinder (118); [M3] a coating part having one-surface coating processing means (135) for coating one surface of the sheet (W) from the number printing part and other-surface coating processing means (126) for coating another surface of the sheet (W) from the number printing part; and [M4] a sheet delivery part (140) having a plurality of stacking trays (143a, 143b, 143c) on which the sheet (W) from the coating part is

stacked; [M5] characterized in that the number printing part and the coating part are connected to each other only by a cylinder (120, 122) and [M6] in that the combination printing press further comprises checking means (124) for checking printing quality of the sheet (W) after the sheet (W) is subjected to number printing in the number printing part and before the sheet is subjected to coating processing in the coating part."

IX. Claim 1 of the first auxiliary request, which corresponds to auxiliary request 2 filed during the oral proceedings held before the opposition division on 14 November 2019, essentially differs in wording from claim 1 of the main request by following additional features (the feature numbering used by the respondent appears in square brackets).

"[M7] and in that the plurality of stacking trays (143a, 143b, 143c) consists of: [M7.1] two stacking trays (143a, 143b) for good items to which the sheets (W) whose printing state is determined to be normal as a result of checking by the checking means (124) are delivered as good items and [M7.2] one stacking tray (143c) for defective items to which the sheets (W) whose printing state is determined to be abnormal as a result of checking by the checking means (124) are delivered as defective items".

X. The appellant's submissions may be summarised as follows.

Inventive step of claim 1 of the main request

Starting either from Figure 1 or Figure 2 of document K3, the distinguishing features could be divided in two groups: M3 and M5, on the one hand, and M6, on the

other hand. Although both groups were suitable for ensuring the high quality of the end products, they did not interact functionally with each other. The first group of features was aimed at protecting the products, while the second was aimed at the print quality of the number printing and its verification. Due to the lack of functional interaction between the two groups there was no combined technical effect that went beyond the sum of the technical effects of the individual groups. Furthermore, there was no support in the contested patent for the synergistic effect claimed by the respondent. The partial-problems approach was therefore applicable.

The board in the first appeal decision already decided that features M3 and M5 were an obvious solution to the problem of improving the quality of the numbered products by providing protection; this was the first partial problem.

For the following reasons, feature M6 was an obvious solution to the second partial problem of providing a means of checking the print quality of the number printing, namely in view of common general knowledge or the teaching of document K8.

In the context of the embodiment shown in Figure 1 of document K3, inspection cameras 50a to 50c were disclosed in an arrangement directly behind two letterpress printing units 2A, 2B for checking the quality in the letterpress printing units. The quality of the number printing was not checked in this embodiment. However, the skilled person would have applied the teaching of checking the quality of the letterpress printing units also to the number printing and, as with the other printing units, they would have

provided an inspection device directly behind the number printing. So, rather than rearranging the existing inspection device of document K3, the skilled person faced with the second partial problem would have positioned an additional inspection device behind the number printing unit. No structural changes to the existing printing press were required.

Document K8 was concerned with a generic printing machine equipped with two numbering units and an inspection device which, according to paragraph [0007], was to be located immediately behind the number printing device so that as little waste as possible was produced. In paragraph [0047] of document K8, the position of the inspection device was further justified by referring to the comparative example of Figure 5 where the inspection occurred further downstream. Paragraph [0016] of document K8 indicated that an inspection camera 18a was used to check the print quality of the seal and the printed numbers. Based on the combination printing press of document K3 already combined with the teaching of document K5 and faced with the above-mentioned second partial problem, the skilled person would have been prompted by the teaching of document K8 to provide an inspection device immediately after the number printing. Whether corrective actions were taken in response to the inspection was not relevant since such no such corrective actions were specified by claim 1. The same applied when starting from the printing press known from the embodiment of Figure 2 of document K3. It was emphasised that the alternative solution of placing the inspection device after the coating part in the printing press resulting from the combination of documents K3 and K5 would have been undesirable since it resulted in a certain number of waste sheets, which,

according to the teaching of document K8, must be avoided at all costs.

Therefore, the subject-matter of claim 1 of the main request did not involve an inventive step.

Remittal

A discussion on the merits of the case with regard to the claims of the first auxiliary request had not yet taken place at first instance. In addition, the board had not provided a provisional opinion on inventive step of the first auxiliary request in its communication under Article 15(1) RPBA. Therefore, the case should be remitted to the opposition division for further prosecution.

- XI. The respondent's submissions may be summarised as follows.

Inventive step of claim 1 of the main request

The subject-matter of claim 1 differed from the disclosure of document K3 by features M3, M5 and M6. All distinguishing features were interrelated. The aim of feature M3 was to improve and maintain the quality of the numbered products by means of surface coating protection. By providing only a cylinder for connecting the number printing part and the coating part in accordance with feature M5, inaccuracies and misalignment during transfer of the numbered sheet to the coating part were minimised. With the checking means of feature M6, the print quality of the sheet was checked after it was subjected to number printing and before it was subjected to a coating process. In consequence, the checking result could not be affected

by any optical effects due to the coating, which, in turn, contributed to the high print quality of the claimed combination printing press. Thus, the distinguishing features served the same advantageous purpose. In addition, the cylinder of feature M5 and the checking means of feature M6 were both located between the number printing part and the coating part, and therefore cooperated with each other. Features M3, M5 and M6 were not just an uncorrelated sequence of features, but cooperated synergistically to solve the objective technical problem of increasing the print quality.

Figure 1 of document K3 disclosed optical checking means 50a, 50b, 50c. However, these were provided so as to inspect the printed material upstream of the number printing part 3A, 3B and, hence, were mounted at locations passed by the sheet before the sheet was subjected to number printing. There was no justification for transferring the optical checking means to a different location, such as downstream of the numbering unit. Document K5 did not disclose any checking means. Thus, a combination of documents K3 and K5 would certainly not have suggested the subject-matter of claim 1. Starting from the embodiment of Figure 2 of document K3 would be even more difficult since no checking means were disclosed in that context.

Document K8 disclosed an inspection device 18 including a camera 18a arranged opposed to the circumferential surface of an inspection cylinder 17. The camera was used to inspect the print quality of the seal and of the numbers printed on the sheet 5 and, particularly, whether the printed numbers coincided with the numbers normally expected to be printed (see paragraph [0016] of document K8). Document K8 did not provide a coating

of any sort, nor a single cylinder in the sense of feature M5. In addition, it followed from paragraphs [0007], [0016], [0046] and [0047] of document K8 that the number printing part was immediately stopped by throwing off the number printing cylinders 14, 15 from the impression cylinder 12 in case of a misprint. Any misprinted sheet was thus disregarded. The same type of function was used in document K3 (see paragraph [0025]) when inspecting the sheets prior to the number printing part. No further corrections were mentioned or suggested in these documents which would lead to the implementation of the corrective actions so as to improve the quality of subsequent sheets to be printed. The purpose and the function of the "inspection means" disclosed in documents K3 and K8 clearly differed from those claimed in feature M6 of claim 1. The appellant's arguments in this respect were merely based on a retrospective approach.

It followed from the above that neither document K3 by itself nor the mentioned paragraphs of document K8 prompted the skilled person to the arrangement in accordance with feature M6 to ensure the alleged early detection of possible printing errors on the numbering.

Thus, the subject-matter of claim 1 of the main request involved an inventive step.

Remittal

The claims of the first auxiliary request, in particular the additional features M7 to M7.2, had never been discussed before. The parties had merely exchanged a few written arguments in this regard; no in-depth analysis had been carried out. At the end of the first appeal proceedings, the case had been

remitted to the opposition division for similar reasons in respect to the claims of then auxiliary request 1. Pursuant to Article 12(2) RPBA, it was the primary object of the appeal proceedings to review the decision under appeal in a judicial manner. In this context, reference was made to Article 6 of the European Convention on Human Rights. Appeal proceedings were not a mere continuation of the opposition proceedings. For the above reasons, a remittal to the opposition division for further prosecution was justified.

Reasons for the Decision

Inventive step of claim 1 of the main request (auxiliary request 1 as held allowable by the opposition division)

1. The appellant contests the opposition division's conclusion that the subject-matter of claim 1 involves an inventive step. In its view, the claimed solution is obvious when combining the combination printing press of document K3 with the teaching of document K5 and with either common general knowledge or the teaching of document K8.

(a) Partial-problems approach

2. The appellant's inventive-step assessment is based on a partial-problems approach which the opposition division endorsed but the respondent refutes. At the heart of the dispute lies the question whether there is synergy between distinguishing features M3 and M5, on the one hand, and distinguishing feature M6, on the other hand.

3. The board shares the view of the appellant and, for that matter, of the opposition division on this point. The mere fact that feature M6 contains a reference to the coating part mentioned in features M3 and M5 is not in itself sufficient to establish a combinative effect going beyond the sum of the individual effects of features M3 and M5 and feature M6, respectively. After all, checking the print quality immediately after the number printing has no demonstrable impact on a subsequent coating step or on the way the numbering and coating parts are connected. Nor has the respondent convincingly shown that, conversely, the arrangement of a coating part or a one-cylinder connection would affect the print quality check of a sheet that has been subjected to number printing. Even if the coating part, the connecting cylinder and the checking means each individually contributes to achieving the goal of high print quality so that the distinguishing features M3, M5 and M6 are "not just an uncorrelated sequence of features", as the respondent puts it, there is no reason for assuming that the features mutually influence each other to the extent that they have a combinative effect going beyond the sum of the individual effects.

4. As a consequence, the objective technical problem the skilled person was asked to solve when starting from document K3 must consist of two partial problems solved independently by features M3 and M5, on the one hand, and by feature M6, on the other hand.

(b) Binding effect of the first appeal decision

5. In the first appeal decision T 221/20, the present board in a different composition decided that the subject-matter of claim 1 as granted - which

essentially corresponded to features M1 to M5 - lacked an inventive step over the combination of documents K3 and K5. In arriving at this conclusion, the board started from the embodiment of Figure 2 of document K3 and formulated the objective technical problem solved by the distinguishing features M3 and M5 as to improve the quality and protection of a numbered sheet (Reasons 1.1 to 1.3).

6. Pursuant to Article 111(2) EPC, a department whose decision was appealed is bound by the ratio decidendi of the Board of Appeal if the case is remitted for further prosecution, in so far as the facts are the same. In point 36 of the Reasons for the decision under appeal, the opposition division acknowledged the binding effect of the board's decision on its assessment of inventive step in respect of features M3 and M5. It is established jurisprudence that the binding effect also extends to any appeal proceedings following remittal, in so far as the facts are the same (see "Case Law of the Boards of Appeal of the European Patent Office", 11th edition, July 2025, V.A.10.1.3).
7. Thus, the conclusion that features M3 and M5 are obvious in view of the combined printing press shown in Figure 2 of document K3 in combination with the teaching of document K5 is legally binding also in the present appeal proceedings.
8. It follows from the above that the only issue to be decided in respect of claim 1 of the main request is whether or not the solution of feature M6 was obvious in the sense of Article 56 EPC.

(c) Second partial problem

9. In the decision under appeal, the second partial problem was formulated as to ensure an early detection of possible printing errors on the numbering (Reasons 34 and 36). By assuming an "early detection", however, the opposition division's formulation contains an element of the solution. Instead, the board adheres to the formulation proposed by the appellant on appeal, namely to provide a verification of the print quality of the number printing.

(d) Obviousness of feature M6 in view of common general knowledge

10. It is common ground between the parties that the combined printing press shown in Figure 2 of document K3 does not contain any checking means. The embodiment of Figure 1 of document K3 does, but it comes in the form of three inspection cameras 50a, 50b, 50c arranged *upstream* of the number printing part 3A, 3B. The aim of these cameras is to check the print quality of sheets that have passed the first and second letterpress printing units 2A, 2B (paragraph [0025] of document K3).
11. The appellant submits that, in order to verify the print quality of the number printing, the skilled person would have applied this teaching by placing an inspection camera directly behind the impression cylinder 10 of the number printing part 3 of document K3. The board arrives at the same conclusion. The print quality of number printing can only be verified once sheets have been subjected to the number printing part. It therefore stands to reason that the skilled person would have solved the second partial problem by providing an inspection camera or, in the words of feature M6, "checking means" after the number printing

part in the direction of conveyance of the sheets through the printing press, much similar to the relative position occupied by the cameras 50a and 50c with respect to the respective letterpress printing units 2A and 2B shown in Figure 1 of document K3. Rather than *transferring* inspection equipment from one position to another, as the respondent argues, the solution to the problem would have consisted in *introducing* checking means at an appropriate location in the combined printing press shown in Figure 2 of document K3, a measure which does not require inventive skill. This is all the more so since no convincing case was made by the respondent as to why the installation of an inspection camera after a number printing part would have involved structural changes to the combined printing press.

12. The contrary decision by the opposition division was partly based on a counterargument by the respondent in respect of a particular contingency procedure followed by the device of document K3. Paragraph [0025] of document K3 explains that, in case a defective sheet is detected by one of the inspection cameras represented in Figure 1, the number printing cylinder 30 of both number printing units 3A and 3B is disengaged from the impression cylinder 10. Be that as it may, the board is not persuaded that such a corrective action would have dissuaded the skilled person from providing checking means after the number printing part. Even if the detection of a misprint in the upstream printing step had triggered a temporary interruption of the number printing also in the embodiment of Figure 2 of document K3, it would in no way have affected a verification of the print quality on those sheets that had received numbers. This conclusion is reinforced by the fact that feature M6 does not specify any intended action other

than checking print quality of sheets subjected to number printing. Any considerations made by the opposition division and the respondent in respect of (a lack of) "further corrections" mentioned or suggested by document K3 are thus misguided.

13. Precisely because, in the first step of the partial-problems approach, the skilled person would have already incorporated the coating part of document K5 in the combined printing press of document K3 (see T 221/20, Reasons 1.4), it is imperative that the print quality of the sheets subjected to number printing was checked before the sheets were passed through the coating part. This view follows from the appellant's consideration that, had the number print quality been checked only after the coating part, more waste sheets would have been produced. At the same time it takes cognisance of the respondent's argument that optical effects caused by the coating might impact the results of the print-quality check.

14. In view of the above, the board concludes that feature M6, in combination with features M1 to M5, was obvious. Thus, when starting from the embodiment of Figure 2 of document K3, the skilled person would have arrived at the combined printing press of claim 1 in view of the teaching of document K5 and common general knowledge. Therefore, the subject-matter of claim 1 of the main request does not involve an inventive step pursuant to Article 56 EPC.

(e) Obviousness of feature M6 in view of the teaching of document K8

15. Document K8 discloses a printing press that combines a seal printing part, a number printing part and an

inspection device. As illustrated by Figure 1 of document K8, a common impression cylinder 12 conveys a sheet 5 passed a seal cylinder 13 and two number printing cylinders 14, 15 to a transfer cylinder 16 and an inspection cylinder 17. Facing the peripheral surface of the inspection cylinder is the inspection device 18 which has a camera 18a that "inspects the quality of the seal and numbers printed on the sheet 5" and, particularly, "inspects whether the printed numbers coincide with the numbers normally expected to be printed" (paragraph [0016] of document K8). In the event that the inspection device 18 detects an abnormality, the printing operation by the seal cylinder 13 and number printing cylinders 14 and 15 can be immediately stopped, thus minimising the occurrence of waste sheets (paragraph [0047] of document K8).

16. The board shares the appellant's view that the skilled person would have been encouraged by the teaching of document K8 to provide an inspection device in the combination printing press represented in Figure 2 of document K3 with the aim to verify the print quality of the number printing. Given that the combined printing press of document K3 would have already been supplemented with a coating part in the first step of the partial-problems approach, the question that remained was where such an inspection device ought to be positioned. Paragraph [0007] of document K8 is firm in stating that the quality of the seal and number should be inspected immediately after the seal or number is printed. Likewise, paragraph [0047] of document K8 explains by way of a counterexample illustrated in Figure 5 that positioning the inspection device too far downstream in the direction of conveyance entails waste sheets. In the board's view, these are compelling reasons to arrange the inspection

device as close as possible after the number printing part. It must thus be concluded that the skilled person would have arranged the inspection device or, in the words of feature M6, "checking means" after the number printing part, but before the coating part. In this way, the print quality of the sheets would have been checked after the sheets were subjected to number printing, but before they were processed in the coating part, in accordance with feature M6.

17. The respondent's argument that document K8 failed to disclose a coating part is based on the false premise that only documents K3 and K8 would have been combined to arrive at the claimed subject-matter. It ignores the board's finding in the first appeal decision T 221/20 that features M3 and M5, in combination with features M1, M2 and M4, were obvious in view of the combined printing press shown in Figure 2 of document K3 and the teaching of document K5.
18. Furthermore, the respondent's suggestion that the purpose and the function of the inspection means disclosed in either of documents K3 and K8 clearly differed from those of the checking means of feature M6 must be rejected for the reason that, apart from checking print quality of a sheet after it has been subjected to number printing, no purpose or function can be derived from the wording of feature M6.
19. Also the respondent's argument in respect of the disengagement of the number printing of documents K3 and K8 is not convincing. If anything, the corrective action described in paragraph [0046] of document K8 would have brought the disclosure of document K8 closer to that of document K3. As set out in point 12. above, the board is not persuaded that the disengagement of

the number printing cylinders from their respective impression cylinder upon detecting a misprint would have dissuaded the skilled person from providing checking means after the number printing part. Also here, it is important to bear in mind that feature M6 does not specify any action other than checking the print quality of sheets subjected to number printing.

20. In sum, when starting from document K3, the skilled person would have arrived at the combined printing press of claim 1 in view of the teaching of both documents K5 and K8 in an obvious manner. Hence, the subject-matter of claim 1 of the main request does not involve an inventive step pursuant to Article 56 EPC.

Conclusion on the main request

21. In view of the above, the respondent's main request is not allowable so that the decision under appeal must be set aside.

Remittal to the opposition division (Article 111(1), second sentence, EPC and Article 11 RPBA)

22. Article 111(1), second sentence, EPC provides that the board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution. Furthermore, pursuant to Article 11 RPBA, the board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so.

23. The board finds that, in the present case, there are special reasons for remitting the case to the opposition division.

24. Firstly, the claims of the first auxiliary request have not yet been examined by the opposition division. They were originally filed as 'Auxiliary Request 2 (Replacement)' during the oral proceedings held before the opposition division on 14 November 2019. At the end of these oral proceedings, the opposition division decided to reject the opposition. In the subsequent appeal proceedings, the respondent filed the same claims together with an adapted description as 'Auxiliary Request 2' in reply to the statement of grounds of appeal. But because the board decided to set aside the opposition division's decision and to remit the case for further prosecution, no auxiliary requests were discussed on appeal. The opposition proceedings following the remittal revolved exclusively around the allowability of the subject-matter claimed in then auxiliary request 1 (now the main request).

25. It is well-recognised that any party should, where possible, be given the opportunity to have two readings of the important elements of a case. However, although there is no absolute right to have an issue decided upon at two instances, it is also not the function of the board to consider and decide upon issues which had not been examined at all by the department of first instance.

Not remitting the case to the opposition division in the present circumstances would require the board to consider and decide on issues, in particular the question of inventive step of the first auxiliary request, which had not been examined at all by the

opposition division and, thus, to effectively replace the opposition division rather than to review the contested decision in a judicial manner, which is the primary object of the appeal proceedings pursuant to Article 12(2) RPBA.

26. Secondly, both the appellant and the respondent explicitly requested to remit the case to the opposition division for further prosecution. The board is mindful of the fact that there is no right of the parties to a remittal, only a discretion which may or may not be exercised by the board in a party's favour under Article 111(1), second sentence, EPC (R 9/10, Reasons 8; R 12/09 of 15 January 2010, Reasons 8). Also, contrary to the respondent's suggestion, the dismissal of a party's request for remittal does not as such constitute a violation of Article 6 of the European Convention on Human Rights (ECHR), concerning the right to a fair trial, already for the reason that this provision does not establish a right to assessment of a case in two independent instances (T 2561/11, Reasons 4). Nevertheless, the board is of the view that, in the present case, both parties' insistence on having the claims of the only remaining auxiliary request examined at two levels of jurisdiction, together with the fact that the board would have needed to consider and decide upon issues which had not been assessed by the opposition division, outweighs any considerations regarding the inevitable lengthening of the proceedings before the EPO caused by a remittal.
27. The board wishes to emphasise that its discretionary decision to remit the case is by no means occasioned by the respondent's considerations that the parties had "merely exchanged a few arguments" in respect of the first auxiliary request on appeal and that "no in-depth

analysis" had been carried out. Apart from the fact that, in such circumstances, a remittal could be regarded as an attempt to circumvent the substantiation requirements of Article 12(3) RPBA (T 1731/19, Reasons 8.2 and 8.3), it would entail that the parties could, through the degree of completeness of their appeal submissions, dictate how the board should exercise its discretion under Article 111(1), second sentence, EPC.

28. In view of the above, the board exercises its discretion to remit the case to the opposition division for further prosecution (Article 111(1), second sentence, EPC and Article 11 RPBA).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairwoman:



N. Schneider

A. Bacchin

Decision electronically authenticated