Datasheet for the decision
of 10 November 2011

Case Number: T 0556/09 - 3.2.05

Application Number: 99309442.4

Publication Number: 1004448

IPC: B41J2/175

Language of the proceedings: EN

Title of invention: Printer and ink cartridge attached thereto

Applicant: Seiko Epson Corporation

Opponent: Pelikan Hardcopy Production AG

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 112a(2)(d)
RPBA Art. 12, Art. 13
EPC R. 106

Keyword:
Novelty (main request - yes)
Inventive step (main request - no)
Admissibility of auxiliary requests 1 to 4 - no
Objection according to Article 112a(2)(d) EPC - dismissed

Decisions cited:
T 708/05, R 10/09
Catchword:
Case Number: T0556/09 - 3.2.05

DE C I S I O N
of the Technical Board of Appeal 3.2.05
of 10 November 2011

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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 23 December 2008
rejecting the opposition filed against European
patent No. 1004448 pursuant to Article 101(2)
EPC, second sentence.

Composition of the Board:
Chairman: W. Zellhuber
Members: S. Bridge
A. Pignatelli
Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division rejecting the opposition filed against the European patent No. 1 004 448.

The Opposition Division held that the grounds for opposition submitted by the appellant under Article 100(a) EPC (lack of novelty, Article 54 EPC, and lack of inventive step, Article 56 EPC) and Article 100(b) and (c) EPC did not prejudice the maintenance of the patent in suit as granted.

II. Oral proceedings were held before the Board of Appeal on 10 November 2011.

III. The appellant requested that the decision under appeal be set aside and European patent No. 1 004 448 be revoked. He further requested, that the auxiliary requests, filed on 10 October 2011, be rejected as late filed, and, if this request were rejected, that the oral proceedings then be adjourned.

IV. The respondent (patent proprietor) requested that the appeal be dismissed, as main request, or, as an auxiliary measure, that the patent be maintained on the basis of one of the auxiliary requests 1 to 4, filed on 10 October 2011. He further requested that the documents filed by the appellant on 9 and 10 November 2011 be not admitted in the proceedings.

V. Independent claim 1 of the patent as granted (main request) reads as follows:
"1. A printer (1), to which a cartridge (107) is detachably attached, said cartridge (107) keeping ink therein and having a rewritable non-volatile memory (80), said printer (1) causing the ink kept in said cartridge (107) to be transferred to a printing medium (105), thereby implementing a printing operation, said printer (1) being characterised by comprising:

a printer memory (90) that stores information relating to the ink kept in said cartridge (107) into a predetermined area thereof in a predetermined format of addressing, which is different from a specific format of addressing adopted in said non-volatile memory (80);

a memory writing unit that reads the information relating to the ink kept in said cartridge (107) from the predetermined area and writes the read-out information into a specific area of said non-volatile memory (80), which corresponds to the predetermined area of said printer memory (90) and

an address decoder that converts a storage format of addressing of the information relating to the ink from the predetermined format of addressing into the specific format of addressing when said memory writing unit writes the information."

VI. Respective claims 1 according to auxiliary requests 1 to 3 are identical and read as follows (the underlining of the changes with respect to claim 1 according to the main request was added by the Board):

"1. A printer (1), to which a cartridge (107) is detachably attached, said cartridge (107) keeping ink therein and having a rewritable non-volatile
memory (80) carrying out transmission of data by serial access, said printer (1) causing the ink kept in said cartridge (107) to be transferred to a printing medium (105), thereby implementing a printing operation, said printer (1) being characterised by comprising:

a printer memory (90, 210) that stores information relating to the ink kept in said cartridge (107) into a predetermined area thereof in a parallel format of addressing, which is different from a specific format of addressing adopted in said non-volatile memory (80);

a memory writing unit that reads the information relating to the ink kept in said cartridge (107) from the predetermined area and writes the read-out information into a specific area of said non-volatile memory (80), which corresponds to the predetermined area of said printer memory (90, 210) and

an address decoder that converts a storage format of addressing of the information relating to the ink from the parallel format of addressing into a number of pulses of a clock signal constituting the specific format of addressing when said memory writing unit writes the information."

VII. Claim 1 according to auxiliary request 4 differs from claim 1 according to auxiliary requests 1 to 3 in that, the term "8-bit" is inserted before both instances of the term "parallel format of addressing" and in that the term "printer memory (90)" is replaced by the term "printer memory (90, 210)" in both instances.
The following documents are referred to in the present decision:

L10: U. Tietze, Ch. Schenk, "Halbleiter-Schaltungstechnik", ISBN 3-540-56184-6, Zehnte Auflage; Springer-Verlag, 1993, cover pages, pages VIII to XIV, 270 to 301, 624 to 641, 676, 677 and 704 to 707
L17: WO-A-90/00974

The arguments of the appellant in the written and oral proceedings can be summarised as follows:

Admissibility of document L17
Document L17 could only be filed together with the grounds of appeal, because it was not available earlier. It contains clear indications that the printer memory SP is larger than the memory strip used on the ink cartridge and thus requires a different "format of addressing" than the latter. This document is thus relevant and should be admitted into the proceedings.

Main request, novelty of the subject-matter of claim 1

Document O7
Document O7 discloses a printer as defined in claim 1 of the patent in suit. In particular, according to document O7, data relating to the amount of ink remaining in the ink cartridge is stored in the memory 12 of the printer (translation L8a, page 5, last five lines to page 6, end of first paragraph). As that memory constitutes the printer memory and as the printer carries out various functions (see also translation L8a, page 6, second paragraph) the
memory 12 in the printer is necessarily of a larger capacity than the memory 3 on the ink cartridge. A larger memory 12 requires a larger number of address bits so that its "format of addressing" thereby inevitably differs from that of a smaller memory 3 in the ink cartridge.

As was already noted in the grounds of appeal (page 7, point g), the otherwise undefined term "format of addressing" cannot just be interpreted narrowly in the light of the embodiment described in the patent specification, which only discloses converting parallel addressing into a particular kind of serial addressing.

Therefore, the subject-matter of claim 1 of the patent as granted (main request) lacks novelty with respect to the disclosure in document O7.

Document L17
The memory SP in the printer is larger than the memory on an ink cartridge, because it contains sufficient memory locations SP1 to SP5 for all ink cartridges (11, 12) and can also store the program for the printer controller (page 7, lines 1 to 10, figure 1). A larger memory requires a larger number of address bits so that its "format of addressing" thereby differs from that of a smaller memory used in an ink cartridge. It is thus implicit that the different memories SP and 14 require a conversion of their formats of addressing when writing to the memory 14 used in the ink cartridge (page 9, lines 25 to 34, figure 1).

Therefore, the subject-matter of claim 1 of the patent as granted (main request) lacks novelty with respect to the disclosure in document L17.
Main request, inventive step of the subject-matter of claim 1

Starting from the teaching of document O7, the skilled person is motivated to select different sized memories (see document L10, pages 277, 296 and 299) respectively for use in the printer and the ink cartridge and thus inevitably also has to provide an address decoder for converting their correspondingly different "format of addressing" and, in particular, between their differing number of address bits. The skilled person thus immediately arrives at the subject-matter of claim 1 of the patent as granted (main request) which therefore lacks an inventive step.

Auxiliary requests

Auxiliary requests 1 to 4 are late filed, concern issues already raised inter alia in the grounds of appeal (page 7, point g) and, thus, are not admissible under Articles 12 and 13 of the RPBA. Furthermore, the introduction of previously unclaimed features ("parallel format of addressing", "8-bit") from the description raises issues for which the appellant did not have enough time to prepare so that the oral proceedings would have to be adjourned. Moreover, these features are only disclosed in a specific context, thus raising questions with regards to the requirements of Article 123(2) EPC). For all of these reasons, auxiliary requests 1 to 4 should not be admitted into the proceedings.
Respondent's objection concerning an alleged procedural defect during the appeal proceedings (Article 112a(2)(d) EPC)

In accordance with decision T 708/05 (not published) a party must always be prepared for the fact that a board of appeal reverses a conclusion reached in a decision at first instance and the respondent should have taken appropriate steps, if so desired, in due time in order to respond to this possible outcome.

X. The arguments of the respondent in the written and oral proceedings can be summarised as follows:

Admissibility of document L17
Document L17 could already have been submitted during the opposition proceedings and is thus late filed. The device of document L17 only involves counting emitted ink drops, does not calculate the amount of ink remaining in the ink cartridge and thus cannot write this amount into the memory on the cartridge: instead, the memory strip on the ink cartridge is merely erased one bit at a time. Document L17 is thus not relevant to the subject-matter of claim 1 of the patent as granted and should not be admitted into the proceedings at this late stage.

Main request, novelty of the subject-matter of claim 1

Document O7
This document is silent about the size of the printer memory 12 in comparison with the cartridge memory 3. Data other than the amount of ink remaining in the ink cartridge is not necessarily stored in the memory 12, but could, for example, be held in the subtraction unit 13. Furthermore, according to figures 3 and 4, the
memory 3 in the cartridge and the memory 12 in the printer are connected via a bi-directional serial link so that there is no need to convert the "format of addressing". The non-standard term "format of addressing" must be interpreted according to the patent in suit where the embodiment set out in paragraph [0099] (Bl-publication) provides as an example the conversion from the "format of addressing" (8 bits, parallel) used in EEPROM 90 in the printer to a different "format of addressing", that is, the number of pulses of the clock signal CLK for the serial access type of EEPROM 80 in the ink cartridge.

Document L17

It is not immediately and directly derivable from document L17 that the counter values are actually read out from the memory locations SP1 to SP5 in the printer and provided to the TI-ASIC circuit for writing to the ink cartridge memory. Document L17 only discloses that resetting one of the counters SP1 to SP5 causes the TI-ASIC to delete a bit in the corresponding ink cartridge memory 17 (page 9, lines 25 to 30).

Therefore, the subject-matter of claim 1 of the patent as granted (main request) is not immediately and directly derivable from either one of documents O7 and L17 and is thus new.

Main request, inventive step of the subject-matter of claim 1

Document O7 does not contain any indications concerning differently sized memories in the printer and the ink cartridge. There are also no indications concerning different "formats of addressing" so that the skilled person is therefore not motivated to introduce an
address decoder, particularly, as it is simpler not to have one. The effect of providing an address decoder according to the invention is to decrease the load on the print controller (patent as published, paragraph [100]).

The non-standard term "format of addressing" must be interpreted according to the patent in suit where the embodiment set out in paragraph [0099] (Bl-publication) provides as an example the conversion from the "format of addressing" (8 bits, parallel) used in EEPROM 90 in the printer to a different "format of addressing", that is, the number of pulses of the clock signal CLK for the serial access type of EEPROM 80 in the ink cartridge. The skilled person would thus use his knowledge of the art to disregard any irrelevant specificity of the embodiment and thus identify converting "formats of addressing" with changes such as from parallel to serial addressing. "Formats of addressing" which merely involve a different number of address bits thus do not constitute different "formats of addressing" as exemplified in the patent in suit.

Therefore, the subject-matter of claim 1 of the patent as granted (main request) is not obvious when starting from document O7 and is thus based on an inventive step.

Auxiliary requests

Auxiliary requests 1 to 4 became necessary after the negative opinion in the annex to the summons to oral proceedings which considered document O7 as highly relevant. Thus, in these requests, the meaning of the term "format of addressing" has been further restricted based on the disclosure of paragraph [0096] of the
application as filed (published version). Furthermore, as this is the only detailed example provided in the description, it is obvious that nothing else could be intended so that one month is sufficient time for the other party to prepare a response. Auxiliary requests 1 to 4 should therefore be admitted into the proceedings.

Objection concerning an alleged procedural defect during the appeal proceedings (Article 112a(2)(d) EPC)

During the oral proceedings and after the Board had informed the parties of its conclusion not to admit auxiliary requests 1 to 4, the respondent made the following declaration verbatim:

"An objection is raised in respect to the procedural defect of rejecting auxiliary requests in spite of the invitation to file amendments relevant to resolution of an issue to be discussed at the oral proceedings which was first communicated by the Board of Appeal in the annex to the summons to oral proceedings dated 9 August 2011 and which related to the construction of the main claim of the patent as granted and as maintained."

No further reasons were given concerning the nature of the alleged procedural defect.
Reasons for the Decision

1. Main request

1.1 Admissibility of document L17

Document L17 was filed by the appellant with its statement of grounds of appeal as a reaction to the decision of the Opposition Division, rejecting the opposition. The requirements of Article 12(2) RPBA to the effect that "the statement of grounds of appeal ... shall contain a party's complete case. They ... should specify expressly all the facts, arguments and evidence relied on" are thus met.

Document L17 (abstract, figure 1) concerns "containers (11, 12) for printing devices, ... ink reservoirs [which] are fitted with an electronic storage device (14) in the form of a chip in which the information on the current level of the container ... are stored. The level of the printing medium is detected via the central control system (16) of the printing device and transmitted to the chip" and is thus, a priori, relevant to the subject-matter of the claim 1 of the main request.

For these reasons, document L17 is admitted into the appeal proceedings, Article 114 EPC and Article 12(2) (4) RPBA.

1.2 Novelty, claim 1, main request

1.2.1 Document O7

According to this document, the data relating to the amount of ink remaining in the ink cartridge and contained in its non-volatile memory 3 is read out and
written into the memory 12 of the printer (translation L8a, page 5, last five lines and page 6, first five lines). Document O7 is silent about the format of addressing used for the memory 12 and also does not discuss the relative capacity of the memories 3 and 12. Although document O7 refers to other data such as, amongst others, the amount of ink consumed for one line of printing or the amount of ink consumed for circulating the ink not used for printing (translation L8a, page 6, line 5 to end of first paragraph), these are not inevitably also stored in the memory 12, but could, for example, also be held in the subtraction unit 13. Thus, it is not possible to rule out that the memory 12 of the printer is of same size as the memory 3 of the ink cartridge and thus could, furthermore, share the same "format of addressing".

In consequence, it is not directly and immediately derivable from document O7 that the two memories 3 and 12 require a different "format of addressing". Therefore, the subject-matter of claim 1 of the patent as granted (main request) is new with respect to the disclosure of document O7 (Article 54 EPC).

1.2.2 Document L17
This document discloses that the EE-PROM memory SP in the printer has memory locations SP1 to SP5 which are configured as counters which reset once the maximum count value has been reached (page 7, lines 1 to 10, page 9, lines 17 to 25). Resetting one of the counters SP1 to SP5 causes the TI-ASIC to delete a bit in the corresponding ink cartridge memory 17 (page 9, lines 25 to 30). It is thus not immediately and directly derivable from document L17 that the counter values are actually read out from the memory locations SP1 to SP5 and provided to the TI-ASIC circuit for writing to the
ink cartridge memory, because the TI-ASIC only has to
delete a bit in the ink cartridge memory. Therefore,
the feature of claim 1 of the patent as granted (main
request) that the information relating to the ink kept
in said cartridge read-out from the memory in the
printer is the information which is written into the
memory in the ink cartridge is not immediately and
directly derivable from document L17.

Document L17 (page 3, line 35 to page 4, line 4;
page 9, lines 35 to 37) further discloses that it is
impossible to re-program the memory on ink cartridge,
so that this memory may be written but not rewritten:
the feature "rewritable" from the preamble of claim 1
of the patent as granted (main request) is thus not
disclosed either.

Therefore, the subject-matter of claim 1 of the patent
as granted (main request) is new with respect to the
disclosure of document L17 (Article 54 EPC).

1.3 Inventive step, claim 1, main request

Document O7 forms the closest prior art. The subject-
matter of claim 1 of the patent as granted (main
request) differs therefrom in that the printer memory
(90) and the rewritable non-volatile memory (80) in the
ink cartridge each have a respective, different "format
of addressing" and thus require an address decoder to
carry out the necessary "format of addressing"
conversion when writing the information relating to the
ink kept in said cartridge into the ink cartridge
memory (80).

Both RAM and EPROM memories, as used respectively in
the printer and ink cartridge according to document O7
(translation L8a, page 5, last paragraph, first sentence; page 7, second paragraph, last sentence), are available in a variety of different sizes (document L10, page 277, table 11.8 static RAMs; page 279, table 11.10 dynamic RAMs; page 299, table 11.35 EPROMs; page 300, table 11.36 EEPROMs). The person skilled in the art is motivated to use the smallest memory necessary for storing information (relating to the ink kept in the cartridge) on the replaceable ink cartridge as this will contribute to reducing costs, which is a known issue (translation L8a, page 8, second paragraph). As additional information has to be stored when controlling the printer as a whole (translation L8a, page 6, line 5 to end of second paragraph), the person skilled in the art is also motivated to use an accordingly larger memory in the printer.

A fundamental characteristic of a given memory is the "format of addressing" required for data read/write access and a larger memory necessarily requires a larger number of address bits so that its "format of addressing" thereby inevitably differs from that of a smaller memory. Whenever data stored in a first memory requiring a first "format of addressing" is to be transferred into a second memory requiring a second "format of addressing" which differs from the first "format of addressing", converting between the respective "format of addressing" is an unavoidable necessity for the normal use of two such memories. For this reason the skilled person will provide an address decoder where necessary in the course of the normal practice of his art.

Thus, the skilled person starting from the teaching of document O7 has to choose appropriately sized memory
devices. This means using a relatively larger memory in the printer and relatively smaller memory in the cartridge so that he is confronted with the necessity of providing an address decoder to convert the different "format of addressing" resulting from the different number of address bits needed by the differently sized memories. Thus starting from the disclosure of document O7, the skilled person arrives at the subject-matter of claim 1 (main request) through the normal practice of his art without performing an inventive step.

It was argued on behalf of the respondent that the need to provide different numbers of address bits for different sized memories does not constitute a different "format of addressing", because the first embodiment of the patent in suit only provides an example of the meaning of the term "format of addressing" in terms of conversion from the "format of addressing" (8 bits, parallel) used in EEPROM 90 in the printer to a different "format of addressing", that is, the number of pulses of the clock signal CLK for the serial access type of EEPROM 80 in the ink cartridge (paragraph [0099], B1-publication).

The Board cannot accept this argument, because the term "format of addressing" is neither defined in claim 1 (main request) nor given a general definition in the patent as granted. Furthermore, as already pointed out in the response to the appeal (respondent's letter filed 21 September 2009, page 4, second paragraph) and further confirmed by the respondent during the oral proceedings, the first embodiment only constitutes a particular example of a "format of addressing" conversion and thus does not provide a basis for attributing a corresponding generic limitation to the
term "format of addressing" as used in claim 1 of the main request (see also appellant's grounds of appeal, filed 6 May 2009, page 7, point g). In particular, there is no indication in the patent in suit that the conversion from a parallel to a serial "format of addressing" constitutes an essential feature of the invention. Thus, in the absence of a more precise definition in the patent in suit, the term "format of addressing" also includes the number of bits required for specifying an address.

It was further argued on behalf of the respondent that the effect the control IC 200 carrying out the conversion of the "format of addressing" is to decrease the load on the controller 46 included in the print controller 40 (patent as published, paragraph [0100]). This argument cannot provide support for an inventive step, because the subject-matter of claim 1 (main request) neither refers to a controller, nor specifies that the address decoder is necessarily separate from such a controller.

In consequence, the subject-matter of claim 1 of the patent as granted (main request) does not involve an inventive step for the skilled person with respect to the disclosure of document O7 (Article 56 EPC).

2. Admissibility of auxiliary requests 1 to 4

2.1 Auxiliary requests 1 to 4 were filed on 10 October 2011, one month before the oral proceedings before the Board and are thus late filed.

2.2 According to the respondent itself, the aim of the amendments in these requests is to overcome objections based on document O7 which is more than ten years in
the proceedings (see letter of 10 October 2011) and concern the meaning of the term "format of addressing".

The respondent's argument that auxiliary requests 1 to 4 were filed in response to issues raised by the Board in the annex to the summons to oral proceedings cannot be followed, because the Board did not raise any new issues: in particular, the appellant already argued in his notice of opposition filed 27 June 2007 (page 5, point 3c) and again in the grounds of appeal filed 06 May 2009 (point 6 on pages 5 to 7) that the term "format of addressing" can be understood to refer to the number of address bits required for addressing a memory. Therefore, the respondent must have been aware that the meaning of the term "format of addressing" was a subject of discussion not only since the beginning of the opposition proceedings but also again since the beginning of the appeal proceedings.

The Board does not accept that simply the fact that some of these objections were reiterated by the Board in a communication allows the respondent to deviate from the rules of procedure and amend his case: An appeal case to be decided only consists of the requests, evidence and arguments put forward by the parties. A communication from the Board which merely reiterates objections already put forward by the parties and sets out the Board's provisional opinion on some of these objections does not change the case to be decided: the provisional opinion of the Board is not part of the case, but merely a provisional opinion concerning the case. Thus, there is no valid reason for the respondent to wait until one month before the oral proceedings before the Board to file auxiliary requests addressing this issue.
Auxiliary requests 1 to 4, filed on 10 October 2011, thus are a response to issues raised by the appellant in his grounds of appeal, not a response to any directions of the Board under Article 12(1)(c) RPBA and constitute a late filed amendment to the respondent's case, because, according to Article 12(2) RPBA the statement of grounds of appeal and the reply shall contain a party's complete case. After having been confronted with the objections raised by the appellant, the respondent decided to defend its case on the basis of the patent in suit as granted.

2.3 Under Article 13 RPBA, a decision to admit or not to admit a request filed both after the filing of the reply and after oral proceedings have been arranged is at the discretion of the Board of Appeal (see also Enlarged Board of Appeal decision R 10/09, point 2.2, 1st and 3rd paragraphs). The criteria for the exercise of this discretion are the complexity of the new subject-matter, the current state of the proceedings, the need for procedural economy (Article 13(1) RPBA) and the fairness to the other party and the Board (Article 13(3) RPBA). Furthermore, in the annex to the summons to oral proceedings (point 7), the Board already drew the parties' attention to Articles 12 and 13 RPBA in that "any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The criteria for exercise of discretion include inter alia whether or not there are good reasons for the late filing and whether or not the amendments and submissions are relevant to a resolution of the issues to be discussed at the oral proceedings".

2.4 The respective claims 1 of auxiliary requests 1 to 4 have in common that the "predetermined format of
addressing" of the printer memory 90 in paragraphs 2 and 4 of the claim 1 as granted (main request) has been replaced to read "parallel format of addressing" (auxiliary requests 1 to 3), respectively "8-bit parallel format of addressing" (auxiliary request 4).

The only basis for this amendment in the patent as filed is the sentence "The control IC 200 mounted on the carriage 101 carries out the conversion of the format of addressing (8 bits, parallel) in the EEPROM 90 of the printer main body 100 into a different format of addressing, that is, the number of pulses of the clock signal CLK" (paragraph [0096], published version) which forms part of the description of the first embodiment (paragraphs [0096] to [0100], published version).

The introduction of features from the description which were not previously claimed creates a new case which could not have been anticipated at this late stage of the proceedings.

Furthermore, as there is no basis in the application as filed for isolating the "parallel format of addressing" from the remaining features of the first embodiment, there are serious reasons to believe that this amendment to the subject-matter of claim 1 (auxiliary requests 1 to 4) results in a previously undisclosed intermediate generalisation contrary to Article 123(2) EPC.

In addition, the appellant raised the question of the meaning of the term "parallel format of addressing" as this was not otherwise explained. Thus, the clarity of
the amendments would also require discussion (Article 84 EPC).

2.7 The subject-matter of claim 1 (auxiliary requests 1 to 4) is thus not prima facie allowable and it is thus already for that reason not conducive to a resolution of the issue of the lack of inventive step of the subject-matter of claim 1 according to the main request.

2.8 Furthermore, the introduction into respective claims 1 of auxiliary requests 1 to 4 of the previously unclaimed feature "parallel" (format of addressing) from the description raises new issues which the appellant cannot be reasonably be expected to deal with without the adjournment of the oral proceedings as was requested by the appellant.

2.9 For all these reasons, the Board comes to the conclusion that the admission of auxiliary requests 1 to 4 into the proceedings would not be conform to the need for procedural economy and to the principle of a fair conduct of the proceedings.

The requests are therefore refused under Article 13(1) and (3) RPBA.

3. Respondent's objection concerning an alleged procedural defect during the appeal proceedings (Article 112a(2) (d) EPC)

After the rejection of its auxiliary requests, the respondent raised an objection under Article 112a(2)(d) EPC.
The respondent appears to consider that the alleged procedural defect consists in that the Board rejected the auxiliary requests in spite of a perceived invitation by the Board itself in its annex to the summons to oral proceedings to file amendments relevant to the resolution of an issue to be discussed at the oral proceedings.

The Board holds that the annex to the summons to oral proceedings before the Board did not contain any invitation to file any amendments in the sense of Article 12(1)(c) RPBA.

It only contained a reference to the relevant provisions of RPBA in case amendments were to be filed. These provision were cited almost verbatim.

The above interpretation of the party is thus void of any support in the text of the annex to the summons to oral proceedings.

In the absence of additional arguments from the respondent, its objection is dismissed in accordance with Rule 106 EPC.
Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: 

The Chairman:

D. Meyfarth

W. Zellhuber

Decision electronically authenticated