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**Datasheet for the decision  
of 4 September 2023**

**Case Number:** J 0005/23 - 3.1.01

**Application Number:** 21204983.7

**Publication Number:** 3995084

**IPC:** A61B8/12, A61B1/00, A61B8/00,  
A61B90/00

**Language of the proceedings:** EN

**Title of invention:**

TIP ASSEMBLIES FOR REAL-TIME SAMPLING SYSTEM

**Applicant:**

Gyrus ACMI, Inc. d/b/a Olympus Surgical  
Technologies America

**Relevant legal provisions:**

EPC Art. 33(1)(c), 72, 113, 116, 164(1), 164(2)  
EPC R. 2, 22, 41(2)(h), 50(3), 103(1)(a)  
RPBA 2020 Art. 12(8)  
Vienna Convention on the Law of Treaties (1969) Art. 2(1)(a),  
5, 31, 32  
Regulation (EU) No 910/2014 of the European Parliament and of  
the Council of 23 July 2014 on electronic identification and  
trust services for electronic transactions in the internal  
market Art. 3(10), 3(11), 3(12), 25(2)

**Keyword:**

Assignment of a European patent application - signature requirement

Registration of transfers - evidence

Notice from the EPO - legal nature

**Decisions cited:**

G 0005/83, G 0005/88, G 0003/08, G 0002/12, G 0003/19,

J 0002/01, J 0010/20, J 0007/21, T 0205/14

**Catchword:**

In the absence of a different definition in the Implementing Regulations, the term "signature" in Article 72 EPC must be understood as referring to a handwritten depiction of someone's name (Reasons 2.9).



**Juristische Beschwerdekammer**  
**Legal Board of Appeal**  
**Chambre de recours juridique**

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Case Number: J 0005/23 - 3.1.01

**D E C I S I O N**  
**of the Legal Board of Appeal 3.1.01**  
**of 4 September 2023**

**Appellant:** Gyrus ACMI, Inc. d/b/a Olympus Surgical  
(Applicant) Technologies America  
800 West Park Drive  
Westborough, MA 01581 (US)

**Representative:** Noack, Andreas  
c/o Stölmár & Partner  
Neuer Wall 71  
20354 Hamburg (DE)

**Decision under appeal:** **Decision of the Legal Division posted on  
23 February 2023 rejecting the applicant's  
request to record the transfer of European  
patent application No. 21204983.7 in the  
European Patent Register.**

**Composition of the Board:**

**Chair** I. Beckedorf  
**Members:** N. Obrovski  
F. Bostedt

## **Summary of Facts and Submissions**

- I. The applicant's (appellant's) appeal is against the Legal Division's decision dated 23 February 2023 on European patent application No. 21204983.7. In this decision, the Legal Division rejected the applicant's request for the transfer of the application from Gyrus ACMI Inc. to Olympus Medical Systems Corporation to be recorded in the European Patent Register.
  
- II. In the proceedings before the Legal Division, the appellant filed an electronic copy of an assignment agreement, bearing what the appellant calls "text string signatures" for both the assignor and the assignee. The Legal Division referred to the Notice from the EPO dated 22 October 2021 concerning electronic signatures on documents submitted as evidence to support requests for registration of a transfer of rights and informed the applicant that the electronic signatures in the assignment agreement lacked a qualified certificate within the meaning of Regulation (EU) No. 910/2014. It invited the applicant to re-submit the document in PDF format bearing either verifiable electronic signatures or handwritten signatures. As the applicant failed to do so, the Legal Division rejected its request for the transfer to be recorded.
  
- III. The appellant essentially argues, with reference to Rule 2(2) EPC and Article 12 of the decision of the President of the EPO dated 14 May 2021 concerning the electronic filing of documents, that the signature of the parties to the assignment contract as required

under Article 72 EPC may also take the form of "text string signatures" without any further qualification.

IV. The appellant requests:

that the decision under appeal be set aside and that the transfer of rights be registered.

The appellant further requests:

reimbursement of the appeal fee,  
due to a substantial procedural violation in that the Legal Division disregarded the applicable law.

### **Reasons for the Decision**

1. Decision in written proceedings
  - 1.1 The case concerns a purely legal matter, namely the interpretation of the EPC, and is ready for decision in written proceedings in accordance with Article 12(8) RPBA 2020 and Articles 113 and 116 EPC, on the basis of the contested decision to be reviewed and the appellant's extensive written submissions. The appellant did not request oral proceedings and the Board did not consider it expedient to hold oral proceedings of its own motion.
2. Transfer of patent application by assignment contract - signature requirement
  - 2.1 According to Article 72 EPC, the assignment of a European patent application must be made in writing and requires "the signature of the parties to the

contract". Under Rule 22(1) EPC, the transfer of a European patent application is recorded in the European Patent Register on request and upon production of documents providing evidence of such transfer. Pursuant to Rule 22(3) EPC, a transfer has effect vis-à-vis the EPO only at the date when and to the extent that the documents referred to in Rule 22(1) EPC have been produced.

- 2.2 The case in hand hinges on how the term "signature" in Article 72 EPC is to be understood and, in particular, whether it encompasses electronic signatures in the form of "text string signatures" without any further qualification.
- 2.3 When interpreting the provisions of the EPC, the principles of interpretation laid down in Articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969 (VCLT) must be applied (G 5/83, Reasons 4; G 2/12, Reasons V.(3)).
  - 2.3.1 The title of Article 31 VCLT is "General rule of interpretation". According to the first paragraph of this provision "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".
  - 2.3.2 The "general rule of interpretation" is a single rule of interpretation. It requires several methods of interpretation - in particular the grammatical, systematic and teleological methods - to be applied in a holistic manner. The "ordinary meaning" of a certain term is not to be determined in the abstract, but only emerges in the specific context in which it is used,

taking account of the rationale underlying the legal provision to be interpreted.

2.3.3 According to the Enlarged Board of Appeal, the starting point of interpretation under Article 31 VCLT is the wording, i.e. the "objective" meaning of the term to be interpreted, regardless of the original "subjective" intention of the contracting parties (see G 3/19, Reasons XIV.2). Dictionary meanings of a certain term are necessarily abstract and can therefore deviate from the ordinary meaning of that term in the context of the legal provision in which it is used, taking account of the provision's purpose. Against this background, the Board provides the following dictionary extracts by way of example only, as a first approximation for establishing the most common usage of the term "signature" in the context in which this term is used in Article 72 EPC, i.e. in the context of signing a contract.

2.3.4 The Cambridge English Online Dictionary defines the noun "signature" as "your name written by yourself, always in the same way, usually to show that something has been written or agreed by you" (retrieved on 29 August 2023 from <https://dictionary.cambridge.org/dictionary/english/signature>).

2.3.5 The Merriam-Webster's Online Dictionary provides multiple definitions of the term "signature". In the context of a contract, the following come into consideration:

- "the act of signing one's name to something"
- "the name of a person written with his or her own hand" (retrieved on 29 August 2023 from <https://www.merriam-webster.com/dictionary/signature>)

2.3.6 Among the large number of possible meanings of "signature" listed in the Oxford English Online Dictionary, the following come into consideration in the context of a contract:

- "The action of signing one's name; authorization or authentication of a document, letter, etc., by signing it. Also: an instance of this."
- "A person's name written (esp. in a distinctive way) so as to authenticate a document, authorize a transaction, or identify oneself as the writer or sender of a letter. Also: a distinctive mark or cross serving this purpose."

Notably, the following definition is only provided for the specific context of "Computing":

- "A block of text (or text and images) which may be automatically appended to the end of an electronic message, such as an email, and contains the sender's name and contact details, or other information; a file containing this." (retrieved on 29 August 2023 from <https://www.oed.com/view/Entry/179546?rskey=y076Pp&result=1#eid>)

2.3.7 The German version of Article 72 EPC refers to "Unterschrift" as the German term for signature. The leading German dictionary is the "Duden", which in the Duden Online Dictionary provides the following definition for this word in the given context:

- "zum Zeichen der Bestätigung, des Einverständnisses o. Ä. eigenhändig unter ein Schriftstück, einen Text geschriebener Name" (retrieved on 29 August 2023 from <https://www.duden.de/rechtschreibung/Unterschrift>)

"Eigenhändig [...] geschriebener Name" can be translated into English as "a (person's) name written by hand".



2.3.8 The French version of Article 72 EPC refers to "signature" as the French term for signature. The authoritative "Dictionnaire de l'Académie Française" defines "signature" in the following way:  
- "Nom d'une personne écrit de sa main, mis à la fin d'une lettre, d'un contrat, ou d'un acte quelconque, pour le certifier, pour le confirmer, pour le rendre valable." (retrieved on 29 August 2023 from <https://academie.atilf.fr/8/consulter/signature?page=1>)

"Nom d'une personne écrit de sa main" translates into English as "a person's name in their own handwriting".

2.3.9 In summary, in the given context of a contract the above dictionary definitions refer to the term "signature" mostly - although not exclusively - as a handwritten depiction of someone's name.

2.4 When applying the "general rule of interpretation" pursuant to Article 31 VCLT, account must be taken of the object and purpose of the treaty to be interpreted. This includes taking account of the underlying purpose of the specific provision to be interpreted (see G 3/14, Reasons 55: "the object and purpose of the EPC as implemented by the article"; see also Reasons 46 and 62).

2.4.1 As stated in T 205/14, Reasons 3.6.1, Article 72 EPC "constitutes harmonised law with respect to the formal requirements for a transfer of a validly filed European patent application and overrules as *lex specialis* national law which, in general, governs legal acts related to property interests in such applications". Article 72 EPC thus imposes a prohibition on the contracting states to the EPC to stipulate at national

level further formal requirements (e.g. notarisation) for the transfer of a European patent application. At the same time, Article 72 EPC sets mandatory minimum requirements, namely that the assignment must be made in writing and that the signature of the parties to the contract must be provided.

2.4.2 The general rationale underlying Article 72 EPC is that there must be clear and unambiguous formal requirements for the transfer of a European patent application, harmonised at the level of the EPC and resulting in a sufficient level of authenticity of the assignment contract. These requirements guarantee legal certainty.

2.4.3 More specifically, the signature requirement in Article 72 EPC ensures that the assignment contract becomes clearly attributable to the signing parties when they put their names on the contract in a distinctive manner, thereby creating an objectively verifiable link between signature and signatory. It also highlights the legal significance of the act, thereby helping to prevent approval due to a lack of attention. This is commensurate with the importance of this legal transaction, which "has the effect of making a patent application the property of another person" (J 7/21, Reasons 4.4).

2.4.4 If one were to interpret the term "signature" in Article 72 EPC as also including electronic signatures, the question immediately arises as to which kind of electronic signatures could qualify as a "signature" within the meaning of Article 72 EPC. The possibilities include simple electronic signatures (such as the "text string signatures" referred to by the appellant), advanced electronic signatures which are uniquely linked to and capable of identifying the signatory, or

qualified electronic signatures which are additionally based on a qualified certificate (for more detailed possible definitions of these options, see Article 3(10), (11) and (12) of Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market).

- 2.4.5 As explained above, the rationale underlying Article 72 EPC is that there must be clear and unambiguous formal requirements for the transfer of a European patent application, resulting in a sufficient level of authenticity of the assignment contract (see point 2.4.2 above). It would be at odds with this rationale if - without any explicit legal basis (see points 2.6 to 2.7.2 below) - any type of text in electronic form referring to the name of a person were considered a "signature" within the meaning of Article 72 EPC. Moreover, such an interpretation would not ensure that a "signature" makes the assignment contract clearly attributable to the signing party (see point 2.4.3 above).
- 2.4.6 If, on the other hand, the requirement in Article 72 EPC to provide "the signature of the parties to the contract" is construed as a requirement to provide handwritten signatures, this results in a clear and unambiguous formal requirement for the transfer of a European patent application, ensures a sufficient level of authenticity of the assignment contract and fulfils the specific purpose of the signature requirement as set out above. Interpreting this requirement that way is therefore not only in conformity with the most common usage and meaning of the word "signature" in the context of a contract (see points 2.3.3 to 2.3.9

above), but also achieves the purpose underlying Article 72 EPC.

2.5 According to the "general rule of interpretation" pursuant to Article 31 VCLT, legal terms must be interpreted in their context. The immediate context of the term "signature" in Article 72 EPC, i.e. the other terms contained in this legal provision - which provide the context of the document on which the "signature" must be provided (i.e. the assignment contract) - was already taken into account in the above analysis and interpretation. The material to be taken into account for a systematic interpretation is, however, not limited to this immediate context. For the following reasons, it in fact includes the entirety of the articles of the EPC, as well as the Implementing Regulations to it.

2.5.1 Pursuant to Article 31(2) VCLT, the context to be taken into account for interpretation includes *inter alia* the entire text of the treaty. Article 2(1)(a) VCLT defines "treaty" as an "international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments [...]". Pursuant to Article 5 VCLT, the VCLT is also applicable to any "treaty" constituting an international organisation and to any treaty adopted within an international organisation without prejudice to any relevant rules of the organisation.

2.5.2 At the Munich diplomatic conference 1973, not only the articles but also the Implementing Regulations to the EPC 1973 were directly concluded between the contracting states (see Government of the Federal Republic of Germany, "Convention on the grant of

European patents (European Patent Convention) and attached annexes", Munich: Wila Verlag für Wirtschaftswerbung Wilhelm Lampl, 1973). In addition, Article 164(1) EPC (1973) states that the Implementing Regulations "shall be integral parts of this Convention". Through this definition, the contracting states made the Implementing Regulations to the EPC 1973 part of the "text" of the treaty to be taken into account as context within the meaning of Article 31(2) VCLT. Even if this were not the case, the context to be taken into account under Article 31(2) VCLT includes not only the text of the treaty but also, according to point (a), "any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty". At the very least, the Implementing Regulations to the EPC 1973 must be deemed such an agreement.

2.5.3 The legal situation is less clear with regard to subsequent amendments to the Implementing Regulations. In Article 33(1)(c) EPC, the contracting states to the EPC empowered the Administrative Council, as an organ of the international organisation created by the EPC, to amend the Implementing Regulations. Accordingly, none of the subsequent amendments to the original Implementing Regulations were concluded between the contracting states to the EPC themselves but were adopted by the Administrative Council. This is true for the entire Implementing Regulations to the EPC 2000 (see "Decision of the Administrative Council of 12 December 2002 adopting the Implementing Regulations to the European Patent Convention 2000", OJ EPO 2003, 57), as well as for all subsequent amendments.

2.5.4 Against this background, i.e. in the absence of a separate agreement among the contracting states on the

Implementing Regulations to the EPC 2000 and the subsequent amendments to these, the question arises whether the current Implementing Regulations are also to be regarded as part of the "text" of the treaty within the meaning of Article 31(2) VCLT. In favour of this view is the fact that Article 164(1) EPC - the content of which was reconfirmed by the contracting states at the Munich diplomatic conference 2000 - does not contain any qualification to the effect that only the original Implementing Regulations to the EPC 1973 constituted integral parts of the EPC (i.e. the "treaty" under Article 31(2) VCLT). Rather, the statement in said Article is applicable to the current Implementing Regulations as well. Articles 33(1)(c) and 164(1) EPC could accordingly be understood as provisions by which the contracting states empowered the Administrative Council of the European Patent Organisation ("EPOrg") to implement the articles of the EPC in the Implementing Regulations such that they can also change the context in which the articles themselves have to be interpreted.

- 2.5.5 The Administrative Council's power under Article 33(1)(c) EPC is subject to the limitation of Article 164(2) EPC (see G 2/12, Reasons VII.2(4)(a)). According to this provision, in case of conflict the articles of the EPC prevail over the Implementing Regulations. Since the Administrative Council of the EPOrg is different from the contracting states to the EPC, the rationale underlying Article 164(2) EPC is that legislation by the Administrative Council in the form of amendments to the Implementing Regulations (which are an integral part of the EPC) must not create law - and thus obligations for the contracting states - that contradicts or goes beyond the framework set by

the articles of the EPC and agreed to by the contracting states themselves.

2.5.6 The Enlarged Board of Appeal confirmed that subsequent amendments to the Implementing Regulations are to be taken into account when interpreting an article of the EPC (see G 2/12, Reasons VII.4(1) and G 3/19, Reasons VI.5.2, VI.5.3 and XXIV). In G 2/12, Reasons VII.4(1), the Enlarged Board of Appeal referred to the interpretative means under Article 31(3) VCLT concerning, in point (a), any subsequent agreement between the parties regarding the interpretation of the treaty or its application and, in point (b), any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. The present Board notes that the mandatory interpretative means to be taken into account for interpretation under Article 31(3) (a) and (b) VCLT "together with the context" have the same interpretative weight as the "context" under Article 31(2) VCLT. Hence, regardless of whether subsequent amendments to the Implementing Regulations are subsumed under Article 31(2) VCLT or under Article 31(3) (a) and (b) VCLT, they are to be taken into account in a systematic interpretation of an article of the EPC.

2.6 Generally speaking, therefore, the Implementing Regulations must be taken into account when interpreting Article 72 EPC. Hence, the appellant's reference to Rule 2(2) EPC - which in the appellant's opinion provides meaningful context for the interpretation of Article 72 EPC - cannot be disregarded from the outset. For the following reasons, however, Rule 2(2) EPC in substance does not have any

impact on the interpretation of the term "signature" in Article 72 EPC.

2.6.1 The title of Rule 2 EPC is "Filing of and formal requirements for documents" ("Einreichung von Unterlagen; Formvorschriften" in German, and "Dépôt des documents et exigences de forme auxquelles ils doivent satisfaire" in French). Accordingly, Rule 2(1) EPC regulates how documents may be filed "[i]n proceedings before the European Patent Office". It also empowers the President of the EPO to lay down any special formal or technical requirements "for the filing of documents". Rule 2(2) EPC goes on to say that "[w]here the Convention provides that a document must be signed, the authenticity of the document may be confirmed by handwritten signature or other appropriate means the use of which has been permitted by the President of the European Patent Office". A document authenticated by such other means is then deemed to meet the legal requirements of a signature.

2.6.2 The phrase "where the Convention provides that a document must be signed" in Rule 2(2) EPC must be read not in an isolated manner but in the context of the entire provision, i.e. taking account of the contents of Rule 2(1) EPC and the title of Rule 2, which is applicable to both paragraphs. In doing so, the only possible conclusion is that the scope of application of Rule 2 EPC in its entirety is limited to formal requirements for filing documents in proceedings before the EPO. This understanding is confirmed by the explanatory notes to Rule 2 in CA/PL 17/06, page 6: "It is proposed to insert a new Rule 2 EPC to adapt the Implementing Regulations to the possibility of *electronic filing*." (emphasis added). An example of a document filed in proceedings before the EPO which



"must be signed" by the applicant or its representative is the request for grant (Rule 41(2)(h) EPC) or, for that matter, all documents filed after the application is filed (Rule 50(3) EPC).

2.6.3 Formal requirements for filing documents in proceedings before the EPO concern a relationship between the EPO, a public authority, and a party to proceedings before the EPO, which is usually a private party. Article 72 EPC, on the other hand, regulates formal requirements for assignment contracts. This usually concerns a relationship between two or more private parties. Hence, Rule 2 EPC and Article 72 EPC regulate entirely different matters. Moreover, unlike Article 72 EPC (see point 2.4.1 above), Rule 2 EPC does not have any impact on national law.

2.6.4 In the context of Rule 2 EPC, i.e. in the context of filing documents in proceedings before the EPO, the purpose of requiring a signature is mainly to ensure that the identity of the person who filed the document can be determined with a sufficient degree of certainty. Given that the EPO provides online services allowing applicants, attorneys and other users to file documents electronically in a secure environment which is protected by smart card or username/password access, the required level of authenticity in a purely procedural context such as this can also be achieved by means other than a signature on the document filed. This consideration is, however, not applicable to a document the subject of which is the contractual transfer of a European patent application as an object of property from one private party to another.

2.6.5 In view of all of the above, Rule 2 EPC cannot be regarded as a provision implementing Article 72 EPC.

Moreover, the mere fact that Rule 2 EPC is part of the general provisions in Chapter I of the Implementing Regulations, as argued by the appellant, does not lead to an extension of its scope of application - which is clearly delimited in Rule 2 EPC itself.

2.7 The appellant also invoked the "Decision of the President of the EPO dated 14 May 2021 concerning the electronic filing of documents" (OJ EPO 2021, A42), which is based on Rule 2 EPC. However, contrary to the appellant's assertion, this decision does not provide meaningful context for the interpretation of Article 72 EPC either.

2.7.1 The EPOrg is an intergovernmental organisation governed by the rule of law (G 3/19, Reasons XXV.1; see also G 3/08, Reasons 7.2.3). The rule of law requires *inter alia* that the EPO only acts within the boundaries of the law, i.e. in particular within the boundaries of the EPC and the Implementing Regulations to it. The President of the EPO is equally bound by the law (see G 5/88, Reasons 2.8, last sentence), including when issuing generally applicable regulations. As the scope of application of Rule 2 EPC is limited to formal requirements for filing documents in proceedings before the EPO, the power conferred to the President of the EPO in Rule 2(2), second sentence, EPC - i.e. to permit appropriate means other than a handwritten signature to confirm the authenticity of a document - is subject to the same limitation. In other words, Rule 2(2), second sentence, EPC does not empower the President of the EPO to specify what qualifies as a signature under Article 72 EPC.

2.7.2 Accordingly, the Legal Division was correct when it stated that the decision of the President of the EPO

dated 14 May 2021 was not applicable to the case in hand (see point 5.2 of the decision under appeal). The decision of the President of the EPO is - as suggested by the very reference in its title to "the electronic filing of documents" - limited to the filing of documents in proceedings before the EPO. This is also true for Article 12 of this decision, referred to by the appellant, which starts with "[w]here filed documents require signature" and only then says that "this may take the form of a facsimile signature or a text string signature". It is thus clear from both the title and the contents of the decision of the President of the EPO that this decision - like Rule 2 EPC - is not at all concerned with formality requirements for assignment contracts under Article 72 EPC. Therefore, the decision of the President of the EPO has no bearing on the interpretation of Article 72 EPC and the terms used in it.

2.8 The appellant also referred to the "Notice from the European Patent Office dated 22 October 2021 concerning electronic signatures on documents submitted as evidence to support requests for registration of a transfer of rights under Rules 22 and 85 EPC and requests for registration of a licence or other rights under Rule 23 EPC" (OJ EPO 2021, A86; hereinafter referred to as the "Notice"). The Notice provides *inter alia* "information about the practice of the Legal Division" in respect of electronic signatures attached to documents submitted as evidence to support requests for registration of a transfer of rights. For the following reasons, it is not to be taken into account for the interpretation of Article 72 EPC either.

2.8.1 The Notice states that "under the practice applicable to date" (i.e. before the publication of the Notice)

the authenticity of the signature on documents submitted under Rule 22 EPC was confirmed "by way of an original handwritten signature of the party concerned". The notice goes on to state that "[t]o facilitate communication by electronic means, the Legal Division will accept, as from the date of publication of the present notice, qualified electronic signatures, in addition to handwritten signatures [...]. A qualified electronic signature is considered to fulfil the legal requirement for a signature with respect to data in electronic form in the same way that a handwritten signature does with respect to data on paper. [...] For the purposes of this notice, the Legal Division will apply *mutatis mutandis* the definition [of a qualified electronic signature] provided in Regulation (EU) No 910/2014". The Notice also clarifies that "Article 12 of the decision of the President of the EPO dated 14 May 2021 concerning the electronic filing of documents [...] does not apply to the signature attached to documents submitted as evidence to support requests" under Rule 22 EPC.

2.8.2 The appellant argues that the last sentence violates the hierarchy of norms in the EPC as a mere notice cannot deviate from higher-ranking provisions. According to the appellant, the supposedly violated higher-ranking provisions are Rule 2(2) EPC and the decision of the President of the EPO dated 14 May 2021 concerning the electronic filing of documents. This argument is flawed as Rule 2(2) EPC and the decision of the President of the EPO dated 14 May 2021 concerning the electronic filing of documents regulate something entirely different from Article 72 EPC (see point 2.6.3 above).

2.8.3 Having said this, the Notice on which the Legal Division based its decision does indeed deviate from a provision of the EPC, namely from Article 72 EPC as interpreted by the Board as per the above analysis (and as understood by the Legal Division until the publication of the Notice). The Notice's aim of "facilitat[ing] communication by electronic means" with users is commendable. In the context of Article 72 EPC, however, a notice from the EPO is the wrong means to achieve this. While a notice from the EPO may be a source of legitimate expectations (see J 10/20, Reasons 1.15), it is, as such, only a document providing information. In particular, the Notice is not a legal instrument passed by a competent legislative body, so it can neither implement nor specify any articles of the EPC (or, for that matter, of the Implementing Regulations to it). It is not part of the material referred to in Article 31(2) and (3) VCLT, and therefore is not to be taken into account for a systematic interpretation of Article 72 EPC. Hence, the contents of the Notice have no bearing on the interpretation of the term "signature" in Article 72 EPC.

2.8.4 It is noteworthy in this context that Article 72 EPC is applied not only in proceedings before the EPO (see J 2/01, Reasons 3, first sentence) but also by national courts (see, for example, German Federal Court of Justice, decision of 23 June 1992, X ZR 98/90 - "Magazinbildwerfer"). National courts may also give little or no weight to a document which, as such, has a merely informative rather than normative character. Evidently, a situation in which the practice of the EPO's Legal Division with regard to Article 72 EPC deviates substantially from the practice of national courts should be avoided. This would be the case if,

for example, the Legal Division accepted "qualified electronic signatures" whereas some national courts of the contracting states to the EPC did not. The Board notes that not all contracting states to the EPC are EU member states, for which Regulation (EU) No. 910/2014, which is referred to in the notice from the EPO and states in Article 25(2) that a "qualified electronic signature" has the equivalent legal effect of a handwritten signature, is legally binding.

2.9 In conclusion, the Board, applying the general rule of interpretation pursuant to Article 31 VCLT to the term "signature" in Article 72 EPC, i.e. interpreting this term in good faith according to its ordinary meaning in the applicable context and taking account of the purpose of this legal provision, holds that this term - in the absence of a different definition in the Implementing Regulations (see point 2.11 below) - must be understood as referring to a handwritten depiction of someone's name, written on the assignment "contract" referred to in Article 72 EPC. In the absence of any such handwritten signature, an assignment agreement does not comply with the formal requirements under Article 72 EPC and, under Rule 22(3) EPC, has no effect vis-à-vis the EPO. It follows from Rule 22(3) EPC that it is beyond the EPO's jurisdiction whether or not such a contract, in cases of non-compliance with the requirements of Article 72 EPC, also has no effect between the parties to the contract themselves. If necessary, this question must be decided by the competent national court according to the applicable law regulating the consequences of non-compliance with formal requirements for contracts.

2.10 Pursuant to Article 32 VCLT, the travaux préparatoires may *inter alia* be used to confirm the meaning resulting

from the application of Article 31 VCLT. Page 1 of document 1416/IV/62 F of 10 February 1962 contains in draft Article 23 EPC (which became Article 72 EPC) a provision which, although ultimately discarded, read: "L'authenticité de la signature [...] requiert la certification officielle par un service compétent à cet effet en vertu du droit national". This at least indirectly indicates that the term "signature" was at the time understood as a handwritten signature - which is a signature the authenticity of which can be confirmed by someone who is present when the named individual signs the document (i.e. the "certification officielle" referred to above, which can be a signature certification by e.g. a notary). The travaux préparatoires thus do not contradict, and arguably support, the meaning resulting from the application of Article 31 VCLT. In the revision of the EPC 2000, Article 72 EPC was not amended.

- 2.11 While under the present legal framework the term "signature" must be understood as referring to handwritten signatures only, Article 72 EPC does, as such, not prohibit the legislator of the Implementing Regulations to the EPC, i.e. the Administrative Council, from specifying the meaning of the term "signature" in the Implementing Regulations (see G 3/19, Reasons XXVI.4). Taking due account of the rationale underlying Article 72 EPC (see points 2.4.2 and 2.4.3 above), such a definition could include a reference to some form of electronic signature and still respect the boundaries set by Articles 72 and 164(2) EPC. Providing such a definition in the Implementing Regulations would then change the context in which the term "signature" in Article 72 EPC is interpreted pursuant to Article 31 VCLT (see points 2.5

to 2.5.6 above), both by the departments of the EPO and by national courts.

3. Filing a copy of an assignment agreement according to Article 72 EPC in proceedings before the EPO
  - 3.1 In the proceedings leading to the decision under appeal the appellant argued that even before publication of the Notice, the Legal Division accepted handwritten signatures on an assignment agreement being provided in the form of an electronic copy (and hence not necessarily as "wet signatures" on paper). The appellant considers this contradictory.
  - 3.2 The Board disagrees. As pointed out before, the formal requirements for the conclusion of an assignment contract under Article 72 EPC must not be confused with the requirements for filing a document in proceedings before the EPO. A document filed as evidence that an assignment contract bears - as required under Article 72 EPC - the parties' handwritten signatures is a document which is filed "in proceedings before the European Patent Office". Filing such documentary evidence thus falls under Rule 2 EPC and the decision of the President of the EPO dated 14 May 2021 concerning the electronic filing of documents. If there is no particular reason for doubt, the Legal Division will usually be able to deduce with sufficient certainty from a scanned electronic copy whether the original assignment agreement bears the parties' handwritten signatures.
4. Reimbursement of the appeal fee
  - 4.1 The appellant argued that the Legal Division had disregarded the applicable law, namely, in its view,



Rule 2(2) EPC and the decision of the President of the EPO dated 14 May 2021 concerning the electronic filing of documents. However, as explained above, neither Rule 2(2) EPC nor the decision of the President is to be applied in the context of Article 72 EPC. Not applying them was therefore not a mistake by the Legal Division.

4.2 In addition, a mistake in the application of Article 72 EPC would constitute an error in the application of the law rather than a substantial *procedural* violation, which is a precondition for reimbursement of the appeal fee under Rule 103(1)(a) EPC (Case Law of the Boards of Appeal, 10th edition, 2022, V.A.11.6.10(c)).

5. Conclusion

5.1 The electronic signatures on the copy of the assignment agreement provided by the appellant fulfil neither the requirement of a "signature" within the meaning of Article 72 EPC nor, in consideration of the principle of the protection of legitimate expectations, that of a "qualified electronic signature" pursuant to the Notice from the EPO dated 22 October 2021. Moreover, the Legal Division did not commit any substantial procedural violation.

5.2 Hence, neither the appellant's request that the decision under appeal be set aside and the transfer of rights be registered nor its request for reimbursement of the appeal fee is allowable.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chair:



C. Eickhoff

I. Beckedorf

Decision electronically authenticated