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Datasheet for the decision of 13 August 2026

Case Number: J 0010/25 - 3.1.01

Application Number: XXXXXXXX.X

Publication Number:

IPC:

Language of the proceedings: EN

Title of invention:
XXX

Applicant:
N.N.

Headword:
Decisive ground of the decision remains unclear.
Violation of the right to a reasoned decision.

Relevant legal provisions:
EPC Art. 90(5), 113, 116
EPC R. 49, 50, 58, 103(1)(a), 111(2)
RPBA 2020 Art. 12(8)
Decision of the President of the EPO dated 25.11.2022 (OJ EPO 2022 A113)

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It can be changed at any time and without notic

Keyword:

Substantial procedural violation - (yes)

Reimbursement of appeal fee - substantial procedural violation (yes)

This datasheet is not part of the Decisior
It can be changed at any time and without notic

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European Patent Office
Office européen des brevets

Juristische Beschwerdekammer

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Chambre de recours juridique

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Case Number: J 0010/25 - 3.1.01

D E C I S I O N
of the Legal Board of Appeal 3.1.01
of 13 August 2026

Appellant: N.N.
(Applicant)

Representative: N.N.

Decision under appeal: **Decision of the Receiving Section of the European Patent Office posted/electronically transmitted on 1 September 2025 refusing European patent application No. XXXXXXXX.X pursuant to Article 90(5) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: D. Rogers
J. Hoppe

Summary of Facts and Submissions

I. The Receiving Section issued a communication dated 10 October 2024. This consists of 3 pages and is set out on EPO form 1050C. The first page is entitled "Communication pursuant to Rule 58 EPC Invitation to remedy deficiencies in the application documents".

II. The form consists of a series of tick boxes, to the right of which are texts setting out various deficiencies. The Receiving Section ticked "Deficiency (deficiencies) in application documents filed on the date of filing", and further ticked "ANNEX C: Drawings".

III. Annex C is titled "DEFICIENCIES AS TO THE FORM OF THE DRAWINGS Rule 49 EPC in conjunction with the Decision of the President of the EPO dated 25.11.2022 (OJ EPO 2022.A113), Rule 50 EPC".

IV. Annex C is also in the form of tick boxes with text setting out the deficiencies. Two boxes were ticked, setting out the following deficiencies in "The drawings/ Some of the drawings":

> The drawings on page 6 contain numbers and/or letters of heights less than 0.32cm; and
>
> The drawings contain different figures not numbered consecutively in Arabic numerals.

V. This communication concerned a set of drawings filed on 22 May 2024. The communication set a time limit of two months, pursuant to Rule 58 EPC, in which to respond.

VI. The appellant did not respond within the time limit under Rule 58 EPC to the communication of 10 October 2024.

VII. The appellant then filed the following drawings:

A set of drawings filed on 19 March 2025; and
A set of drawings, "main request", filed on 15 July 2025; and
A set of drawings, "auxiliary request", filed on 15 July 2025.

VIII. On 1 September 2025, the Receiving Section issued a decision ("the Decision"). A previous identical decision dated 22 January 2025 had also been issued, but it was not possible to prove that this had been delivered to the appellant, thus prompting the Receiving Section to re-issue it.

IX. The Decision was issued on EPO form 1088. This is a decision in the form of a series of tick boxes with text. The Decision states:

"Decision to refuse European patent application pursuant to Article 90(5) EPC
The above-mentioned European patent application is refused for the following reasons:

The deficiency (deficiencies) noted by the Receiving Section in its communication under Rule 58 EPC dated 10.10.2024 (EPO Form 1050C) was (were) not corrected in due time or not properly remedied.

The deficiency in question relates to:

form of application/replacement documents"

X. The applicant appealed against the Decision. The appeal contained two sets of drawings as a main request and an auxiliary request. These were originally filed on 15 July 2025. The applicant argued that these drawings overcame the deficiencies identified in the 10 October 2024 communication of the Receiving Section.

XI. The appellant's requests are that

the impugned decision to refuse the application be set aside according to the main request, or subordinately to the auxiliary request.

The appellant further requested that the case be remitted to the Receiving section for further prosecution.

Reasons for the Decision

1. The case is ready for decision which is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA and Articles 113 and 116 EPC after the appellant had withdrawn their request for oral proceedings. The withdrawal was declared after the Board had issued a communication, in which it indicated its intention to set aside the decision under appeal and to remit the case to the Receiving Section fo further prosecution.

2. The appeal is admissible.

3. In this case the key issue is what is the ground for refusal of the application set out in the Decision.

4. The Decision is ambiguous: the defect could be that the deficiencies noted in the communication dated 10 October 2024 were either:

   Not corrected in due time; or
   Not properly remedied.

5. The decision leaves open whether refusal was based on non-observance of the Rule 58 EPC time limit or on an assessment that the subsequently filed drawings still failed to meet Rule 49 EPC.

6. Thus, the decisive ground remains unclear. This violates Rule 111(2) EPC (reasoned decision) and deprives the appellant of effective judicial reasoning. This ambiguity thus constitutes a substantial procedural violation.

7. Due to the substantial procedural violation, the Legal Board also considers it appropriate to reimburse the appeal fee (Rule 103(1)(a) EPC).

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the Receiving Section for further prosecution.

The appeal fee is reimbursed.

The Registrar: The Chairman:

N. Michaleczek I. Beckedorf

Decision electronically authenticated