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**Datasheet for the decision  
of 8 May 2023**

**Case Number:** R 0009/22

**Appeal Number:** T 0999/16 - 3.5.03

**Application Number:** 06019997.3

**Publication Number:** 1768268

**IPC:** H04B1/38, H04M1/725, G01F15/06,  
G08C17/02

**Language of the proceedings:** EN

**Title of invention:**

Module for wireless communication with central processor unit

**Applicant:**

IQRF Tech s.r.o.

**Headword:**

Petition for review

**Relevant legal provisions:**

EPC Art. 112a(2)(c), 112a(2)(d), 113, 133(1)  
EPC R. 104, 106

**Keyword:**

Petition for review - clearly inadmissible; objection under Rule 106 EPC not made; Illness of representative; Holding of oral proceedings by videoconference in absence of representative; COVID

**Decisions cited:**

R 0004/08

**Catchword:**

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**Große Beschwerdekammer**  
**Enlarged Board of Appeal**  
**Grande Chambre de recours**

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Case Number: R 0009/22

**D E C I S I O N**  
**of the Enlarged Board of Appeal**  
**of 8 May 2023**

**Petitioner:** IQRF Tech s.r.o.  
(Applicant) Prumyslova 1275  
506 01 Jicin (CZ)

**Representative:** K & H Bonapat  
Patentanwälte Koch · von Behren & Partner mbB  
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**Decision under review:** **Decision T 0999/16 of the Technical Board of Appeal 3.5.03 of the European Patent Office of 4 February 2022.**

**Composition of the Board:**

**Chairman** C. Josefsson  
**Members:** D. Rogers  
G. Pricolo

## **Summary of Facts and Submissions**

- I. The petition for review ("Petition") concerns appeal proceedings T 0999/16 of board of appeal 3.5.03. The appeal was lodged by the applicant ("the Petitioner") against the decision of the examining division to refuse the patent application.
- II. The Petitioner was represented before the board of appeal by its CEO, Mr Šulc, hereafter the "CEO". The Petitioner was represented at the oral proceedings before the Enlarged Board by professional representatives.
- III. The oral proceedings before the board were originally scheduled to take place on 6 November 2020. Due to a combination of the COVID situation and the illness of the CEO, these were re-scheduled several times and eventually took place on 4 February 2022 as a videoconference.
- IV. No one attended the oral proceedings before the board on behalf of the Petitioner.
- V. The Enlarged Board sent a communication setting out its preliminary view on the case. The Petitioner responded to this in a letter dated 17 August 2022 ("the Reply").

### *The appeal proceedings*

- VI. In a communication dated 10 December 2021, the board re-scheduled the oral proceedings so as to take place on 4 February 2022 as a videoconference. In a letter dated 4 January 2022 (received by the board on 10 January 2022) an employee of the Petitioner requested

that the 4 February 2022 oral proceedings be cancelled and re-scheduled for April 2022. The reason for this request was the continuing illness of the CEO. A copy of an untranslated document in Czech was attached to this letter. A preference for in-person oral proceedings rather than by videoconference, was also expressed in this letter. These documents are found in annex R14 attached to the Petition.

- VII. On 14 January 2022, the CEO sent an email to the board's registrar, requesting a postponement of the oral proceedings, see Annex R1\_220114 to the Reply. Attached to this email was an undated letter containing the same text as the email. The Petitioner refers to this undated letter as the "17 January 2022" letter. This decision will adopt this naming when referring to this letter.
- VIII. On 18 January 2022 the board sent a communication to the Petitioner rejecting the request of 4 January 2022 for cancelling and re-scheduling the 4 February 2022 oral proceedings. Para 2 of this communication stated: "The evidence provided by the appellant does not justify a fourth postponement in this case."
- IX. On 1 February 2022, the Board's registrar sent an email to the CEO stating that no request for postponement had been filed, either through the EPO's online services, or by post. Later on 1 February 2022, the CEO sent two emails to the Board. The first stated that a letter requesting postponement had been posted on 17 January 2022, and the second attached some untranslated documents from the Czech Post Office indicating the postage of a letter to the EPO. See Annex R5\_220201 to the Reply.

- X. On 2 February 2022, the board's Registrar sent an email to the Representative attaching the Zoom link for the oral proceedings on 4 February 2022.
- XI. Later on 2 February 2022, an employee of the Petitioner responded to the board by email. This email stated that on 2 February 2022 the Petitioner had sent another request to postpone the oral proceedings. This email and its attachments were received by post by the board on 8 February 2022.
- XII. Attached to the email of 2 February 2022, see Annex R4\_220202 to the Reply, were the following documents:
- a) Letter dated 2 February 2022 stating that a postponement of the oral proceedings was requested.
  - b) A copy of the postal receipt and screen tracking document from the Czech post office concerning a letter posted on 17 January 2022 to the EPO. These documents were untranslated from the Czech language.
  - c) A document entitled "Temporary incapacity for work (TIW) information" in English and concerning the CEO.
  - d) A copy of the undated letter that had been attached to the 14 January 2022 email, the "17 January 2022" letter.
- XIII. The Petitioner states that the 17 January 2022 letter was delivered by post to the EPO on 19 January 2022. The Enlarged Board notes that the files of EPO do not show that this letter was ever received by post by the EPO.

- XIV. With a communication dated 8 February 2022 (sent in advance by email to the appellant on 3 February 2022), the board stated that there was no evidence on file that the CEO's medical condition prevented him from attending the oral proceedings, since the last medical certificate provided by him merely confirmed that he was on long-term sick leave until 31 January 2022. The board stated that, in his position as the appellant's CEO, he should have appointed a professional representative for attending those oral proceedings in his stead if he considered that he could not attend them himself. Hence, no reasons for yet another postponement of the scheduled oral proceedings were present and the date for the oral proceedings was therefore maintained.
- XV. Oral proceedings were held by videoconference before the board on 4 February 2022 in the absence of the CEO. The Petitioner did not inform the board that the CEO would not attend. At the end of the oral proceedings the Chairman of the board announced that the appeal was dismissed. The refusal of the patent application was thus confirmed.
- XVI. The written decision of the board deals with the postponements of the oral proceedings and the right to be heard of the Petitioner in paras 1 and 2 respectively. In respect of why the board had not further postponed the oral proceedings, the board considered that the medical evidence on file did not constitute evidence that the CEO was prevented from attending and presenting his case on the appointed day. The board was also not convinced that in-person oral proceedings were necessary (see para 1.8 of decision).

XVII. As regards the right to be heard, the board pointed out that the Petitioner had been duly summoned to oral proceedings and had failed to attend (see para 2.5 of decision).

XVIII. The Petitioner states on page 5 of the Petition that it is filing the Petition under the grounds of Article 112a(2)(d) EPC. On page 7 of the of the Petition the Petitioner further states that it is filing the Petition upon the basis of a violation of its right to be heard, Article 112a(2)(c) EPC and Article 113 EPC.

XIX. Under the heading "Serious and fundamental deficiencies in several respects (cf. Article 112a(2)(d)EPC)", see page 5 of the Petition, the Petitioner complains of the re-scheduling of the oral proceedings, and that the board did not take into account the serious illness of the CEO. Further, the Petitioner considered that the board acted illegally in requesting that the Petitioner appoint a representative other than the CEO, as Article 133(1) EPC states that "no person shall be compelled to be represented". The Petitioner also considered that the board did not properly take into consideration the seriousness of the CEO's illness (page 6, Petition):

"The Board of Appeal did not take into consideration special circumstances of this case where it was not possible to either appoint a representative or to attend oral proceedings in person or by videoconference although all health documentation of Mr Šulc were received on November 2021 (see Annex R22)."

XX. Under the heading "Serious violations of our right to be heard...(cf Article 112a(2)(c) EPC)", see page 7 of the Petition, the Petitioner states:



"The appellant is not obliged to make written submissions in reply to the board's preliminary opinion. Right to be heard does not involve only written submission. Because the Board of Appeal summoned oral proceedings, it was obvious that oral proceedings will be taken place. Based on this fact we wanted to present our case in person during oral proceedings, we were not obliged to make prior written submission and we cannot be held responsible for following the rules as stated in EPC or Rules. If the oral proceedings were not summoned, we would have made written submissions."

XXI. In the Reply, the Petitioner argues (bottom page 4 to top page 5) that it was not in a position to raise an objection under Rule 106 EPC to the holding of the oral proceedings during the appeal proceedings as it:

"...objectively could not have been aware that the Board of Appeal would not postpone the oral proceedings...". This is because, "... the Petitioner did not know, and could not have known, that the video conference (despite his request for a postponement) would take place. On the contrary, the Petitioner believed and hoped that the Board of Appeal would take into account the specific circumstances of this case, postpone the oral proceedings and he would be able to attend...".

XXII. In the Reply, the Petitioner states that it was not in a position to present arguments and evidence on whether the 4 February 2022 oral proceedings should be postponed as it was not objectively able to submit a medical report on the state of health of its CEO (bottom page 5 to page 6 of the Reply).

XXIII. The Petitioner requests that the decision under review is set aside and that the proceedings be re-opened.

### **Reasons for the Decision**

*Has the Petitioner complied with Rule 106 EPC?*

1. The Enlarged Board considers this Petition to be a petition under Article 112a(2)(c) EPC (violation of the right to be heard) and 112a(2)(d) EPC (the violations set out in Rule 104 EPC). A petition under such grounds is only admissible if an objection in respect of the defect was raised during the appeal proceedings and dismissed by the board, except where such objection could not be raised during the appeal proceedings.
2. The Enlarged Board takes the view that the Petitioner's objection could have been raised during the appeal proceedings. This is because the Petitioner's objections are all based upon the non-postponement of the oral proceedings, something that the Petitioner was aware of during the appeal proceedings. This issue was not something the Petitioner only became aware of through the written decision.
3. The Petitioner's argument in its Reply that it objectively could not have been aware that the Board would not postpone the oral proceedings is unconvincing. On 1 February 2022, the registrar sent an email to the Petitioner saying that no request by letter had been received for postponing the oral proceedings and that the oral proceedings would take place. The Petitioner then sent a letter by post on 2 February 2022 requesting a postponement that was not

received by the Board until 8 February 2022, that is after the oral proceedings had taken place on 4 February 2022. Given this factual situation, no objective basis existed for the Petitioner to believe that the oral proceedings would not take place.

4. Rule 106 EPC objections need to comply with two criteria. First, the objection must be expressed by a party in such a form that the board of appeal is able to recognize immediately and without doubt that an objection pursuant to Rule 106 EPC - that is one which is additional to, and distinct from other statements - has been made. In this case, this means that a Rule 106 EPC statement must be something other than a protest or argument against the holding of the oral proceedings. This is a precondition for a board of appeal to have been able to react immediately and appropriately by either removing the cause of the objection or, as provided in Rule 106 EPC, by dismissing it. It therefore ensures for the party and the public at large, legal certainty as to whether the substantive decision of the board of appeal is open to review pursuant to Article 112a EPC. This is one of the evident purposes of the obligation to raise objections under Rule 106 EPC.
5. Second, for the same reason the objection must be specific, that is the party must indicate unambiguously which particular defect of those listed in paragraph 2(a) to (d) of Article 112a EPC it intends to rely on. This follows from the wording of Rule 106 EPC itself (see para 2.1 of R 4/08).
6. The Petitioner should have made, but did not make any objections during the appeal proceedings that could be considered to be Rule 106 EPC objections.

7. The Enlarged Board is thus of the view that the Petition is inadmissible.

## Order

### For these reasons it is decided that:

The petition for review is unanimously rejected as being clearly inadmissible.

The Registrar:

The Chairman:



A. Voyé

C. Josefsson

Decision electronically authenticated