

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 12 March 2026**

Case Number: R 0024/24

Appeal Number: T 1088/21 - 3.4.01

Application Number: 13894959.9

Publication Number: 3053414

IPC: H05B37/02, H04W84/18, H05B33/08

Language of the proceedings: EN

Title of invention:
INTELLIGENT LIGHTING CONTROL

Patent Proprietor:
Casambi Technologies OY

Opponent:
Zumtobel Lighting GmbH

Headword:
Petition for review

Relevant legal provisions:
EPC Art. 112a(2), 112a(2)(c), 112a(2)(d), 113, 116
EPC R. 104, 104(b), 106, 110

Keyword:
Petition for review - clearly inadmissible or unallowable

Decisions cited:
R 0001/08, R 0016/09, R 0006/11



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

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: R 0024/24

**D E C I S I O N
of the Enlarged Board of Appeal
of 12 March 2026**

Petitioner: Casambi Technologies OY
(Patent Proprietor) Bertel Jungin Aukio 1E
Alberga Business Park
02600 Espoo (FI)

Representative: Heinonen & Co
Attorneys-at-Law Ltd
Fabianinkatu 29 B
00100 Helsinki (FI)

Other party: Zumtobel Lighting GmbH
(Opponent) Schweizer Strasse 30
6850 Dornbirn (AT)

Representative: Rupp, Christian
Mitscherlich PartmbB
Karlstraße 7
80333 München (DE)

Decision under review: **Decision of the Technical Board of
Appeal 3.4.01 of the European Patent
Office of 7 June 2024**

Composition of the Board:

Chair: C. Josefsson
Members: D. Rogers
M. O. Müller

Summary of Facts and Submissions

- I. The petition for review ("the Petition") concerns appeal proceedings T 1088/21 of the board of appeal 3.4.01 ("the Board"). The Board revoked the patent in its decision dated 7 June 2024 ("the Decision").
- II. The Petition is based first on the ground that fundamental violations of Article 113 EPC occurred, right to be heard (Article 112a(2)(c) EPC), and second that the Board decided on the appeal without deciding on a request relevant to that decision (Article 112a (2) (d) EPC and Rule 104(b) EPC).
- III. As regards the objection that the Board decided on the appeal without deciding on a request relevant to that decision, this objection concerns the non-admission into the appeal proceedings of auxiliary requests 1 to 7 (see page 14/16, penultimate paragraph of the Petition).
- IV. The Petitioner also argues that this non-admission of auxiliary requests 1 to 7 is a violation of its right to heard (see last paragraph of page 14/16 of the Petition).
- V. The Petitioner has also made a further objection that the Board decided on the appeal without deciding on a request relevant to that decision. This is made on pages 5/16, 6/16 and in the sixth and seventh paragraphs of page 14/16 of the Petition. The request not decided upon appears to be "...by ignoring to take into account the de facto problem-solution approach in the oral proceedings..." (see seventh paragraph of page 14/16).

VI. The main objections under violation of the right to be heard are set out in the Petition on page 3/16, paragraph B.2 and page 10/16, paragraph 1.2.

VII. These concern the Board accepting a change in the inventive step arguments of the opponent, without, at the same time giving the Petitioner the chance to file auxiliary requests.

VIII. The remaining objections under the violation of the right to be heard concern the way the Board assessed inventive step in the light of document D1.

IX. The Petitioner requests:

"D.1 Set Aside the Decision: The Patent Proprietor respectfully requests that the Enlarged Board of Appeal overturn the Board of Appeal's decision to revoke the patent, and sets the patent back to force.
D.2 Alternatively, Re-open the Case: A re-examination of the case is sought, with proper application of the problem-solution approach and full consideration of all submissions, including Auxiliary Requests.
D.3 Investigate Procedural Violations: An internal review of the Board's adherence to EPO policies and procedural fairness is requested to ensure transparency and uphold the integrity of the patent examination process. Rectify inherent code of conduct that may result such partiality and imbalance in equity of the parties (*sic*).
D.4 Oral Proceedings: Should there be contemplation of refusing this petition, the Patent Proprietor requests oral proceedings under Article 116 EPC to further discuss and clarify the issues raised.
D.5 The petition fee being refunded according to the Rule 110 EPC."

- X. By letter dated 2 December 2025, the Petitioner withdrew its request for oral proceedings.

Reasons for the Decision

Non - admissible elements of the Petition

The Petition as far as it relates to auxiliary requests 1 to 7

1. The objection that the Board decided on the appeal without deciding on a request relevant to that decision concerns the non-admission into the proceedings of auxiliary requests 1 to 7.
2. Pursuant to Rule 106 EPC, a petition for review is only admissible where the objection against the procedural defect was raised during the appeal proceedings and dismissed by the board, except where this objection could not be raised during the appeal proceedings.
3. In the present case, the minutes of the oral proceedings do not mention any objection under Rule 106 EPC being raised by the Petitioner during the oral proceedings.
4. No request for correction of these minutes has been received.
5. The Board's communication of 21 March 2024 in preparation of the oral proceedings ("the Communication") raised concerns over the admissibility of the Petitioner's auxiliary requests. The decision not to admit auxiliary requests 1 to 7 was announced during the course of the oral proceedings, after a discussion on this issue. The Petitioner has not argued that it only became aware of the non-admission of

auxiliary requests 1 to 7 and the non-consideration of these requests upon reading the Decision. The Petitioner should have therefore filed an objection under Rule 106 EPC during the oral proceedings.

6. The Petition is thus clearly inadmissible as far as it concerns auxiliary requests 1 to 7.

Requests not decided upon - problem-solution approach

7. The Petitioner made an objection that the Board decided on the appeal without deciding on a request relevant to that decision. The request not decided upon is "...by ignoring to take into account the de facto problem-solution approach in the oral proceedings...".
8. The Enlarged Board does not consider that the methodology used by a board for assessing inventive step to be in itself a "request". In addition the Petition itself refers to the oral proceedings as being the occasion upon which the problem-solution approach to inventive step was not applied. Thus, the Petitioner should have filed an objection under Rule 106 EPC during the oral proceedings as regards this issue.
9. The Petition is thus clearly inadmissible as far as it concerns this aspect of the petition.

Non - allowable elements of the Petition

Right to be heard

10. The Petitioner's objections under violation of the right to be heard concern the Board accepting a change in the inventive step arguments of the opponent, without, at the same time giving the Petitioner the chance to file auxiliary requests.

11. As regards the opportunity to file auxiliary requests aspect of this objection, this has been considered inadmissible, see above.

12. As regards the change of inventive step argument, see paragraph VII above, the Board raised this issue in its Communication at paragraphs 32 to 47. The Petitioner responded to this in its reply of 6 May 2024 at paragraph D on page 10/16 and at D I.1 to D.I.5 on page 11/16 and 12/16. Inventive step of the main request in the light of document D1 was discussed at the oral proceedings. The Decision takes up this issue at paragraphs 9 and 10. These paragraphs of the Decision reflect the content of paragraphs 32 to 40 of the Board's Communication. In the light of this, the Enlarged Board can see no basis for finding that the Petitioner's right to be heard was violated. The Petitioner also had separate objections concerning the way that the Board assessed inventive step in the light of document D1, these are dealt with in paragraph 14 below.

13. The Petition is therefore clearly not allowable as concerns the above.

Further objections - inventive step and document D1

14. These objections concern the way the Board assessed inventive step in the light of document D1, see paragraph VIII above.

15. The Board raised issues concerning the main request and whether this was inventive over document D1 in its Communication. The Board did not consider that the main request involved an inventive step over document D1 (see paragraphs 41 to 47 of the Communication).

16. The Petitioner, in its reply of 6 May 2024, responded to the Board's Communication (see section D.I., pages 10/16 to 12/16).
17. This issue was further discussed at the oral proceedings.
18. In the Petition, the Petitioner sets out various objections to how the Board dealt with the issue of the main request and inventive step over document D1. These can be summarised as follows:

the Board was potentially biased against the Petitioner (see page 3/16, C.1; page 10/16 and 15/16 of the Petition); and

the Board assessed the prior art at the wrong date (page 6/16 of the Petition); and

the Board's analysis of document D1 was wrong (page 7/16, 8/16 and 9/16 of the Petition); and

the Board's interpretation of claim 1 of the main request was incorrect (page 8/16, 9/16, 11/16 and 12/16 of the Petition); and

the Board did not take the same decision as the examining and opposition divisions (page 5/12, 11/12, 12/16 and 13/16 of the Petition); and

the Decision is not logically coherent (page 10/16 and 11/16 of the Petition); and

the Board's understanding of the description was incorrect (page 12/16 of the Petition); and

the general approach of the boards to the admission of claim requests gives an unfair advantage to opponents (page 13/16 and 14/16 of the Petition).

19. The list of grounds for review in Article 112a(2) and Rule 104 EPC is exhaustive (concerning the exhaustive character of these grounds, see also CLBA, 11th edition, V.B.3.5.2 with reference inter alia to R 1/08, point 2.1 of the reasons and R 16/09, point 2.3.5 of the reasons, R 6/11, points 11.1 and 11.2 of the reasons).
20. None of the objections set out above fall under any of the grounds for review and the Petitioner does not appear to argue that this is the case. In particular, the Enlarged Board is unable to identify any argument that the above objections support the position that a violation of the right to be heard has occurred. The Enlarged Board notes that a petition for review does not permit the Enlarged Board to review the correct application of the substantive law by a board of appeal.
21. The Enlarged Board thus considers that no fundamental violation of Article 113 EPC within the meaning of Article 112a(2)(c) EPC occurred in respect of the Petitioner's arguments on inventive step, so that the Petition (including the request for the reimbursement of the fee for a petition for review) is clearly not allowable.
22. The Petition is thus clearly not allowable to the extent that it is not inadmissible.

Order

For these reasons it is decided that:

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

The Registrar:

N. Michaleczek



The Chair:

C. Josefsson

Decision electronically authenticated