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**Datasheet for the decision
of 5 August 2025**

Case Number: R 0025/24

Appeal Number: T 2165/22 - 3.4.02

Application Number: 18814732.6

Publication Number: 3593091

IPC: G01C21/34

Language of the proceedings: EN

Title of invention:

A METHOD AND A COMPUTER SYSTEM FOR PROVIDING A ROUTE OR A
ROUTE DURATION FOR A JOURNEY FROM A SOURCE LOCATION TO A
TARGET LOCATION

Applicant:

Malewicz, Grzegorz

Headword:

Petition for review

Relevant legal provisions:

EPC Art. 24(3), 112a(1), 112a(2), 112a(4), 113(1), 113(2)
EPC R. 107, 109(2)(a), 115(2)
RPEBA Art. 13
RPBA 2020 Art. 12(3), 15(1), 15(3)

Keyword:

Petition for review - clearly unallowable

Decisions cited:

G 0010/91, R 0008/15, R 0007/16, R 0008/16, R 0010/20



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Case Number: R 0025/24

D E C I S I O N
of the Enlarged Board of Appeal
of 5 August 2025

Petitioner: Malewicz, Grzegorz
(Applicant) Alabastrowa 56
25-753 Kielce (PL)

Decision under review: Decision T 2165/22 of the Technical Board of
Appeal 3.4.02 of the European Patent Office of
10 October 2024

Composition of the Board:

Chairman C. Josefsson
Members: M. Blasi
M. Müller

Summary of Facts and Submissions

- I. The petition for review, filed by the appellant-applicant (petitioner) on 8 November 2024, concerns decision T 2165/22 of Technical Board of Appeal 3.4.02 (the Board), which was taken at the oral proceedings of 10 October 2024 and issued as a reasoned written decision on 8 November 2024. With this decision, the appeal against the examining division's decision to refuse European patent application No. 18 814 732.6 was dismissed. A further letter indicating the reasons for the petition was filed on 6 December 2024.
- II. In the petition for review, the petitioner submitted that eight fundamental procedural defects occurred, with the Board violating:
- (a) Article 12(3) RPBA 2020
 - (b) Article 24(3) EPC
 - (c) Article 113(2) EPC
 - (d) Article 113(1) EPC
 - (e) the principle of good faith

In the petition for review, explicit reference was only made to the ground under Article 112a(2)(d) EPC. However, in light of alleged violations referring to Article 113 EPC (see items (c) and (d) above), it can be unambiguously derived from the content of the submission that the petition for review is also based on the ground under Article 112a(2)(c) EPC.

III. The petitioner made the following requests (page 3 of the petition for review):

- "1. *The 2024.10.10 decision of the Board of Appeal, announced in the 'Minutes of the oral proceedings', is set aside.*
2. *Proceedings in the patent application EP18814732.6 are re-opened before the Boards of Appeal.*
3. *Any employment of Chairman [...] with the Defendant is terminated, and Chairman [...] is barred from holding any employment with the Defendant for five years.*
4. *The Defendant pays the cost of the Petition.*
5. *The Defendant pays 1,000,000 EUR to the Petitioner per annum, pro rated, starting from 2024.10.11, until the claims as amended on 2021.08.31, concerning a patent application EP18814732.6, are allowed by the Defendant.*
6. *The Defendant pays the cost of the Appeal.*
7. *The Defendant pays 100,000 EUR to the Appellant.*
8. *Any employment of [...] with the Defendant is terminated and [...] is barred from holding any employment with the Defendant for five years."*

IV. A further letter from the petitioner entitled "*Amendment for Petition*", including an enclosed complaint filed with the China National Intellectual Property Administration, was received on 8 April 2025. The petitioner requested that this submission be added to the proceedings.

V. The Enlarged Board, in its current composition pursuant to Rule 109(2)(a) EPC, issued a communication pursuant to Article 13 RPEBA on 23 May 2025, received by the petitioner on 29 May 2025, informing the petitioner

that, in the Enlarged Board's preliminary view, the petition for review was clearly unallowable. It also set a two-month time limit for making further written submissions, if desired. No submissions were received within the time limit.

- VI. Given that no request for oral proceedings was made, the current decision can be taken in written proceedings.
- VII. The Enlarged Board of Appeal must make a general remark. In its written submissions, the petitioner chose to use disrespectful, derogatory and insulting language to describe individuals involved in the examination and appeal proceedings and also the European Patent Office as an organisation. The Enlarged Board of Appeal stresses that everyone involved deserves to be treated with dignity and respect and distances itself from the language used by the petitioner.

Reasons for the Decision

Admissibility of the petition for review

1. The petition for review is not considered clearly inadmissible.
2. The formal requirements under Article 112a(1) and (4) EPC and Rule 107 EPC for filing a petition for review are met.
3. Concerning the obligation to raise objections under Rule 106 EPC, the Enlarged Board accepts that an objection could not have been raised during the appeal

proceedings before the Board, and therefore the exception provided for in Rule 106 EPC can be considered to apply in the circumstances of the current case.

Allowability of the petition for review

Request for setting aside the decision under review and reopening the proceedings before the responsible Board

4. In the petition for review, it is submitted that eight fundamental procedural defects occurred:
 - (a) one violation of Article 12(3) RPBA 2020, concerning the basis of appeal proceedings
 - (b) one violation of Article 24(3) EPC, concerning suspected partiality
 - (c) one violation of Article 113(2) EPC, concerning the basis of decisions
 - (d) three violations of Article 113(1) EPC, concerning the right to be heard
 - (e) two violations of the principle of good faith

In the petition for review it is also submitted that each procedural defect is a ground for review under Article 112a(2) (d) EPC.

5. The grounds on which a petition for review can be based are set out in Article 112a(2) EPC. As derivable from the wording ("*only [...] on the grounds*"), the list of possible grounds for review is exhaustive.
6. While Article 112a(2) (d) EPC allows for further grounds for review, i.e. "*any other fundamental procedural defect*", to be laid down in the Implementing Regulations, only two further situations have been set out: a board of appeal failing to arrange for the

holding of oral proceedings requested by the petitioner and a board deciding on an appeal without deciding on a request relevant to that decision (see Rule 104 EPC).

7. Thus, anything not defined by the Implementing Regulations as a fundamental procedural defect under Article 112a(2)(d) EPC does not qualify as a procedural defect within the meaning of Article 112a(2) EPC.

8. It follows that the asserted violations of Article 12(3) RPBA 2020, Article 24(3) EPC and the principle of good faith cannot per se be considered under the ground for review of Article 112a(2)(d) EPC.

However, where the petitioner's submissions under Article 12(3) RPBA 2020, Article 24(3) EPC or the principle of good faith are - or may be - associated with an alleged violation of Article 113 EPC, those submissions may be relevant as a ground for review under Article 112a(2)(c) EPC.

9. In the following, the submissions on the asserted procedural defects are addressed in the order set out in §80 of the petition for review.

10. *Asserted violation of Article 12(3) RPBA 2020, concerning the basis of appeal proceedings - violation (a)*

10.1 In the section of the petition for review on a violation of Article 12(3) RPBA 2020 (§11 to §26 of the petition for review), the petitioner criticised the Board for not having taken into account "[e]ach communication included in the prosecution history of the patent application EP18814732.6" and for not

referring to §6, §30, §35 to §40, §41 to §47 of the letter dated 9 July 2024 in the decision under review.

10.2 This section of the petition for review will be taken into account by the Enlarged Board for its considerations of the ground for review under Article 112a(2)(c) EPC of whether a first fundamental violation of Article 113(1) EPC occurred, i.e. in addition to the petitioner's submissions which explicitly relate to Article 113(1) EPC, as set out in §28 of the petition for review.

11. *Asserted violation of Article 24(3) EPC, concerning suspected partiality - violation (b)*

11.1 In the petition for review it was explained why it is considered that one member of the Board and one member of the examining division were suspected of partiality pursuant to Article 24(3) EPC. In other words, an objection of partiality is raised by the petitioner against these persons. It is submitted in §39 of the petition for review, that "*suspected of partiality*" was a ground for review under Article 112a(2) EPC.

11.2 However, the Enlarged Board does not share this view. Article 24(3) EPC is not mentioned in Article 112a EPC. Article 112a(2)(a) EPC concerns when a member of the board of appeal took part in the decision under review in breach of Article 24(1) EPC (the member had a personal interest in the case which led to the decision under review or had participated in the decision under appeal) or despite being excluded pursuant to a decision under Article 24(4) EPC. Furthermore, Article 112a(2)(b) EPC concerns when the board which took the decision included a person not appointed as a member of the board of appeal.

- 11.3 It follows that the Enlarged Board cannot consider in the proceedings for review under Article 112a EPC submissions in a petition for review relating to a mere objection that a member of the board which took the decision under review was suspected of partiality, let alone submissions in relation to that objection to a member of the examining division which took the decision leading to the decision under appeal.
12. *Asserted violation of Article 113(2) EPC, concerning the basis of decisions - violation (c)*
- 12.1 In §42 of the petition for review, reference is made to the Board's statement "[a]ccordingly, there is no allowable request on file for granting a patent" in point 3 of the decision under review. In §44 and §45 of the petition for review, it is put forward that the petitioner had submitted, and agreed to, only "*the claims as amended on 2021.08.31*" and that the Board violated Article 113(2) EPC because the Board did not decide on these claims.
- 12.2 Pursuant to Article 113(2) EPC, the European Patent Office - and hence also the boards of appeal - shall examine, and decide upon, the European patent application only in the text submitted to it, or agreed, by the applicant.
- 12.3 It is correct that no decision on substance, i.e. on whether the claims complied with the requirements for patentability, was made by the Board on the claims as amended on 31 August 2021. However, it cannot be said that the claims as amended on 31 August 2021 were not decided upon by the Board.

- 12.4 The Board considered that the set of amended claims filed with the letter dated 31 August 2021 was the petitioner's main request on appeal. It found that this claim request had no longer been maintained by the petitioner in the proceedings leading to the decision under appeal and did not admit the claim request into the appeal proceedings (see point 3 and point 6.2, second paragraph, of the decision under review). Consequentially, the Board concluded that there was no allowable request on file for granting a patent (see point 3, last paragraph, of the decision under review).
- 12.5 Thus, a decision on the admittance of this claim request was taken by the Board.
- 12.6 Article 113(2) EPC establishes the principle of party disposition in proceedings before the EPO by providing that the EPO must examine and decide upon "only" claim requests submitted and agreed to by the applicant. However, Article 113(2) EPC does not provide for an applicant's right to have a claim request considered on substance under all circumstances.
- 12.7 Therefore, the Enlarged Board cannot establish that a violation of Article 113(2) EPC as contended in the petition for review occurred.
- 12.8 Even considering the petitioner's complaint that the Board did not decide on "*the claims as amended on 2021.08.31*" under other possible grounds for review, i.e. in light of Article 112a(2) (d) EPC in conjunction with Rule 104(b) EPC, no fundamental procedural defect occurred since the Board actually decided on these claims (not as to their substance but as to their admittance). Hence, Rule 104(b) EPC was not violated either.

13. *Asserted first violation of Article 113(1) EPC, concerning the right to be heard - violation (d)(1)*
- 13.1 Pursuant to Article 113(1) EPC, the decisions of the European Patent Office and, hence, also of the boards of appeal, "*may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments*".
- 13.2 The right to be heard under Article 113(1) EPC not only comprises the right to submit comments but, according to the title of Article 113 EPC and the established case law of the boards of appeal, also that those comments be duly taken into consideration by the deciding body. The Enlarged Board deems it self-evident that this cannot extend to comments not even made in the proceedings at hand.
- 13.3 In the petition for review (see §18, §19 and §26), the Board is criticised for not having taken into account "*[e]ach communication included in the prosecution history of the patent application EP18814732.6*".
- 13.4 The Enlarged Board notes that there is no basis in the EPC requiring the boards of appeal to take the entire prosecution history into account. Rather, the appeal procedure is not a continuation of the examination procedure (for the case of inter partes appeal proceedings, see also G 10/91, OJ EPO 1993, 420, point 18 of the Reasons). The appeal procedure is a separate procedure governed by Articles 106 to 108, Rules 97 ff EPC and the Rules of Procedure of the Boards of Appeal. The scope of an appeal is defined by Rule 99(2) EPC, and further elaborated by Article 12 RPBA 2020. Pursuant to

Article 12(3) RPBA 2020, the statement of grounds of appeal and the reply shall contain a party's complete appeal case and, accordingly, they shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on.

- 13.5 It is the duty of a party to raise issues again in the appeal proceedings, to the extent necessary (see also R 8/16, point 38 of the Reasons). This is also stipulated in Article 12(1) and (3) RPBA.
- 13.6 Accordingly, not taking into account submissions merely referred to by a general reference but not addressed in the statement of grounds of appeal does not amount to a violation of Article 113(1) EPC.
- 13.7 The petitioner further criticises that, in the decision under review, the Board made no reference to §6, §30, §35 to §40, §41 to §47 of the petitioner's letter dated 9 July 2024.
- 13.8 §6 of the letter dated 9 July 2024 essentially concerns the same submissions as also set out in §18 of the petition, namely that the petitioner takes issue with the fact that, despite the reference to "*[e]ach communication included in the prosecution history [...]*" on page 11 of the statement of grounds of appeal, the Board did not consider all these communications. Reference is made to point 13.3 to 13.6.
- 13.9 In §30 of the petitioner's letter dated 9 July 2024, the petitioner complained that neither the examining division nor the Board provided any reasonable "other

interpretations" that were different from the meaning which the petitioner intended with the statement "*revert and cancel*".

- 13.10 In §35 to §40 of the petitioner's letter dated 9 July 2024, the petitioner explained why the examining division must have been well aware of what the petitioner's statement, made during the oral proceedings before the examining division, that the petitioner wished to "*revert and cancel the two amendments made during oral proceedings*" (see point 12 of the minutes of the oral proceedings before the examining division), actually meant, namely that the petitioner withdrew all amendments made during the oral proceedings and relied on the claims as amended on 31 August 2021 as the sole claim request to be considered further. The petitioner also set out that the arguments implicitly included exceptional circumstances which had been present because the "*two claim amendments made during the oral proceedings dated 2022.04.01 were illegal*" since the petitioner had been coerced into making unnecessary claim amendments.
- 13.11 §41 to §47 of the petitioner's letter dated 9 July 2024 concern the events before and after the closure of the oral proceedings before the examining division. The petitioner emphasised in this passage that the petitioner's request ("*to revert and cancel*") should not have merely been taken into account but should have been implemented by the examining division. The Enlarged Board understands this to mean that the claims as amended on 31 August 2021 should have been considered on substance.
- 13.12 The Enlarged Board cannot establish that the Board, by not having made reference to §6, §30, §35 to §40, §41

to §47 of the petitioner's letter dated 9 July 2024 in the decision under review, violated Article 113(1) EPC.

13.13 While it is correct that these paragraphs have not been cited in the decision under review, this does not mean that their content was not taken into consideration by the Board. As a general rule, it is to be assumed that all submissions submitted to a board of appeal will not only be read but also taken into account and duly considered by the board before giving its final decision (see also e.g. R 10/20, point II.3.2.1.1 of the Reasons). In the circumstances of the case at hand, the Board made explicit reference to the petitioner's letter dated 9 July 2024 in section IV of the decision under review and to various passages of it in points 1.1, 2.2, 6.1 and 6.2 of the decision under review. Not citing the passages highlighted by the petitioner does not amount to a violation of Article 113(1) EPC.

13.14 In the decision under review, the Board considered the petitioner's point of view on the unambiguity of the "*revert and cancel*" statement made at the oral proceedings before the examining division (point 2.2 of the decision under review), to what extent it could review the examining division's assessment (point 2.3.2 of the decision under review) and whether the findings of the examining division were to be overruled (*ibid.*).

13.15 The Board also reviewed the examining division's additional assessment made in point 19.2 of the decision under appeal. In this passage, the examining division assessed the situation as if the petitioner's request was directed at the claims as amended on 31 August 2021 (i.e. as the petitioner wished the "*revert and cancel*" statement to be understood) and

held that the petitioner had failed to provide arguments for refiling the previously abandoned claims (point 2.3.2, penultimate paragraph, of the decision under review). At least for this reason, there was no need for the Board to further consider what "*other interpretations*" the examining division could have given to the statement.

- 13.16 Finally, the Enlarged Board notes that while the reasoning in a decision should allow a party to establish that the deciding body considered its arguments for compliance with the right to be heard, the reasons may be incomplete (see e.g. R 8/15, point 2.2.3 of the Reasons; R 7/16, point 3.1.2 of the Reasons).
- 13.17 In light of the overall content of the decision under review, the Enlarged Board finds that the petitioner's submissions were duly considered. Accordingly, the Enlarged Board cannot establish that a violation of the petitioner's right to be heard occurred by there being no reference in the decision under review to §6, §30, §35 to §40, §41 to §47 of the petitioner's letter dated 9 July 2024.
14. *Asserted second violation of Article 113(1) EPC, concerning the right to be heard - violation (d) (2)*
- 14.1 §46 to §50 of the petition for review relate to an asserted second violation of Article 113(1) EPC.
- 14.2 In §49 of the petition for review, it is submitted that the petitioner had no opportunity to present comments "*on the 2024.10.10 decision made during the 2024.10.10 oral proceedings*".

- 14.3 The Enlarged Board notes that the petitioner did not attend the oral proceedings before the Board. The petitioner's intention not to attend the oral proceedings had been communicated to the Board in the letter dated 9 July 2024, by which the petitioner replied to the Board's communication under Article 15(1) RPBA 2020 accompanying the summons to oral proceedings.
- 14.4 The oral proceedings took place before the Board in accordance with Rule 115(2) EPC, which provides that the proceedings may continue without a duly summoned party not appearing at the oral proceedings. In addition, Article 15(3) RPBA 2020 provides that a board of appeal shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of a party duly summoned who may then be treated as relying only on its written case.
- 14.5 Article 113(1) EPC establishes the right to be heard under the EPC by stipulating that a decision may only be based on grounds or evidence on which the parties concerned had the opportunity to present their comments. The right to be heard does not, however, include the right for a party to be informed of a decision before it is taken to enable the party to submit further comments. Nor does it include the right for a party to delay the proceedings or to prevent the taking of a final decision by not attending oral proceedings.
- 14.6 While the petitioner submitted under the first violation of the right to be heard under Article 113(1) EPC that the Board did not take into account all its submissions, no argument was made to

the effect that the decision under review is based on grounds or evidence on which the petitioner had had no opportunity to present comments, at least in writing.

14.7 Indeed, as can be seen from a comparison between the reasons for the decision under review and the content of the communication under Article 15(1) RPBA 2020 dated 14 June 2024, the Board's considerations which essentially served as the basis for the reasoning for the decision under review had already been communicated to the petitioner in writing.

14.8 Therefore, the Enlarged Board cannot establish that the Board, by taking a final decision on the appeal case in the petitioner's absence, violated Article 113(1) EPC.

15. *Asserted third violation of Article 113(1) EPC, concerning the right to be heard - violation (d) (3)*

15.1 §65 to §78 of the petition for review relate to an asserted third violation of Article 113(1) EPC.

15.2 The petitioner takes issue with the Board's statement in point 5 of the decision under review that "*the board cannot see a legal basis under the EPC for granting either the request for damages [...] or the request relating to an employment*".

15.3 The petitioner contests this statement by referring to a possible decision by the President of the EPO for payment of damages and to the procedure under the EPC for the removal from office of a board member.

15.4 While the Enlarged Board agrees that procedures exist in the course of which such requests can be decided upon, the Board's statement must be read in the context

of the proceedings for which it was written, i.e. from the perspective of whether the Board itself could, in the appeal proceedings during which requests to this effect (damages and removal from office) had been made, decide upon these requests, including whether there was a legal basis for the Board to make such a decision. In other words, this section can only be understood to mean that the Board found no legal basis under the EPC which itself could apply in order to decide upon the requests (for damages and for removal from office) which had been submitted to it.

- 15.5 The Enlarged Board cannot establish that the petitioner's submissions on a third violation of the right to be heard constitute a violation of Article 113(1) EPC.
16. *Asserted two violations of the principle of good faith - violations (e) (1) and (e) (2)*
- 16.1 The petitioner's submissions on a first violation of the principle of good faith set out in §59 to §64 of the petition for review cannot be taken into account as these submissions do not relate to a ground for review under Article 112a(2) EPC.
- 16.2 However, the petitioner's submissions on a second violation of the principle of good faith set out in §67 to §78 of the petition for review were also made in support of an asserted third violation of the right to be heard. Accordingly, these submissions were considered in the context of the asserted third violation of Article 113(1) EPC, i.e. under the ground for review of Article 112a(2) (c) EPC (see above).

Summary

17. In light of the above, the Enlarged Board is unable to establish on the basis of the petitioner's submissions that any violation of Article 113 EPC occurred, let alone a fundamental one within the meaning of Article 112a(2)(c) EPC.

Request for reimbursement of the fee for appeal

18. If the decision under appeal were set aside and the proceedings were reopened before the Board, that Board would also be competent to decide on any reimbursement of the appeal fee.
19. The Enlarged Board, however, does not have any power in the proceedings on the petition for review to order reimbursement of the appeal fee (see also below).

Reimbursement of the fee for the petition for review

20. Pursuant to Rule 110 EPC, if the proceedings before the board of appeal are reopened, the Enlarged Board orders the reimbursement of the fee for a petition for review *ex officio*. A request to this effect is not required.
21. However, since a request including a reimbursement of the fee for the petition for review was made (see item 4 on page 3 of the petition for review), this request must be rejected in view of the Enlarged Board's finding that the decision under review is not to be set aside and the proceedings are not to be reopened.

Request for payment by the EPO of the cost of the petition, requests for payment of damages to the petitioner and requests directed to termination of employment at the EPO

22. In the provisions governing the legal remedy of a petition for review, i.e. Article 112a and Rules 104 to 110 EPC, an order for a payment by the EPO of the overall costs incurred by filing the petition for review, an order for a payment by the EPO of damages to the petitioner and orders for termination of an employment at the EPO are not mentioned. Accordingly, the Enlarged Board cannot make such orders in the proceedings on a petition for review.
23. As orders to the effects mentioned under items 3, 4, 5, 6, 7 and 8 on page 3 of the petition for review cannot be given in the proceedings for review, these requests cannot be considered in these proceedings.
24. Accordingly, the requests directed to the effects mentioned under items 3, 4, 5, 7 and 8 on page 3 of the petition for review have to be rejected.
25. The same applies to the request for reimbursement of the appeal fee and the cost of the appeal as a whole (item 6 on page 3 of the petition for review) since the Enlarged Board cannot give such orders either.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



M. Schalow

C. Josefsson

Decision electronically authenticated