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**Datasheet for the decision
of 24 February 2026**

Case Number: R 0004/25

Appeal Number: T 0367/21 - 3.5.01

Application Number: 15747545.0

Publication Number: 3164837

IPC: G06Q20/22, G06Q20/32, G06Q20/38

Language of the proceedings: EN

Title of invention:
ELECTRONIC PAYMENT SYSTEM AND RELATIVE METHOD

Applicant:
Ricci, Francesco

Headword: /
Petition for review

Relevant legal provisions:
EPC Art. 112a(2)(c), 113(1)
EPC R. 106, 109(2)(a)

Keyword:
Objection under R. 106 EPC raised (no)
Fundamental defect under Article 112a(2)(c) EPC leading to
violation of right to be heard (no)

Decisions cited:
R 0019/10, R 0020/10, R 0014/25



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

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Case Number: R 0004/25

**D E C I S I O N
of the Enlarged Board of Appeal
of 24 February 2026**

Petitioner:
(Applicant)

Ricci, Francesco
Via Galileo Galilei 7
47822 Santarcangelo di Romagna (IT)

Decision under review: **Decision of the Technical Board of
Appeal 3.5.01 of the European Patent
Office of 6 June 2024.**

Composition of the Board:

Chair: C. Josefsson
Members: B. Müller
C. Herberhold

Summary of Facts and Submissions

I. The patent proprietor's petition for review filed on 1 March 2025 is directed against the decision of Technical Board 3.5.01 (hereinafter: "the Board") in appeal case T 0367/21. In this decision, the Board dismissed the appeal against the Examining Division's refusal of European patent application No. 15747545.0. The decision was pronounced in the oral proceedings of 6 June 2024 and the reasoned written decision was handed over to the delivery service on 19 December 2024.

The title of the invention is: Electronic Payment System and Relative Method.

Editorial note: the single-spaced text portions below are all quotations. Unless otherwise indicated, emphases have been added by the Enlarged Board of Appeal (hereinafter also referred to as: "the EBA").

II. On 5 August 2024, the Examining Division issued completed EPO Form 2522 entitled "Notice drawing attention to Rule 51(2) EPC, Article 2 No. 5 of the Rules relating to Fees, - Payment of the renewal fee plus additional fee –".

The relevant parts of the notice read:

The renewal fee for the 10th year fell due on 30.06.24 unless this date falls within the period covered by an interruption of the proceedings in accordance with Rule 142(1) EPC, or a request for re-establishment of rights is pending (Art. 122, R 51(4) EPC).

...

The renewal fee was not paid by the due date. The renewal fee may still be validly paid up to the last day of the sixth calendar month following the due date, provided that the additional fee (50% of the renewal fee) is paid at the same time, see OJ EPO 2008.

...

If the renewal fee and the additional fee are not paid in due time, the European patent application shall be deemed to be withdrawn (Art. 86(1) EPC).

On 4 August 2025, the EPO issued an analogous notice stating that the renewal fee for the 11th year that had fallen due on 30 June 2025 had not been paid by the due date. The notice likewise set out the above remedy and the consequences of non-compliance therewith.

III. The petition is based on procedural and “material” (substantive) defects in the decision under review.

III.1 The asserted procedural defects

The following defects set out in point 5 of the petition “undermined the applicant’s right to a fair trial under Article 113(1) of the EPC” (headings, including their numbering, as in the original, followed by edited accompanying text):

5.1 Delay in Communication

of the written decision depriving the petitioner of “the opportunity to assess the decision and act accordingly, resulting in direct loss of rights and significant damage.”

5.2 Introduction of New Grounds Without Prior Notice

The Board’s preliminary opinion departed from the decision by the Examining Division basing its analysis (of inventive step) on document D2 instead of D1. During the oral proceedings, the Board raised an unexpected objection concerning the lack of direct control over the Clearing Settlement Mechanism (CSM) severely hampering the petitioner’s ability to provide a full rebuttal. This defect is based on both Article 113(1) and Rule 104(b) EPC.

5.3 Pressure to Withdraw the Appeal

At the conclusion of the oral proceedings, the Board declared the case “no longer admissible or appealable”. It suggested that the applicant withdraw the appeal offering a partial reimbursement of the appeal fee. A fair trial under Article 113(1) EPC “must be free from undue pressure or inducement”. Such pressure undermined the petitioner’s decision-making independence and contributed to his inability to meet renewal fee obligations.

5.4 Incomplete Documentation of the Oral Procedure

The minutes of the oral proceedings were extremely brief and failed to capture essential discussions, including arguments against D2, the CSM objection and the presentation of the Proof of Concept (POC). This incomplete documentation hindered a comprehensive review of the proceedings and prevented the petitioner from demonstrating that its arguments were fully considered.

5.5 Failure to Consider the Proof of Concept (POC)

During the hearing, the Board pointed out that a POC would clarify the technical contribution. The applicant responded immediately to this statement by pointing out the

existence of a POC. He said he was willing to provide supporting evidence in the form of a contract and screenshots (attachments 6 and 10 to the petition, respectively), which the Board however “neither requested nor considered. The failure to consider the POC deprived the petitioner of a crucial opportunity to demonstrate the technical merits of the invention...”.

III.2 The asserted “material” (substantive) defects (see point 6 of the petition)

The petitioner claims that, in addition to the procedural violations, the substantive assessment by the Board contained “material errors” affecting the outcome:

6.1 Misinterpretation of the Expert's Report

The report was intended to confirm compliance with Article 83 EPC. Instead, the Board “reinterpreted” the report as implying obviousness under Article 56 EPC. This led to an incorrect assessment of inventive step.

6.2 Non-recognition of the Technical Contribution

The Board incorrectly concluded, despite the supporting POC (attachments 6 and 10 to the petition), that the invention lacked technical character because the applicant did not exercise direct control over the CSM.

The defect under point 6.1 was based on Article 113(1) EPC, the defect under point 6.2 on Articles 52 and 56 EPC.

IV. The Petitioner's requests made in the petition

The following requests were set out verbatim in the petition on page 4, at the start of point 7 (that point being entitled “Remedy Requested and Conclusion”).

1. Restoration of the Renewal Fee Deadline

- o Revocation of the renewal fee deadline under Rule 136 EPC, given that the late communication of the decision (received on 8 January 2025, six days after the deadline of 2 January) directly affected the applicant's rights.

2. Reopening of the Appeal Proceedings

- o Annulment of the final decision of 8 January 2025 and referral of the case to a reconstituted Board of Appeal for a full review. This is necessary in view of the non-notified objections, incomplete documentation, and the failure to consider crucial evidence (particularly the POC).

3. Formal Recognition of Procedural Violations

o An official recognition by the EBoA of procedural breaches of Article 113(1) and Rules 104(b) and 124(1) of the EPC, to ensure accountability and to prevent similar irregularities in the future.

At the end of point 7, these requests were rephrased and a further request was added.

4. Proceed with a fair re-evaluation of the case.

V. Attachments to the petitions

This point reads verbatim (emphases omitted):

1. Expert Report (13 October 2020): Technical assessment confirming sufficiency under Article 83 EPC, misinterpreted by the BoA.
2. Affidavit by Attorney Prosperetti: Corroborates the applicant's arguments and conduct during the oral proceedings (6 June 2024).
3. Receipt of the Decision (8 January 2025): Proof of receipt demonstrating the delay after the renewal fee deadline (2 January 2025).
4. Italian Patent No. 1,429,529: Original patent filing establishing the priority date and scope.
5. Minutes of the Oral Procedure (6 June 2024): Brief record (approximately 10 lines) omitting key discussions on D2, CSM, and POC.
6. ALTRAN Contract (1 March 2018): Agreement with ALTRAN Italia S.p.A. verifying the development of the POC. (details paragraph 4(a),7(a),7(b),7(c) translated by Francesco Ricci
7. Renewal Fee Payment Receipt: Documentation of prior fee payments, highlighting the impact of the missed deadline.
8. Written Observations (9 May 2024): Statement refuting the preliminary opinion of 30 November 2023.
9. Notes to the Hearing (7 June 2024): Detailed notes supplementing the incomplete minutes.
10. POC Screenshot (2018): Visual proof demonstrating real-time payment functionality via QR Code and NFC
11. EPO Payment Reminder (August 5, 2024): Official notice confirming the expiration of the renewal fee (2 January 2025) and emphasising the delay's impact.

VI. The EBA's communication pursuant to Article 13 and 14(2) of the Rules of Procedure of the Enlarged Board of Appeal (RPEBA) (hereinafter referred to as: "the communication" or "the preliminary opinion")

In the communication, point B, the EBA arrived at the following preliminary and non-binding assessment.

The petitioner had filed in essence two requests:

- (i) a request for re-establishment of the right to pay the renewal fee for the 10th year pursuant to Article 122(1) and Rule 136 EPC (point IV.1 above) relating to defect 5.1: "Delay in Communication" and
- (ii) a request to set aside the Board's decision in the framework of a petition for review pursuant to Article 112a EPC (point IV.2 above).

Re (i)

The EBA noted (in point B.4.2 of the communication) that, pursuant to Rule 136(4) EPC, jurisdiction over the request for re-establishment of rights was vested in the Examining Division and not the EBA. The EBA therefore could not decide on the request for re-establishment of rights. The EBA also explained obiter (in point B.4.3 of the communication) why this request, in its view, had no purpose.

Re (ii)

The petition was clearly inadmissible in respect of defects 5.2, 5.3 and 5.5 due to failure to raise an objection pursuant to Rule 106 EPC. In respect of defect 5.4, the petition was not clearly inadmissible, but rather clearly unallowable.

As to "material" (substantive) defects 6.1 and 6.2, the petition was also clearly inadmissible, because it was not reasoned within the meaning of Article 112a(4) in conjunction with Rule 107(2) EPC.

VII. The petitioner's reply of 11 February 2026 to the EBA's communication

The petitioner stated that the purpose of the reply was to clarify the procedural deficiencies and irregularities identified in the petition. The reply

is strictly procedural in nature and does not challenge the technical merits or inventive step of EP15747545. It addresses violations of Article 113(1) EPC, which guarantee the right to be heard, and procedural conduct that compromised the fairness of the appeal proceedings before the BoA.

Regarding defects 6.1 and 6.2 referred to as “material” (substantive) in the petition, the petitioner explained.

4. Substantive Defects Linked to Procedural Failures

Defects 6.1 (misinterpretation of expert report) and 6.2 (failure to recognize technical contribution) are direct consequences of procedural defects 5.4 and 5.5. The Petitioner had no opportunity to respond to the reinterpretation of evidence, thereby violating Article 113(1) EPC. These are procedural, not technical issues (emphases omitted).

As to the cumulative impact of defects 5.1, 5.4 and 5.5, the petitioner argued that the combination of defects 5.1 (delay), 5.4 (incomplete minutes), and 5.5 (failure to consider the POC) **cumulatively deprived the Petitioner of a fair trial**, preventing a complete and timely defense and compromising the overall fairness of the proceedings (emphasis in the original).

The petitioner also amended his requests, the final requests being set out below in section X.

Regarding compliance with Rule 106 EPC, the petitioner submitted that defects 5.2, 5.3 and 5.5 fell within the exception of this provision, “as these violations became apparent only during or after the oral proceedings”.

VIII. The petitioner’s further reply of 22 February 2026 (referred to as “supplemental submission”)

In point 1, the petitioner said that the sole purpose of this submission was ...to clarify the procedural sequence relating to the introduction, at the oral proceedings of 6 June 2024, of “direct control over the CSM” as a decisive condition.

Points 2 to 6 then read verbatim:

In the [Board’s] preliminary opinion of 30 November 2023, SEPA and the Clearing Settlement Mechanism (CSM) were treated as non-technical requirements within the COMVIK framework.

However, the written procedure did not formulate “direct control over the CSM” as a determinative legal threshold for technical character or inventive step.

The discussion concerned attribution of technical effect, not institutional or infrastructural control.

This distinction is essential.

3. Procedural Development at the Oral Proceedings

During the oral proceedings of 6 June 2024:

1. The absence of a Proof of Concept (PoC) was raised.

2. The Petitioner clarified that a PoC and industrial contracts (including ALTRAN) existed but were not physically available.
3. The discussion then shifted to the CSM.
4. At that stage, it was stated that the CSM constituted a fundamental element for industrial implementation and that it would need to fall within the domain or control of the applicant.

The absence of such control was presented as decisive.

This introduced a qualitative shift from:

- assessment of claimed features,
- to

- institutional control over external infrastructure.

This formulation had not appeared in the written phase.

4. Absence of Procedural Safeguards

Following this shift:

- no invitation to amend the requests was made;
- no opportunity to file an auxiliary request was opened;
- no adjournment was offered;
- no procedural indication was given that the framework remained open for adaptation.

The minutes of the oral proceedings consist of approximately ten lines.

They do not record:

- the articulation of “direct control” as decisive;
- any procedural opportunity offered to react;
- any discussion of amendment possibilities.

Given their brevity, the minutes do not allow verification that procedural safeguards were ensured once the decisive criterion was introduced.

This point was already raised in the Petition and reiterated in the reply of 11 February 2026.

5. Rule 106 EPC

The procedural defect could not reasonably have been raised during the oral proceedings. The requirement was introduced at a decisive stage and was not framed as an issue open for amendment or further procedural discussion.

In such circumstances, the exception under Rule 106 EPC applies.

The issue is not whether the Board’s substantive assessment was correct.

The issue is whether the procedural framework allowed the Petitioner a genuine opportunity to react to a newly articulated decisive condition.

6. Clarification

The Petitioner does not argue that the Board’s assessment of the CSM was substantively incorrect.

The procedural concern lies exclusively in the elevation of “direct control over the CSM” to a determinative legal condition at the oral stage, without reopening procedural avenues.

IX. The oral proceedings before the EBA

The petitioner’s presentation focused on the “incomplete documentation” of the oral proceedings in the allegedly very short minutes (asserted defect 5.4). The minutes did not set out, in particular, that new grounds were mentioned in the oral proceedings before the

Board, more precisely, the “relationship” with the Clearing Settlement Mechanism (CSM) and the necessity of Proof of Concept (POC). The petitioner requested that he be granted leave to submit evidence that was essential to prove the technical character of the invention. The petitioner was not able to submit the evidence in the oral proceedings. He said he needed more time. **The Board should have known that this was a formal objection.**

The EBA pointed out that the petitioner had not submitted before the oral proceedings that he had raised an objection. The petitioner replied that he had requested a correction of the minutes via the present petition. The petitioner’s representative added that the petitioner had repeatedly **requested more time** as he had not been in a position “to comment on the proceedings”. These requests should at least have been included in the minutes.

The EBA drew the petitioner’s attention to the statements in point 5 of the reply of 22 February 2026: “The procedural defect could not reasonably have been raised during the oral proceedings” and “...the exception under Rule 106 EPC applies”. The representative replied that the Board had advised the petitioner that the only thing he could do was withdraw the appeal. There was **no possibility at the end of the oral proceedings to raise a formal objection**. The petitioner and his representative thought that the procedural requests made in the course of the proceedings would have been recorded at least in the minutes.

X. The petitioner’s final requests

In his reply of 11 February 2026 (in point 7), the petitioner made the following requests:

1. Formal recognition of all procedural deficiencies outlined above.
2. Referral to the Examining Division for re-establishment of rights regarding the renewal fee (Rule 136 EPC).
3. Official registration of corrected minutes and consideration of the documentation submitted with the Petition for Review.
4. Confirmation that these deficiencies are procedural only and do not address technical merit.

In the oral proceedings before the EBA, the petitioner clarified that, in addition to above requests 1–4, he maintained his request made in the petition under point 7.2 (point IV.2 above) reading:

[5.] Reopening of the Appeal Proceedings

Reasons for the Decision

1. The petitioner's final requests and the corresponding asserted defects

The requests

The EBA structures the petitioner's requests (see above, point X) as follows.

1.1 Final request 2: "Referral to the Examining Division for re-establishment of rights regarding the renewal fee (Rule 136 EPC)" (point X.2). This request supersedes the request for re-establishment of the right to pay the renewal fee for the 10th year pursuant to Article 122(1) and Rule 136 EPC made in the petition (point IV.1 above).

1.2 Final request 3: "Official registration of corrected minutes and consideration of the documentation submitted with the Petition for Review" (above, point X.3). These are two requests:

1.2.1 a request for correction and formal adoption of the minutes of the oral proceedings before the Board ("final request 3.1") and

1.2.2 consideration by the EBA of the attachments to the petition (a list thereof is reproduced above in point V) ("final request 3.2").

1.3 Final request 5: "Reopening of the Appeal Proceedings" (point X.5 above) is considered a request to set aside the Board's decision in the context of a petition for review pursuant to Article 112a EPC.

The first and the fourth final requests

- "Formal recognition of all procedural deficiencies outlined above" (above, point X.1)
- "Confirmation that these deficiencies are procedural only and do not address technical merit" (above, point X.4)

are encompassed by the fifth request, because the asserted procedural deficiencies are at its heart.

The EBA considers that the final requests update the requests filed with the petition in reply to the EBA's communication. An exception applies to the two requests jointly filed as **final request 3** (set out in point 1.2 above) for the **first time** with the letter of 11 February 2026.

- Re final request 3.1: While defect 5.4 of the petition relating to the minutes is based on Article 113(1) EPC, it concerns final request 5 that the appeal proceedings be reopened. It does not concern the request that corrected minutes be adopted. No such request was filed with the petition.
- Re final request 3.2: These attachments can be broken down into three groups (see below, point 3.1.2.1).

The defects

The asserted fundamental defects, both procedural and “material” (substantive), listed above under point III correspond to final request 5 encompassing final requests 1 and 4.

An exception applies to procedural defect 5.1 entitled “Delay in Communication”. Seen in conjunction with point 7.1 of the petition (set out in point IV.1 above), this relates to the request made in the petition for re-establishment of the right to pay the renewal fee for the 10th year. The petitioner considers that he had lost this right due to the delay in the notification of the decision under review. The petitioner has not asserted defect 5.1 with a view to establishing a ground for overturning the decision by the Board, which is the core purpose of a petition. Pursuant to Article 112a(5) EPC:

If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision and shall re-open proceedings before the Boards of Appeal...

Rather, the petitioner relies on defect 5.1 solely to justify re-establishment of the right to pay the renewal fee for the 10th year in time.

The request for re-establishment was addressed in the EBA’s communication subsequent to examination of all the defects, procedural and “material” (substantive), asserted in the petition, with the exception of defect 5.1.

The EBA provisionally concluded that jurisdiction on the request for re-establishment of rights was vested in the Examining Division and not the EBA. See Rule 136(4) EPC:

The department competent to decide on the omitted act shall decide on the request for re-establishment of rights.

The EBA therefore could not decide on the request for re-establishment of rights. The EBA set forth that the department that had issued the notice of 5 August 2024, i.e. the Examining Division, would have jurisdiction to do so.

The EBA now affirms this preliminary opinion and holds that the **petition is clearly inadmissible in respect of asserted fundamental procedural defect 5.1.**

2. Final request 2: “Referral to the Examining Division for re-establishment of rights regarding the renewal fee (Rule 136 EPC)”

Further to the EBA’s communication, the petitioner’s final request 2, which corresponds to the request for re-establishment directed to the EBA in the petition, was amended to a request for a referral to the Examining Division for re-establishment.

In this respect, the EBA notes that there is no provision in the EPC that entitles the EBA to refer a case to a department of the EPO other than the Boards of Appeal unit, and, more specifically, the board responsible pursuant to Rule 108(3) EPC. Any request for re-establishment in this case would therefore have to be filed before the Examining Division of the petitioner’s own motion.

As a consequence, this request filed before the EBA is inadmissible.

3. Final request 3: “Official registration of corrected minutes and consideration of the documentation submitted with the Petition for Review” (final request 3.1)

3.1.1 Request for correction and formal adoption of the minutes of the oral proceedings before the Board

In the case law of the Boards of Appeal, dealing with requests for correction of minutes of oral proceedings is generally considered to be the task of the department of the EPO before which the respective oral proceedings were held. See Case Law of the EPO Boards of Appeal , 11th ed. 2025 (hereinafter denoted “Case Law”), section III.C.8.10.3, e.g.

T 1005/08, point 1.2., cited there.

Final request 3.1 is therefore inadmissible.

The EBA is in any case prepared to accept the petitioner’s and his representative’s accounts of the course of the oral proceedings before the Board, for the sake of argument and in the petitioner’s favour, as truly reflecting the course of the oral proceedings before the Board. These accounts are, in particular the statements they made in the oral proceedings before the EBA and the notes and affidavit provided in writing (as attachments 9 and 2, respectively).

3.1.2 Request for consideration by the EBA of the attachments to the petition (a list thereof is reproduced above in point V) (final request 3.2)

3.1.2.1 Breakdown of the attachments into three groups

- Patentability

Expert Report (13 October 2020): Technical assessment confirming sufficiency under Article 83 EPC, misinterpreted by the BoA (point V.1)

Italian Patent No. 1,429,529: Original patent filing establishing the priority date and scope (point V.4)

ALTRAN Contract (1 March 2018): Agreement with ALTRAN Italia S.p.A. verifying the development of the **POC**. (details paragraph 4(a),7(a),7(b),7(c) translated by Francesco Ricci (point V.6)

Written Observations (9 May 2024): Statement refuting the preliminary opinion of 30 November 2023 (point V.8)

POC Screenshot (2018): Visual proof demonstrating real-time payment functionality via QR Code and NFC (point V.10)

- The hearing before the Board

Affidavit by Attorney Prosperetti: Corroborates the applicant's arguments and conduct during the oral proceedings (6 June 2024) (point V.2)

Notes to the Hearing (7 June 2024): Detailed notes supplementing the incomplete minutes (point V.9)

Minutes of the Oral Procedure (6 June 2024): Brief record (approximately 10 lines) omitting key discussions on D2, CSM, and POC (point V.5)

- Re-establishment of rights

Receipt of the Decision (8 January 2025): Proof of receipt demonstrating the delay after the renewal fee deadline (2 January 2025) (point V.3)

Renewal Fee Payment Receipt: Documentation of prior fee payments, highlighting the impact of the missed deadline (point V.7)

EPO Payment Reminder (August 5, 2024): Official notice confirming the expiration of the renewal fee (2 January 2025) and emphasising the delay's impact (point V.11)

3.1.2.2 Analysis

- Definition of a “request” requiring a formal decision (see Case Law, V.B.4.4.2)

In R 19/10 [Reasons, point 5.1] it was acknowledged by the Board that the EPC does not contain an explicit definition of the term “request”. However, according to the common practice in the proceedings before the EPO, requests are in general directed to **executable legal consequences** sought by the parties. The arguments provided by the parties in support of these legal consequences do not normally belong to the legally binding requests (see also R 17/11).
(affirmed in R 3/24, point 3.1)

- Request for consideration of the attachments pertaining to patentability

The first group of attachments relating to the request for consideration of the attachments pertaining to patentability meet the above definition of a request. The EBA is of the view that the petitioner wants the EBA to continue the Board’s examination of the patentability of the application in suit *inter alia* on the basis of these five documents. This is because the petitioner complained that the Board did not allow him to furnish the POC to which documents V.10 and V.6 relate. The remaining three documents that were already part of the file before the Board likewise relate to patentability. The petitioner is thus requesting the EBA to order the grant of a patent.

This is a request that the EBA is unable to accede to. Under Article 112a EPC, the EBA is not empowered to examine the merits of a decision by a board, review the correct application of the law, overturn the decision and remit the case. See in greater detail below, point 5.4.2.

The EBA is only entitled, if it finds a fundamental defect in a decision within the meaning of Article 112a(2) and Rule 104 EPC, to set aside a decision by a board and remit the case to the board responsible (Rule 108(3) EPC).

The EBA therefore cannot itself carry out the examination of a patent application, e.g., as requested, by continuing the Board’s examination and taking account of evidence filed for the first time before the EBA (on the POC in this case). Article 111(1), second sentence, EPC that affords a board discretion to decide itself (“exercise any power within the competence of the department which was responsible for the decision appealed”) and, in *ex parte* cases such as the present one, order the grant of a patent, does not apply by analogy to the EBA’s powers under Article 112a EPC.

The request for consideration of the five documents with a view to examining patentability is therefore inadmissible.

Those documents, however, are taken into account as a matter of course in examining the asserted procedural and “material” (substantive) defects.

- Request for consideration of the attachments pertaining to the hearing before the Board

This is not a request requiring a formal decision. As stated, the EBA will consider the notes by the petitioner and the affidavit by its representative, a legal practitioner, for the sake of argument and in the petitioner’s favour, as truly reflecting the course of the oral proceedings before the Board. The minutes drawn up by the Board are taken into account as a matter of course.

- Request for consideration of the attachments pertaining to the re-establishment of rights

Given that the request for re-establishment is inadmissible, the same must follow for the request for consideration of documents pertaining to that request.

3.1.3 Conclusion on final request 3

This request is inadmissible in respect of both of its elements 3.1 and 3.2, with the exception of the request relating to the attachments pertaining to the hearing which is not a request that requires a decision. The question of admittance of final request 3 filed subsequent to the petition and after expiry of the corresponding deadline on 11 February 2026 can therefore be left open.

4. It follows from the above that the only request to be considered in the present proceedings under Article 112a EPC is final request 5, as defined above in point 1.3, which is tantamount to a petition for review of the Board’s decision. The admissibility and allowability of the petition will be evaluated in points 5 and 6 below, respectively.

5. Admissibility of the petition for review

5.1 Time limit

The written decision under review was handed over to the delivery service on 19 December 2024 and notified to the petitioner on 8 January 2025 according to the letter of the EPO of 26 February 2025, in which it was stated that
...the time limit for filing a request for review under Article 112a EPC will expire on 3 March 2025 (Rule 126 EPC).

The petition for review and the respective fee were received on 1 and 3 March 2025, respectively. This was in time: irrespective of the correct application of Rule 126 EPC in the letter, the petitioner was entitled to rely on the information given therein.

5.2 Compliance with Rule 106 EPC in respect of asserted procedural defects 5.2, 5.3 and 5.5

5.2.1 Background

Rule 106 EPC reads:

A petition under Article 112a, paragraph 2(a) to (d), is only admissible where an objection in respect of the procedural defect was raised during the appeal proceedings and dismissed by the Board of Appeal, except where such objection could not be raised during the appeal proceedings.

Up until the oral proceedings before the EBA, both the minutes of the oral proceedings and the written decision were silent on any explicit objection raised by the petitioner and the same applied to the remainder of the file. As a consequence, it was the EBA's preliminary view that the requirements of Rule 106 EPC were met only if an objection relating to the asserted procedural defects could not have been raised during the appeal proceedings. Those defects all relate to a fundamental violation of Article 113(1) EPC (the right to be heard) and of Article 112a(2)(d) in conjunction with Rule 104b EPC (not deciding on a relevant request).

The EBA expressed its preliminary opinion that objections in respect of the asserted procedural defects 5.2, 5.3 and 5.5 could, and should, have been raised during the proceedings before the Board. Conversely, an objection in respect of defect 5.4 could not have been raised.

In the two written replies to the preliminary opinion, the petitioner argued that he had complied with Rule 106 EPC because, in respect of the three defects, an objection could not have been reasonably raised in the oral proceedings before the Board.

In the oral proceedings before the EBA he contended that, in the oral proceedings before the Board, he had both

- made statements that the Board should have recognised as an objection and
- not raised an objection because it had not been possible to do so.

In the following, the three asserted procedural defects 5.2, 5.3 and 5.5 will be summarised on the basis of both the petition and the replies to the preliminary opinion made in writing and in the oral proceedings before the EBA (point 5.2.2). Subsequently, the question of whether either an objection was raised or an objection could not have been raised will be analysed (point 5.2.3). The petitioner's claim that he both raised and did not raise an objection is contradictory and thus cannot be accepted.

5.2.2 The substance of defects 5.2, 5.3 and 5.5

Defect "5.2 Introduction of New Grounds Without Prior Notice" (violation of both Article 123(1) and Rule 104(b) EPC)

The Board's preliminary opinion departed from the Examining Division's decision in basing its analysis (of inventive step) on document D2 instead of D1. During the oral proceedings, the Board raised an **unexpected objection concerning the lack of direct control over the Clearing Settlement Mechanism (CSM)**. This objection was not included in the Board's preliminary opinion. The petitioner asked for more time but was not provided with an opportunity to respond in real time.

The petitioner asserted this unexpected objection repeatedly, in the two written replies and the hearing before the EBA. As a consequence, the EBA is of the opinion that the statement in the last sentence of point 3 of the petition that the decision "added a new reasoning..." focusing on the lack of direct control over the CSM must be interpreted as follows: the reasoning was made for the first time in the oral proceedings before the Board and was merely reflected, not raised for the first time, in the decision.

Defect "5.3 Pressure to Withdraw the Appeal"

At the conclusion of the oral proceedings, the Board suggested that the applicant withdraw the appeal, offering a partial reimbursement of the appeal fee. A fair trial under Article 113(1) EPC "must be free from undue pressure or inducement". Such pressure

undermined the petitioner's decision-making independence and contributed to his inability to meet renewal fee obligations. The Board repeated this suggestion several times (see the representative's affidavit, point 12).

Defect "5.5 Failure to Consider the Proof of Concept (POC)"

During the hearing, the Board pointed out that a POC would clarify the technical contribution. The applicant responded that a POC existed and that he was willing to provide supporting evidence in the form of a contract and screenshots (furnished later with the petition as attachments 6 and 10, respectively). The Board neither requested nor considered such evidence. The failure to consider the POC deprived the petitioner of a crucial opportunity to demonstrate the technical merits of the invention.

5.2.3 Requirements for a valid objection

The EBA affirms the view that it expressed in R 14/25 (in point 1.3.2(i))

that neither Rule 106 EPC nor the term "objection" need be mentioned for a statement to qualify as an objection in the meaning of that rule. Furthermore, what matters is not a party's intention in making a statement, but rather the Board's perception of that statement. However, a Board must be in a position to understand criticism objectively as an objection under Rule 106 EPC. The reminder could thus still constitute an objection if the general requirements of a valid objection were met. Those conditions are set out in the "Case Law" (in section V.B.3.7.2); the following conditions are of particular relevance in the case in hand.

"[The objection] must be specific, indicating clearly and unambiguously on which procedural defect the petitioner intends to rely.

An objection under R. 106 EPC is additional to and distinct from other statements, such as arguing or even protesting against the conduct of the proceedings or against an individual procedural finding..."

The EBA adds that a Board must be able understand that the party

- requests in a formal manner that the Board reconsider its approach on a specific topic and formally accept or reject the party's criticism and
- will have a right to challenge the line taken by the Board pursuant to Article 112a EPC if the Board rejects the formal criticism.

Only then will it amount to an objection under Rule 106 EPC.

5.2.4 Whether objections were raised or could not have been raised in respect of defects 5.2, 5.3 and 5.5

5.2.4.1 The petitioner's arguments regarding how he raised objections in respect of defects 5.2 and 5.5

As mentioned above, up until the oral proceedings before the EBA, both the minutes of the oral proceedings and the written decision were silent on any objection that the petitioner raised and the same applied to the remainder of the file.

It was during the oral proceedings before the EBA that the petitioner argued for the first time that he had raised an objection during the oral proceedings before the Board (see point IX above) in two ways.

The lack of direct control over the Clearing Settlement Mechanism (CSM) and the necessity of Proof of Concept (POC) had been raised for the first time in the oral proceedings before the Board. The petitioner asked for more time to respond. He also requested to be granted leave to submit evidence of the existence of a POC, which he was not able to produce in the oral proceedings.

The Board should have known that this was a formal objection.

Analysis

In the EBA's view, the petitioner's requests for more time to reply to the CSM-related point and to submit evidence on the POC do not qualify as objections in the meaning of Rule 106 EPC. The petitioner's notes on the hearing (point V.9 above) and the representative's affidavit (point V.2 above) make no mention of any assertion of a violation of rights in the oral proceedings before the Board that are fundamental procedural defects under Article 112a and Rule 104 EPC. The Board therefore could not objectively derive the need to issue a formal decision. As a consequence, these requests do not constitute objections.

Nor is it comprehensible how the petitioner's request for a correction of the minutes via the present petition might constitute an objection under Rule 106 EPC (point IX above). Any objection under that legal provision must be filed while the appeal proceedings are still pending ("during the appeal proceedings") to enable a board to examine and possibly accept it by correcting its conduct of the proceedings.

5.2.4.2 Was raising objections impossible?

During the **oral proceedings before the EBA**, the petitioner also expressed the view that it was not possible for him to raise objections.

The reason why it was not possible to raise an objection was that the Board had advised the petitioner that the only thing he could do was to withdraw the appeal. There was no possibility at the end of the oral proceedings to raise a formal objection.

Furthermore, in the context of defect “5.3 Pressure to Withdraw the Appeal”, the petitioner submitted that the Board’s repeated suggestion to withdraw the appeal constituted pressure undermining “the petitioner’s decision-making independence”.

The EBA cannot acknowledge that it follows from these reasons that raising an objection was impossible, not least because the petitioner was represented by an attorney acting on his behalf during the oral proceedings before the Board. This legal practitioner will be familiar with Rule 106 EPC and its interpretation in the relevant case law of the Enlarged Board of Appeal. He is therefore deemed to have been in a position to raise objections.

In his reply of **11 February 2026**, the petitioner argued that defects 5.2, 5.3 and 5.5 fell within the exception of Rule 106 EPC, “as these violations became apparent only during or after the oral proceedings”. This statement does not identify any violation that had become apparent only after the oral proceedings and neither do the summaries of the three defects above (in point 5.2) drawn up on the basis of the petitioner’s assertions.

In his reply of **22 February 2026** (in point 5, as clarified by point 6), the petitioner argued that **the determinative legal condition “direct control over the CSM”**

...was not framed as an issue open for amendment or further procedural discussion.

In such circumstances, the exception under Rule 106 EPC applies.

...

The issue is whether the procedural framework allowed the Petitioner a genuine opportunity to react to a newly articulated decisive condition.

The EBA’s answer is that, yes, Rule 106 EPC as part of the procedural framework would have made it possible to object to the Board’s way of proceeding, but the petitioner did not avail himself of this possibility.

In conclusion, objections to the three asserted defects 5.2, 5.3 and 5.5 would have been possible. The exception of Rule 106 EPC therefore does not apply in respect of these defects.

5.2.5 Compliance with Rule 106 EPC and Article 112a(4) in conjunction with Rule 107(2) EPC in respect of defect 5.4

This asserted defect has been summarised above (in point III.1) as follows.

“5.4 Incomplete Documentation of the Oral Procedure”

The minutes of the oral proceedings were extremely brief and failed to capture essential discussions, including arguments against D2, the CSM objection and the presentation of the POC. This incomplete documentation hindered a comprehensive review of the proceedings and prevented the petitioner from demonstrating that its arguments were fully considered.

An objection pursuant to Rule 106 EPC in respect of defect 5.4 relating to the allegedly incomplete minutes of the oral proceedings could obviously not have been raised during the appeal proceedings. This defect is based on Article 113(1), together with Rule 124(1), EPC and thus on Article 112a(2)(c) EPC.

The EBA considers, in the petitioner's favour, that the reasons given regarding the defect meet the requirements of Article 112a(4) in conjunction with Rule 107(2) EPC.

5.3 Conclusion on admissibility in respect of defects 5.2, 5.3, 5.4 and 5.5

In the light of the foregoing, the petition is clearly inadmissible in respect of defects 5.2, 5.3 and 5.5 due to failure to raise pertinent objections under Rule 106 EPC. It is not clearly inadmissible in respect of defect 5.4.

5.4 Admissibility of the petition in respect of defects 6.1 and 6.2 relied on as “material” (substantive)

5.4.1 The “material” (substantive) defects

“6.1 Misinterpretation of the Expert's Report”

The report was intended to confirm compliance with Article 83 EPC. Instead, the Board “reinterpreted” the report as implying obviousness under Article 56 EPC. This led to an incorrect assessment of inventive step.

“6.2 Non-recognition of the Technical Contribution”

The Board incorrectly concluded, despite the supporting POC (attachments 6 and 10, provided for the first time together with the petition), that the invention lacked technical character because the applicant did not exercise direct control over the CSM.

5.4.2 The EBA's preliminary view on the defects referred to as “material” in the petition [extract from the EBA's communication, point B.2.3, below]

In R 20/10 it was held (in point 2):

According to Article 112a(4), first sentence, EPC the petition shall be filed in a reasoned statement. Furthermore, Rule 107(2) EPC stipulates that the petition shall indicate the reasons for setting aside the decision of the board of appeal and the facts and evidence on which the petition is based. According to Rule 108(1) EPC the Enlarged Board of Appeal shall reject the petition as inadmissible if the petition does not comply with Article 112a, paragraph 1, 2 or 4, Rule 106 or Rule 107, paragraph 1(b) or 2, EPC.

This holding applies to the admissibility of a petition as a whole. In this case, the petition is not clearly inadmissible as a whole, because it is not clearly inadmissible in respect of defect 5.4. The EBA is nevertheless of the opinion that the above holding can be applied by analogy to isolated grounds for review. This is because a petition, different from an appeal to a board pursuant to Article 106 EPC, may be held inadmissible in part and unallowable in part. In other words, if a petition does not comply with the provisions mentioned in the last sentence of the above quotation in respect of one asserted defect and/or ground, it may be held to be inadmissible with regards to that defect and/or ground only. As to Rule 106, in particular, the EBA has adopted this stance in several of its decisions. The following discussion is based on this approach.

The EBA believes that the present petition is not reasoned within the meaning of Article 112a(4) in connection with Rule 107(2) EPC as regards substantive defects 6.1 and 6.2.

As to these objections labelled “Material Irregularities”, the petitioner itself says;

In addition to the procedural violations, the substantive assessment by the BoA contains material errors affecting the outcome.

In the framework of Article 112a EPC the EBA however is not in a position to review the application of substantive law. See Case Law of the EPO Boards of Appeal, 10th edition 2022 (hereinafter also abbreviated as “Case Law”; the 11th edition of 2025 is not referred to as it was issued subsequent to the adoption of the decision under review), section V.B.3.4.3 (case references omitted):

The Enlarged Board has no competence under Art. 112a EPC to examine the merits of the decision and to go into the substance of a case... , not even indirectly... . A review of the correct application of substantive law would amount to the Enlarged Board being a third instance which has been explicitly excluded... . It is not the purpose of petition for review proceedings to evaluate whether or not the reasons selected by the board are appropriate...; the Enlarged Board cannot replace a board's substantive assessment with its own... . The Enlarged Board cannot act as a third instance or second-tier appellate tribunal in petition proceedings... .

As to defect 6.1, i.e. "Misinterpretation of the Expert's Report", the petitioner did mention Article 113(1) EPC as a legal basis. The petitioner however fails to assert facts corresponding to the right to be heard and thus to assert a corresponding procedural defect. The petitioner merely sets forth:

Legal Basis: Decisions such as G 4/92 and Article 113(1) of the EPC stipulate that reinterpretation of evidence must be justifiable and may be subject to refutation.

Article 113(1) EPC reads:

The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

"Grounds or evidence" under Art. 113(1) EPC are to be understood as meaning the essential legal and factual reasoning on which the decision is based. (See Case Law, section III.B.2.3.2).

The petitioner does not assert that he was deprived of making comments on questions of fact, evidence or law, i.e. his right to be heard, in connection with the alleged misinterpretation of the expert's report. As a consequence, the mere mentioning of Article 113(1) EPC does not contradict the petitioner's own submission that this defect relates to the "substantive assessment" of the case.

In respect of substantive defect 6.2 the petitioner has not referred to Article 113(1) EPC or any of the grounds of Article 112a(2) EPC.

As it was held in R 20/10 (in point 2.2)

In order to justify the Enlarged Board examining the merits of a petitioner's case, the complaints made must provide at least a minimum context with a ground which could potentially constitute a ground for revision of a decision of a board of appeal within the terms of the EPC.

Regarding substantive defects 6.1 and 6.2, no such context has been provided in connection with the ground of Article 112a(2)(c) EPC relating to Article 113(1) EPC or any other of the grounds for review mentioned in Article 112a EPC.

It follows that the petition is obviously inadmissible regarding these two defects.

[end of extract from the EBA's communication]

5.4.3 The petitioner's reply to the EBA's preliminary view on the "material" (substantive) defects

In his reply of 11 February 2026, the petitioner relabelled as procedural defects 6.1 and 6.2 referred to as "material" (substantive) in the petition:

4. Substantive Defects Linked to Procedural Failures

Defects 6.1 (misinterpretation of expert report) and 6.2 (failure to recognize technical contribution) are **direct consequences of procedural defects 5.4 and 5.5**. The Petitioner had **no opportunity to respond to the reinterpretation of evidence**, thereby violating Article 113(1) EPC. These are procedural, not technical issues.

5.4.4 Analysis

Admittance of the relabelling of defects 6.1 and 6.2

Admittance of the petitioner's amendment of his reasoning regarding asserted defects 6.1 and 6.2 is subject to the provisions of Article 12 RPEBA entitled "New submissions filed after expiry of the time limit in proceedings under Article 112a EPC", paragraph 1 of which reads:

Notwithstanding Rule 109, paragraph 3, EPC the Board may consider new submissions made by the petitioner after expiry of the time limit for filing petitions for review, if this is justified for special reasons.

R 109(3) EPC sets out, in particular, that the EBA "shall decide... on the basis of the petition."

The petitioner has submitted no special reasons for relabelling the defects. In the EBA's view, this requirement might be dispensed with if the replies in respect of defects 6.1 and 6.2 merely expanded on the reasons given for defects 6.1 and 6.2.

Such is not the case, however. Both substantive defects would now have to be assessed in the context of procedural defects 5.4 and 5.5, however extensive such an assessment would need to be.

In addition, as to defect 6.1, the petitioner argued that he had no opportunity to comment on the "reinterpretation" of the expert report. This is a new defect based on a violation of the right to be heard. As stated in the preliminary opinion, the petitioner did not assert in the petition that he was deprived of making comments on questions of fact, evidence or law, i.e. his right to be heard, in connection with the alleged misinterpretation of the expert's report.

As a consequence, merely mentioning Article 113(1) EPC as legal basis for this defect did not contradict the petitioner's own submission that this defect related to the "substantive assessment" of the case.

The requirement to submit special reasons for relabelling the defects might also be dispensed with if the EBA's preliminary opinion might objectively have surprised the petitioner. The present opinion, however, is based on the established case law of the EBA according to which the Enlarged Board is not entitled to review the substance of a decision, as requested in the petition in respect of defects 6.1 and 6.2.

The EBA will leave the question of admittance open and nevertheless analyse the new submissions because, even on the basis of the new submissions, the petition will be clearly inadmissible or unallowable in respect of these defects.

At the same time, it affirms its preliminary opinion on "material" (substantive) defects 6.1 and 6.2, which therefore becomes final. This opinion continues to be relevant, despite the relabelling of the defects, because the EBA leaves the question of its consideration open.

Assessment of defects 6.1 and 6.2 relabelled as procedural

As stated, the petitioner argues that defects 6.1 (misinterpretation of expert report) and 6.2 (failure to recognize technical contribution) are direct consequences of procedural defects 5.4 and 5.5.

The EBA considers at the outset that it is not comprehensible how defect 5.4 (minutes) could have an impact on defects 6.1 and 6.2, these defects allegedly having occurred during the oral proceedings before the Board, while the minutes were adopted thereafter.

As to defect "5.5 Failure to Consider the Proof of Concept (POC)", the following considerations apply: if defects 6.1 and 6.2 are the direct consequence of defect 5.5, as the petitioner claims, then they share the fate of that defect, namely, in the absence of a respective objection being raised, the petition is not admissible in respect of defects 6.1 and 6.2 either.

As far as defect 6.1 is concerned, however, the petitioner relies on an additional aspect, namely that he had no opportunity to respond to the "reinterpretation" of evidence. He argues that the expert report (referred to as "expert opinion" by the Board) was intended to confirm compliance with Article 83 EPC. Instead, the Board "reinterpreted" the report as

implying obviousness under Article 56 EPC. As this “reinterpretation” was only made in the decision, the question might arise as to whether he ought to have anticipated it or, conversely, was objectively surprised by it. In the latter case, an objection under Rule 106 EPC would not have been possible. In this context, it is necessary to look into the importance attributed to the expert report in the decision under review, paragraph 13 of which reads:

The **Board's view is confirmed by the expert opinion** provided by the appellant, according to which the skilled person would have been able to implement the features of claim 7 - which include a real-time transfer of funds - over a known SEPA system.

The Board’s view relates to inventive step regarding feature group A. This view was developed in paragraphs 9 to 12, with paragraph 13 being based on the expert report that merely confirmed that view. It follows that the expert report was not decisive for the outcome of the analysis of inventive step. Even if the Board ought to have heard the petitioner regarding “reinterpreting” the report in the context of Article 56 instead of 83 EPC, this omission would have had no causal connection with the outcome of the inventive-step analysis. It can therefore have had no impact on his right to be heard regarding this analysis, either.

In summary, on the assumption that the petitioner had not been afforded an opportunity to comment on the Board’s “reinterpretation” of the expert report and had therefore been objectively surprised by it, he could not have filed an objection under Rule 106, because the lack of such an opportunity only became apparent in the decision. However, the petition would be clearly unallowable in this respect given that the lack of opportunity could not have had an impact on the outcome of the inventive-step analysis.

5.4.5 Conclusion

No matter whether defects 6.1 and 6.2 are considered “material” (substantive) or procedural, the petition is clearly inadmissible or unallowable in respect thereof.

5.5 Overall conclusion

The above analysis has shown that the petition for review is clearly inadmissible in respect of all the asserted defects, with the exception of defect 5.4 and possibly 6.1. While it is not clearly inadmissible in respect of defect 6.1, it is clearly unallowable.

6. Allowability of the petition for review on the basis of defect 5.4

6.1 The petitioner's submissions

5.4 Incomplete Documentation of the Oral Procedure

- Facts: The minutes of the oral procedure on 6 June 2024 were extremely brief—around 10 lines—and failed to capture essential discussions, including arguments against D2, the CSM objection, and the presentation of the POC (see Annex 5: Minutes, 6 June 2024).
- Legal Basis: Article 113(1) of the EPC and Rule 124(1), together with Decisions R 4/17, R 2/14, and R 0003/19, require that proceedings be accurately documented. R 0003/19 specifically indicates that an incomplete record prevents a full review and constitutes a procedural violation.
- Impact: The incomplete documentation hinders a comprehensive review of the proceedings and prevents the applicant from demonstrating that its arguments were fully considered.

6.2 Analysis

Pursuant to Rule 124(1) EPC, the minutes drawn up for oral proceedings must contain the essentials of the proceedings.

The petitioner asserts that “[t]he incomplete documentation [in the minutes] hinders a comprehensive review of the proceedings and prevents the applicant from demonstrating that its arguments were fully considered”. In this case, none of the defects other than the present one relating to the minutes can be reviewed on their merits in the present proceedings before the EBA. This is because the petition is clearly inadmissible in respect of all the other defects raised; if an exception applied to defect 6.1, then, as already found above, the petition would be clearly unallowable in this regard. The asserted impact of this defect, i.e.:

- hindering a comprehensive review of the proceedings and
- preventing the applicant from demonstrating that his arguments were fully considered cannot therefore arise.

For these reasons alone, the petition is clearly unfounded in respect of defect 5.4.

7. It follows from the foregoing that the petition must be rejected. Given that it has been found that the petition is either clearly inadmissible or unallowable in respect of the asserted fundamental procedural defects under Article 112a(2)(c) and (d) in conjunction with Rule 104(b) EPC, the EBA is unable to conclude that the petitioner has been deprived of a fair trial.

Order

For these reasons it is decided that:

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

The Registrar:

The Chair:



N. Michaleczek

C. Josefsson

Decision electronically authenticated