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**Datasheet for the decision
of 9 January 2026**

Case Number: R 0010/25

Appeal Number: T 0951/22 - 3.4.01

Application Number: 14827303.0

Publication Number: 3066715

IPC: H01P1/06, H01Q9/28

Language of the proceedings: EN

Title of invention:
HIGH-SPEED DATA LINK WITH PLANAR NEAR-FIELD PROBE

Patent Proprietor:
Moog Inc.

Opponent:
Schleifring GmbH

Headword:
Petition for review

Relevant legal provisions:

EPC Art. 112a(1), 112a(2)(c), 112a(2)(d), 112a(4), 113(1),
138(2), 138(3)

RPBA 2020 Art. 13(2)

RPEBA Art. 12(1), 13, 14(2)

EPC R. 104(b), 106, 107(2), 109(2)(a)

Keyword:

Petition for review - Clearly inadmissible or unallowable
Fundamental violation of Article 113(1) EPC (no)

Decisions cited:

T 1906/19, R 0001/08, R 0019/11, R 0014/24

Catchword:



Große Beschwerdekammer
Enlarged Board of Appeal
Grande Chambre de recours

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Case Number: R 0010/25

D E C I S I O N
of the Enlarged Board of Appeal
of 9 January 2026

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Decision under review: **Decision of the Technical Board of Appeal 3.4.01
of the European Patent Office of
28 November 2024.**

Composition of the Board:

Chairman C. Josefsson
Members: E. Mille
G. Pricolo

Summary of Facts and Submissions

- I. The petition for review concerns decision T 951/22 of Technical Board of Appeal 3.4.01 ("Board") of 28 November 2024, dispatched on 17 February 2025. In this decision, the Board dismissed the appeal of the patent proprietor against the decision of the opposition division maintaining the patent in amended form and revoked the patent.
- II. The appellant ("petitioner") filed a petition for review of the above decision in due time. The petition was based on the grounds that fundamental violations of its right to be heard under Article 113(1) EPC (Article 112a(2)c) EPC) and that fundamental procedural defects (Article 112a(2)d) EPC) allegedly occurred during the appeal proceedings. The petitioner requested that decision T 951/22 be set aside and that the proceedings before the Board be re-opened.
- III. The Enlarged Board in its composition pursuant to Rule 109(2) (a) EPC summoned the petitioner upon their auxiliary request to oral proceedings and issued a communication pursuant to Article 13 and Article 14(2) RPEBA on 16 December 2025, to which the petitioner responded by letter dated 5 January 2026.
- IV. The petitioner's case may be summarised as follows:
- A) The alleged violations of the right to be heard of the petitioner are based on the following grounds:
- (i) Insufficient time during the oral proceedings to review case law cited by the Board*

The petitioner alleges (points 15 to 22 of the petition) that the written decision gives more weight to decision T 1906/19 than during the oral proceedings and that if more time had been given to the patent proprietor during these oral proceedings to react to this decision, it could have raised more arguments based on it.

According to the petitioner, such an insufficiency of time amounts to a violation of it's right to be heard.

(ii) Reason of the written decision not detailed during the oral proceedings

The petitioner claims (points 23 to 29 of the petition) that the Board justified its decision for not following a line of case-law cited by the patent proprietor by reference to another line of case-law, and that this justification was not provided during the oral proceedings. According to the first line of case law, the deletion of a dependent claim - in the case at hand, in the sets of claims of the new series of auxiliary requests filed with the patent proprietor's letter dated 31 August 2024 in response to the preliminary opinion of the Board - does *not* amount to an amendment of an appeal case. According to a second line of case law - of the same section of the CLBA - such a deletion *does* amount to an amendment of an appeal case, see Reasons 3 and 4 of the decision under review.

The petitioner concludes that it was consequently deprived of the opportunity to comment on these Reasons of the decision and that this accordingly amounts to a violation of its right to be heard.

Similarly, the petitioner holds the view that the arguments under Reasons 5 of the decision under review were not raised during the oral proceedings and in particular that it was not clear during the oral proceedings that the line of argument of the opponent, according to which going through 35 new claims sets amounts to a lot of work, would prevail, especially since, at the considered stage of the oral proceedings, only the new auxiliary request 1A was under discussion. The patent proprietor was therefore prevented from responding to this argument. This, according to the petitioner, represents a violation of its right to be heard.

(iii) Impossibility to present arguments during the oral proceedings in support of the core feature of the invention in claim 1

The petitioner claims that since its request 1A, comprising claim 4, was discussed on the issue of sufficiency of disclosure of claim 4 and that after deliberation, the Board concluded that the invention according to this request was not sufficiently disclosed, and that this conclusion preliminarily applied to all the other requests still on file, the patent proprietor was deprived of the possibility to defend the patentability of claim 1 of these requests.

It besides challenges the conclusion of the Board regarding sufficiency of disclosure of the said claim 4 of these requests as well as the inadmissibility by the Board of the new series of requests in which this claim 4 was deleted.

It concludes that this inadmissibility amounts to a violation of its right to be heard.

(iv) Alleged illegality for a Board not to admit into appeal proceedings a request in which a dependent claim was deleted when this request would then be allowable if it were admitted

With reference to decision R 14/24 the petitioner claims that Article 138 (2) and (3) EPC prevent a Board from not admitting into the appeal proceedings, on the basis of Article 13(2) RPBA, a request in which a dependent claim was deleted in view of overcoming an objection raised against the allowability of this dependent claim.

The petitioner alleges that in decision R 14/24, contrary to the case at hand, the deletion of dependent claims did *not* necessarily overcome all objections raised against the considered requests. Thus, according to this decision, requests filed with dependent claims deleted, *overcoming* an objection, could legitimately not be denied admittance on the basis of Article 13(2) RPBA.

The petitioner concludes that its right to be heard was violated, while the Board, by not admitting the considered request, applied its discretion in an arbitrary or manifestly illegal way.

(v) Impossibility to present during the oral proceedings on that deleting a dependent claim in a request filed in response to the Board's preliminary opinion would amount to an amendment of the appeal case subjected to the provisions of Article 13(2) RPBA

Such an impossibility would amount to a violation of its right to be heard according to the petitioner.

B) The alleged fundamental procedural defects are based on the following grounds:

(vi) No decision by the Board on a point raised by the proprietor's written submissions dated 31 August 2024

The petitioner claims that the Board did not take position in the decision under review on section 11.c of the considered patent proprietor submissions which state that "there is an established body of case-law in favour of deletion of a claim being admissible under Articles 13(1) and (2) RPBA" and cites examples of such case-law decisions.

This absence of position taken by the board would according to the petitioner amount to a fundamental procedural defect.

(vii) No decision of the Board on patentability of claim 1

The petitioner holds the view that since the Board found the requests still on file unallowable, because their respective claim 4 were regarded as insufficiently disclosed, without the patentability of their respective claim 1 being discussed, this absence of discussion would amount to a fundamental procedural defect.

Reasons for the Decision

Admissibility of the petition for review

1. The requirements under Article 112a(1) and (4) EPC in conjunction with Rule 107(2) EPC were met. Pursuant to Rule 106 EPC, a petition for review is only admissible where an objection against an alleged procedural defect was raised during the appeal proceedings and dismissed by the Board, except where this objection could not be raised during these appeal proceedings.
2. Meeting the requirements under Rule 106 EPC is a precondition for access to the review procedure, since it is an extraordinary legal remedy against otherwise final decisions of a Board.
3. In the case at hand, the petitioner notably claims as ground (i) for an alleged violation of its right to be heard, that it had insufficient time during the oral proceedings to review case law cited by the Board (i.e. T 1906/19) during the oral proceedings. It thus acknowledges however that it was informed of this case-law reference.
4. The petitioner could therefore have raised an objection under Rule 106 EPC if it considered that it did not have enough time to consider the said case-law. It however refrained from doing so.
5. The petitioner also claims as ground (iii) for an alleged violation of its right to be heard that it was impossible for it to present arguments during the oral proceedings in support of the core feature of the invention in claim 1 of the requests then on file, because only sufficiency of disclosure of claim 4 of

these requests was discussed during these oral proceedings and the Board concluded after deliberation that this requirement was not fulfilled so that the patentability of claim 1 of these request was not discussed.

6. However, if the patent proprietor considered at this stage that this absence of discussion of the patentability of claim 1 of the requests on file would amount to a violation of its right to be heard, it could then have raised an objection under Rule 106 EPC accordingly. It however refrained from doing so.
7. Besides, the petitioner holds the view in ground (vi) that since there was no decision of the Board on a point raised in the proprietor's written submissions dated 31 August 2024, this absence of decision amounted to a fundamental procedural defect. In the case at hand, the point in question is set out in section 11.c of the above patent proprietor's submissions, which reads "*there is an established body of case-law in favour of deletion of a claim being admissible under Articles 13(1) and (2) RPBA*" and lists examples of such case-law decisions.
8. However, a mere reference to a line of case-law in a party's submission as in the case at hand does not constitute a request relevant to the decision within the meaning of Rule 104(b) EPC according to the Enlarged Board. Indeed, the arguments provided by the parties in support of legal consequences do not normally belong to legally binding requests (see Case Law of the Boards of Appeal of the European Patent Office, 11th edition 2022 (hereafter CLBA), V.B.4.4.2). As such, the alleged absence of decision raised by the petitioner does not amount to a fundamental procedural

defect under Article 112a(2)(d) EPC.

9. On 8 December 2025, the petitioner submitted new grounds in support of its petition regarding alleged violations of its right to be heard. These grounds were thus submitted after the expiry of the time limit for filing the petition for review. The only argument invoked by the petitioner in support of this late filing is "*the interest of procedural efficiency*".
10. This however does not as such constitute special reasons under Article 12(1) RPEBA for which late submissions may be admitted into the present review proceedings. These grounds are thus clearly inadmissible.
11. In particular, as far as the new ground (iv) raised by the petitioner based on Article 138(2) and (3) EPC is concerned, decision R 14/24 published on 8 August 2025, to which it is referred by the petitioner, neither deals with this article (except in summarising the petitioner's arguments in section IX(ii) of this decision) nor with the conclusion of the petitioner in its late submissions drawn on the basis of this article, i.e. that it would be illegal or against the spirit of the EPC not to admit requests in which a dependent claim was deleted if this deletion makes the said request otherwise allowable, on the basis of Article 13(2) RPBA. Reference to this decision and its date of publication could thus not be regarded as special reasons according to Article 12(1) RPEBA.
12. In addition, even in considering, *arguendo*, that the considered ground (iv) could have been admitted, as a matter of fact, decision R 14/24 does not at all

discuss the alleged incompatibility of Article 13(2) RPBA with Article 138 EPC. This argument was merely raised by the petitioner in the present case in response to the preliminary opinion of the Enlarged Board, regarded during the oral proceedings as potentially inadmissible due to its late filing and not discussed at all in R 14/24.

13. Article 138(3) EPC reads "*the proprietor of the patent shall have the right to limit the patent by amending the claims*". In the case at hand, the patent proprietor was actually able to file new requests in which claim 4 of previous requests was deleted, in response to the preliminary opinion of the Board. This does not imply that this limitation necessarily should have been admitted into the appeal proceedings despite the provisions of Article 13(2) RPBA.
14. As a matter of fact the Board explained why it did not admit new requests in which claim 4 was deleted, even though such requests were otherwise admissible. Indeed, Reasons 7 to 9 of the decision under review reads "*the objection which this amendment addresses (and overcomes), that the application insufficiently discloses the invention in respect of claim 4, was raised at the outset of the opposition proceedings and repeatedly discussed during them (...) the amendment should thus have been submitted during the opposition proceedings, and there are no circumstances justifying its submission only during appeal proceedings*".
15. The Enlarged Board fails to find any arbitrary or manifestly illegal application of discretion by the Board in not admitting the considered amended requests and thus no violation by this Board of the petitioner's

right to be heard. In addition, the Enlarged Board underlines that it has no competence to review the case as to its merits, including whether correct conclusions have been drawn by the Board.

16. Regarding the petitioner's new ground (v) according to which during the oral proceedings the patent proprietor was deprived of the possibility to comment, on that deleting a dependent claim in a request filed in response to the Board's preliminary opinion would amount to an amendment of the appeal case subjected to the provisions of Article 13(2) RPBA according to the Board, the minutes of the oral proceedings read "*The Board and the parties discussed - the criteria for admission of the new auxiliary request 1A; - the invention in general to put the deletion of claim 4 into context; the admission of the new auxiliary request 1A. The parties then confirmed that this three-topics discussion equally applied to the other requests of the new series, and that nothing needed to be added in that respect.*"
17. If the petitioner then actually did not share this view, it could have at this stage of the oral proceedings raised an objection under Rule 106 EPC, which it did not. Therefore, a ground for review based on this topic - even without consideration of its late submission - is to be regarded as clearly inadmissible.
18. In addition, even in considering, *arguendo*, that the considered ground (v) is admissible, in view of the above recitation of the minutes of the oral proceedings, the petitioner as a matter of fact did have the opportunity to comment on the question whether the considered deletion of claim 4 in requests

previously on file would or would not constitute an amendment of the appeal case, subject to the provisions of Article 13(2) RPBA. During the oral proceedings, the petitioner further challenged that the deletion of a dependent claim should not have been regarded as an amendment of the appeal case by the Board. The Enlarged Board again underlines here that it has no competence to review the case as to its merits, including whether correct conclusions have been drawn by the Board.

The petitioner's right to be heard was thus not violated as far as ground (v) is concerned.

19. From the above it follows that the petition is clearly inadmissible as far as the grounds (i), (iii), (iv), (v) and (vi) are concerned.

Allowability of the petition for review

(ii) Reasons of the written decision not detailed during the oral proceedings.

20. As detailed above in section IV, the petitioner claims that the Board justified its decision for not following the line of case-law cited by the patent proprietor, by reference to another case-law line and that this justification was not provided during the oral proceedings.
21. However, the minutes of the oral proceedings read that "*The Board and the parties discussed - the criteria for admission of the new auxiliary request 1A*". These criteria necessarily comprise the question of whether the modification introduced in new auxiliary request 1A (i.e. deletion of dependent claim 4) constitutes an amendment of the appeal case. These minutes further

state that *"After deliberation, the chair informed the parties of the Board's decision not to take into account any request of the new series [among which new auxiliary request 1A]"*, which necessarily means that the considered deletion was regarded as an amendment of the appeal case contrary to the patent proprietor's view and that this amendment was not admitted under Article 13(2) RPBA, as confirmed by Reasons 6 of the decision under review.

22. In the case at hand, it thus appears that the Board in its written decision merely referred to another line of case-law of the same section of the CLBA rather than the line of case-law cited by the patent proprietor in support of its opinion that deleting a dependent claim in a request does not amount to an amendment of the appeal case. However, this issue, according to the minutes of the oral proceedings, appears to have been discussed during the oral proceedings, contrary to the petitioner's point of view.

23. Regarding the petitioner's view that the arguments under Reasons 5 of the decision under review were not raised during the oral proceedings, in reasons 5 of the decision under review, the Board refers to both parties respective points of view (deletion of dependent claim 4 in the new series of requests amounts to the mere elimination of a point of dispute - i.e. an objection of insufficiency of disclosure - according to the patent proprietor, and amount of work needed to go through 35 new claims sets, according to the opponent) and indicated that it followed the point of view of the opponent. These points of view were thus parts of the appeal proceedings and well known by the parties so that, in particular, the patent proprietor could respond to that of the opponent, regarding one of the

considered request (i.e. new auxiliary request 1A) or all of them in the new series filed on 31 August 2024, in which dependent claim 4 was deleted.

24. Regarding the above issue, the minutes of the oral proceedings state "*After deliberation, the chair informed the parties of the Board's decision not to take into account any request of the new series*", which necessarily means that the considered deletion was regarded as an amendment of the appeal case, contrary to the patent proprietor's view, and that this amendment was not admitted under Article 13(2) RPBA, as confirmed by Reasons 6 of the decision under review.
25. In addition, these minutes also state that - before the deliberation of the Board - "*The parties then confirmed that this three-topic discussion equally applied to the other requests of the series, and that nothing needed to be added in that respect*". This confirmed that it was clear at this stage that the said discussion applied equally to all the considered requests and thus notably to the new auxiliary request 1A, contrary to the petitioner's point of view.
26. This issue, according to the minutes of the oral proceedings, thus appears to have been discussed during the oral proceedings and the petitioner had the opportunity to comment on the opponent's point of view.
27. Regarding the fact that the petitioner considers that, since the new series of auxiliary requests was amended only by the cancellation of claim 4, going through this series would not need considerable work contrary to the opponent's point of view, followed by the Board, this concerns the merits of the decision, for which, as already underlined, the Enlarged Board has no review

competence.

28. Finally, in any event, the Boards are not obliged to explicitly state all the reasons underlying a decision until they issue the final decision in writing (CLBA, V.B.3.11) and parties are not entitled to advance indication of all reasons for a decision in detail (see CLBA, V.B.4.3.5).

The petitioner's right to be heard was thus not violated as far as the current ground is concerned.

(vii) No decision of the Board on patentability of claim 1.

29. The petitioner holds the view regarding the requests still on file that since the Board found them unallowable based on their respective claim 4 without the patentability of their respective claim 1 being discussed, this would amount to a fundamental procedural defect.
30. However, if a claim of a request is found unallowable, the request comprising this claim is consequently also unallowable as a whole. Not discussing the patentability of an independent claim of this request cannot therefore amount to a substantial procedural defect under Rule 104(b) EPC since a decision was as a matter of fact regularly made on the request as a whole.
31. The decision of the Board on the considered issue consequently does not suffer from any fundamental procedural defect.

Conclusion

32. What the petitioner essentially complains about is that the Board arrived at conclusions different from the petitioner's one. The Enlarged Board understands that a party may have a different view to the deciding Board on technical or legal considerations and may even be convinced that a decision is wrong from a technical or legal point of view and may, therefore, wish to have the case reviewed. However, the Enlarged Board has no competence to review the case as to its merits, including whether correct conclusions have been drawn by the Board. Under no circumstances may the petition for review be a means to review the application of substantive law, since a review of the correct application of substantive law would amount to the Enlarged Board being a third instance. This has been explicitly excluded by the legislator (see also explanatory remarks 1 to 5 on Article 112a EPC, OJ EPO 2007, Special edition no. 4, and established case law since decision R 1/08). Thus, the Enlarged Board has no competence under Article 112a EPC to examine the merits of a Board's decision and go into the substance of a case, not even indirectly (see also CLA, V.B.3.1 and V.B.3.4.3, and the decisions cited there, e.g. R 19/11, Reasons 2.2).
33. In light of the considerations set out above, the Enlarged Board concludes that the petitioner's arguments were duly considered by the Board, as can be derived from the Board's written reasoned decision. As far as the correctness of the decision as to its substance has been objected to by the petitioner, this cannot be reviewed by the Enlarged Board as detailed above.

34. Therefore, the petition for review is clearly inadmissible or unallowable under Rule 109(2) (a) EPC.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



N. Michaleczek

C. Josefsson

Decision electronically authenticated