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I N T E R L O C U T O R Y D E C I S I O N
of 24 November 2005

Case Number: T 0261/03 - 3.3.03

Application Number: 94304195.4

Publication Number: 0630938

IPC: C08K 5/521

Language of the proceedings: EN

Title of invention:

A flame resistant resin composition

Patentee:

GE PLASTICS JAPAN LIMITED

Opponent:

DEMI Vertriebs- und Beteiligungsgesellschaft mbH

Headword:

Transfer of opponent status/DEMI

Relevant legal provisions:

EPC Art. 107, 112

EPC R. 20

Keyword:

"Transfer of opponent status - yes"

"Admissibility of appeal - yes"

"Referral to Enlarged Board - no"

Decisions cited:

G 0004/88, T 0870/92, T 0670/95, T 0799/97, T 0602/99,
T 0854/99, T 0009/00, T 0273/02, T 0413/02, T 1091/02

Catchword:

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Case Number: T 0261/03 - 3.3.03

I N T E R L O C U T O R Y D E C I S I O N
of the Technical Board of Appeal 3.3.03
of 24 November 2005

Appellant: DEMI Vertriebs- und Beteiligungsgesellschaft
(Opponent) mbH
Kajen 2
D-20459 Hamburg (DE)

Representative: Patentanwälte
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Respondent: GE PLASTICS JAPAN LIMITED
(Proprietor of the patent) 7-2, 3-Chome
Nihonbashi-Honcho
Chuo-Ku,
Tokyo (JP)

Representative: Grever, Frederik
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office dated
16 October 2002 and posted 2 December 2002
concerning maintenance of European patent
No. 0630938 in amended form.

Composition of the Board:

Chairman: R. Young
Members: C. Idez
R. Moufang

Summary of facts and submissions

- I. An opposition was filed by BASF AG against the European patent No. 0 630 938 (application No. 94 304 195.4). In its decision announced orally on 16 October 2002 and posted on 2 December 2002, the opposition division found that the patent in amended form met the requirements of the EPC.
- II. By a letter received at the EPO on 17 January 2003, ROMIRA GmbH informed the EPO that in view of a transfer of business from BASF AG to DEMI Vertriebs- und Beteiligungsgesellschaft mbH (in the following "DEMI") the status of opponent in the opposition proceedings concerning the European patent No. 0 630 938 had changed to DEMI. Attached to the letter was a copy of an asset purchase agreement between BASF AG and DEMI dated 14 August 2002 ("the Agreement"). The Agreement appears to have been signed on behalf of DEMI by the same person who also signed the letter of ROMIRA GmbH.

The Agreement concerned the sale of the Luranyl® business carried on by BASF AG and relating to a certain engineering plastic blend based on polyphenylenether and high impact polystyrene. Articles 8.2 and 8.3 of the Agreement provided that at the date of closing the parties to the agreement should complete several transactions, inter alia "transfer of title and risk of all assets sold to Purchaser" as well as "transfer and delivery of the Technology", the term "Technology" being defined in Article 1.1 as meaning the intellectual property rights, patent rights as listed in an Annex 1.1.3, copy rights [sic] and (further specified) technical information and know-how.

The closing date was determined in Article 8.1 as follows:

"The closing date ("**Date of closing**") shall be unless otherwise agreed upon between the Parties within 10 (ten) business days in Ludwigshafen after the date the German Cartel Office (Bundeskartellamt) has confirmed to the Parties that it will not prohibit the completion of the transactions envisaged under this Agreement or (if this occurs first) the period during which the German Cartel Office is legally permitted to prohibit the transactions envisaged under this Agreement has elapsed without a prohibition order having been rendered or the Parties have formally agreed that a filing of this Agreement at the German Cartel Office is not required."

Article 20 of the Agreement provided that the Agreement including the Related Agreements constituted the entire agreement and understanding between the Parties and that alterations and amendments of the Agreement should only be valid if made in writing or any stricter form prescribed by law.

III. On 7 February 2003 a notice of appeal against the decision of the opposition division was filed by DEMI ("appellant"). The appeal fee was paid on the same day. In the last paragraph of the notice, the following was stated: "Die Rechtsnachfolgeschaft der DEMI wurde dem Patentamt durch Vorlage des Veräußerungsvertrages durch die DEMI mit Schreiben vom 14.08.02 [sic] angezeigt."

- IV. On 21 February 2003 a formalities officer of the transfer service of the EPO informed the appellant that the requested transfer of opponent could not be registered since the request from ROMIRA GmbH was neither signed by the opponent to be registered nor by an authorised representative and since it was not clear from the transmitted document that the Agreement had indeed become effective. It was noted that the Agreement specified several conditions for the closing of the deal and that it was nowhere specified that these conditions had been fulfilled.
- V. In a letter of 18 March 2003, the appellant reiterated its statement that the opponent status had been transferred to it and referred to a declaration of BASF AG.
- VI. With a further letter of 8 April 2003, received at the EPO on 9 April 2003, the appellant filed its grounds of appeal.
- VII. After having been informed by a formalities officer of the transfer section that the declaration referred to in its letter of 18 March 2003 had not been received by the EPO, the appellant submitted, together with its letter of 23 April 2003, received at the EPO on 25 April 2003, a common declaration of BASF AG and the appellant. This declaration which has been signed on 5 March 2003 on behalf of BASF AG and on 13 March 2003 on behalf of the appellant contained the following statement: "Wir die Unterzeichnete BASF Aktiengesellschaft ... erklären hiermit, dass wir den Geschäftsbereich, der die Herstellung und den Vertrieb flammgeschützter Kunststoffmischungen aus

Polyphenylenethern und schlagzähem Polystyrol umfasste, mit allen in diesem Zusammenhang relevanten gewerblichen Schutzrechten, mit Wirkung vom 14.08.2002 an die DEMI ... veräußert haben. Mit dieser Veräußerung ist auch die Stellung der Einsprechenden in Sachen des Patentes EP 94 304 195.4-2102, die mit diesen [sic] Teil des Geschäftsbetriebes in Zusammenhang steht, auf die DEMI ... mit allen Rechten und Pflichten übergegangen. Die DEMI ... hat die Übertragung der vorstehenden Rechte angenommen."

- VIII. In a communication of 3 June 2003 with the title "Communication of amended entries", a Formalities Officer of the Directorate General 2 of the EPO informed the appellant that the name and the address of the opponent had been amended into DEMI as from 25 April 2003.
- IX. In its fax letter of 15 August 2003, the respondent contested the admissibility of the appeal.
- X. After further submissions of the parties and two communications of the board setting out its preliminary views, oral proceedings restricted to the issue of the admissibility of the appeal were held on 24 November 2005 and were attended by both parties. At the end of the oral proceedings the board announced its interlocutory decision.

XI. The arguments of the appellant which are relevant to this decision presented in the written submissions and at the oral proceedings may be summarised as follows:

- (a) The appeal was admissible since it was filed when the appellant had already acquired opponent status. All the substantive and formal requirements for the transfer of opponent status had been met before the expiry of the period for filing the appeal.
- (b) While a standard contract had been used for drafting the Agreement, its proper reading required taking into account the specific circumstances of the case in point. The parties to the Agreement had availed themselves of the possibility foreseen in Article 8.1 according to which they could agree otherwise on the closing date. They did so by agreeing that the 14 August 2002, i.e. the date of the Agreement, was also its closing date. The reason for this was that the merger control provisions of the German antitrust law did not apply to the Agreement. The written form requirement of Article 20 did not need to be complied with in this respect since it only concerned later amendments to the Agreement. The purchase price was paid immediately after the date of the Agreement.
- (c) There had been no need to mention specifically the transfer of the present opposition in the Agreement.

- (d) The EPO was properly notified of the transfer of the relevant business before the expiry of the period for filing the appeal. Appropriate evidence was submitted by ROMIRA GmbH, a company belonging to the same group as the appellant, and referred to in the notice of appeal. Although the referring statement contained mistakes, it was easy to rectify them and to link the notice of appeal with the letter of ROMIRA GmbH. These documents were sufficient to satisfy the EPO that the relevant business was transferred. The decision T 670/95 of 9 June 1998 had only held that facts which *could* give rise to a legal succession had to be shown by appropriate evidence.
- (e) There was no need to prove that a valid contract such as the Agreement was executed by the parties. It was extremely unlikely that the appellant, a respected commercial entity, would incorrectly claim opponent status before the Agreement was executed and thereby make a false representation. It had also to be taken into account that the original opponent had not filed an appeal in the present case. The further evidence submitted by the appellant after having been requested by the formalities officer of the transfer section was an additional confirmation, but not necessary to comply with the rules of the EPC. Thus the communication of the EPO of 3 June 2003 indicating the 25 April 2003 as the date on which the appellant had acquired opponent status was incorrect.

XII. The arguments of the respondent which are relevant to this decision presented in the written submissions and at the oral proceedings may be summarised as follows:

- (a) The appeal was inadmissible since it was filed on behalf of a party who was not a party to the proceedings.
- (b) The Agreement did not specifically stipulate that the opposition filed by BASF AG against the patent in suit and the right to appeal were to be transferred to the appellant. In the absence of such a specific reference, the opposition and the right to appeal remained with the transferor of the business. There was no rule prohibiting such a possibility.
- (c) It was not clear from the Agreement itself whether all conditions to make the transfer of the business effective had been fulfilled, in particular whether the German Cartel Office had consented or not and whether the transactions mentioned in Article 8.3 of the Agreement had been completed.
- (d) A transfer of the position as a party becomes effective only if and when it is notified to the EPO and appropriate evidence is submitted. Before the fulfilment of these requirements, the original opponent and not the alleged transferee kept the right to file the appeal.

- (e) Before expiry of the period for filing the appeal, the only relevant documents on file were a letter from ROMIRA GmbH with the attached Agreement and the notice of appeal stating that the appellant was the legal successor of BASF AG and referring to an unknown letter of the appellant of 14 August 2002. The letter from ROMIRA GmbH had to be disregarded since it was filed by a third party, not by a party to the proceedings.

- (f) The earliest possible date when the transfer could have become effective was the date when the appellant filed the common declaration signed on behalf of BASF AG and the appellant. This, however, occurred after the expiry of the period for filing the appeal.

XIII. The appellant requested that questions (a) and (b) in section II of the submissions of the appellant dated 25 January 2005 be addressed to the Enlarged Board of Appeal or, in the alternative, that the appeal be found admissible.

The questions referred to in the above request of the appellant read as follows:

- (a) Which formal requirements have to be fulfilled before the transfer of opponent status can be accepted? In particular, is it necessary to submit full documentary evidence proving the alleged facts?

- (b) Is an appeal filed by an alleged new opponent inadmissible if the above formal requirements are not complied with before expiry of the time limit for filing the notice of appeal?

The respondent requested

- (i) to submit the questions 1a, b and c which have been submitted by the respondent at the oral proceedings to the Enlarged Board of Appeal or, in the alternative,
- (ii) to reject the appeal as inadmissible or, if requests (i) and (ii) are not complied with,
- (iii) that a period of four months starting from the date of notification of the decision of the board be allowed to respond to the substantive grounds of appeal submitted by the appellant.

Question 1a and 1c referred to in the above request of the respondent are identical with questions (a) and (b) respectively referred to in the request of the appellant. Question 1b read as follows:

- 1b Is it necessary to submit specific evidence that besides the transfer of business assets the status of opponent has been transferred as well?

Reasons for the decision

1. *General*

1.1 The present interlocutory decision is restricted to the issue of the admissibility of the appeal.

1.2 Both parties have, as main requests, requested to refer questions of law to the Enlarged Board of Appeal. However, such a referral presupposes that a decision of the Enlarged Board is required in order to ensure uniform application of the law or to consider an important point of law. The board therefore has to consider whether for reaching a decision on the issue of admissibility a decision of the Enlarged Board is necessary.

1.3 According to Article 107 EPC, the right to appeal a decision is restricted to the adversely affected party to the proceedings. If an appeal does not comply with Article 107 EPC, the board of appeal will reject it as inadmissible (Rule 65(1) EPC) unless the deficiency has been remedied before the relevant time limit laid down in Article 108 EPC.

1.4 In the present case, the notice of appeal was explicitly filed on behalf of DEMI. Thus, the crucial issue is whether the appellant, i.e. DEMI, was a party to the opposition proceedings when the appeal was filed or at least when the time limit for filing the appeal expired. Since the appellant claims that it has acquired opponent status from BASF AG due to a transfer of the relevant business, it has to be ascertained whether the substantive and formal requirements for the

transfer of opponent status had been met at the relevant point in time.

- 1.5 The board is not precluded from performing this analysis by the communication of the Formalities Officer of Directorate General 2 of the EPO of 3 June 2003 according to which the name and address of the opponent was amended into DEMI as from 25 April 2003. The decision as to whether and when an alleged opponent has gained party status falls within the exclusive competence of the organ, i.e. opposition division or board of appeal, before which the opposition proceedings are pending. The decision neither presupposes that the name of the alleged new opponent has already been entered in the European Patent Register, nor is it precluded by a diverging previous entry made in the Register on an administrative basis. This view is in line with previous case law (see T 799/97 of 4 July 2001, point 3.2(a); T 602/99 of 21 November 2003, section VIII; T 854/99 of 24 January 2002, point 1.5; T 9/00, OJ EPO 2002, 275, point 1(e)(bb)); T 1091/02, OJ EPO 2005, 14, point 3.2).

2. *Substantive requirements for transfer of opponent status*

- 2.1 An opposition pending before the EPO can be transferred or assigned to a third party as part of the opponent's business assets together with the assets in the interests of which the opposition was filed (G 4/88, OJ EPO 1989, 480). It follows from the evidence on file that a contract dated 14 August 2002 was concluded between BASF AG and the appellant relating to the sale of the Luranyl® business, a business technologically

related to the opposed patent and thus to the present opposition. This has not been contested by the respondent.

2.2 The respondent has, however, argued that the Agreement did not specifically foresee that the opposition filed by BASF AG against the patent in suit and the right to appeal the decision of the opposition division were to be transferred to the appellant. In the absence of such a specific reference, the opposition remained with the transferor of the business. The board does not share this view. In its decision G 4/88 the Enlarged Board of Appeal has concluded that in a situation where a business in the interest of which an opposition has been instituted is transferred, the opposition constitutes an *inseparable* part of the business assets and is transferable or assignable together with these assets in accordance with the principle "accessio cedit principali". The board interprets these conclusions as holding that, from the point of view of substantive law, the transfer of a business implies the transfer of the opposition. It is thus irrelevant in the present case that the Agreement did not specifically mention the transfer of the opposition against the patent in suit. Nor was there any need to mention the transfer of the right to appeal since this is a procedural right dependent on and following immediately from the transfer of opponent status.

2.3 It has furthermore to be ascertained whether the Agreement was executed before the expiry of the appeal period, i.e. before the 13 February 2003, since, in view of the above considerations, the transfer of opposition presupposed the transfer of the relevant

business assets. Pursuant to Article 8.2 and 8.3 of the Agreement, the transfer of the business assets had to be completed on the date of closing. Article 8.1 contained several alternatives for the determination of the closing date making it, unless otherwise agreed, dependent on further actions of the German Cartel Office or of the parties. The appellant has maintained that the parties had indeed agreed "otherwise" on the closing date which then became the 14 August 2002, i.e. the date of the Agreement itself. The explanation given was that BASF AG and the appellant had used a standard contract for drafting the Agreement, but had been aware that the merger control provisions of the German antitrust law did not apply to it. According to the common declaration of BASF AG and the appellant signed in March 2003, the Agreement became effective on the 14 August 2002. The respondent has not contested these facts. In view of the submitted evidence, the board has come to the conclusion that the Agreement must have been executed before the expiry of the appeal period. In this context, it is noted that even parties to an invalid or non-enforceable contract may complete transactions such as the transfer of business assets. It is thus of no relevance in the present case to examine further whether the agreement of BASF AG and the appellant to consider the 14 August 2002 as the closing date was legally binding in view of the written form requirement of Article 20 of the Agreement.

3. *Formal requirements for transfer of opponent status*

3.1 *General.* The EPC does not contain any explicit provisions regarding the formal requirements for the transfer of opponent status. Notwithstanding its broad

title ("Registering a transfer"), Rule 20 EPC only deals with the transfer of European patent applications and, *mutatis mutandis*, of European patents during the opposition period or during opposition proceedings (Rule 61 EPC). Nevertheless, the boards of appeal of the EPO have consistently held that formal requirements have to be fulfilled before opponent status can be considered as transferred. Some of the appeal decisions have based this finding on an application *per analogiam* of Rule 20 EPC.

- 3.2 *Notification.* A first condition to be met is that the competent organ of the EPO before which the opposition proceedings are pending be informed about the transfer of the relevant business. It follows from the established case law of the EPO that without such a notification the transferor of the business remains opponent and the transferee does not acquire opponent status. In the present case, the EPO was first informed on 17 January 2003 by the letter of ROMIRA GmbH of the transfer of the business. Furthermore, the notice of appeal maintained that the appellant was the legal successor of BASF AG and referred to a submission of the Agreement "by the appellant with letter of 14 August 2002". It is true that this reference contained two mistakes since the Agreement was submitted by ROMIRA GmbH rather than by the appellant and the indicated date was the date of the Agreement itself rather than the date of the letter. However, these mistakes were obvious ones: a person consulting the file would, in view of the absence of any other relevant document, have linked the letter of ROMIRA GmbH together with the reference in the notice of appeal. This conclusion is supported by the fact that

the Agreement was apparently signed on behalf of DEMI by the same person who also signed the letter of ROMIRA GmbH. Thus, although ROMIRA GmbH was, as correctly pointed out by the respondent, only a third party, the information submitted by it has to be treated as from the date on which the notice of appeal explicitly referred to it in the same way as if it were submitted by the appellant. It follows from the above that the EPO was informed by the appellant about the alleged transfer before the end of the period for filing the appeal.

3.3 *Request.* According to Rule 20(1) EPC, the recording of a transfer of a European patent application in the Register of European Patents is dependent on a respective request of an interested party. It is doubtful whether this provision should be applied *per analogiam* to the transfer of an opposition since the name of the opponent is not mentioned in the list of necessary entries under Rule 92(1) EPC or in any of the notices of the President of the EPO under Rule 92(2) EPC. However, this issue does not need to be decided in the present case. The notice of appeal, if viewed together with the letter of ROMIRA GmbH to which it refers (see above, point 3.2), unambiguously shows the intention of the appellant to acquire opponent status and to have the relevant evidence submitted to the EPO. The board interprets this as an implicit request for the recording of the transfer of opponent status.

3.4 *Fee.* Rule 20(2), first sentence, EPC stipulates that a request for recording the transfer of a European patent application shall not be deemed to be filed until such time as an administrative fee has been paid. The board

is not aware of any appeal decision which considered this provision to be applicable in the context of a transfer of opponent status. Even those decisions which generally favour an application of the provisions of Rule 20 EPC to the transfer of oppositions make an exception for the payment of the administrative fee (see T 413/02 of 5 May 2004, point 3). The board concludes that there was no need for the appellant in the present case to pay the fee provided for in Rule 20(2) EPC.

3.5 *Production of documentary evidence*

- 3.5.1 Several board of appeal decisions have held that a transferee of a relevant business acquires opponent status only as from the date when documentary evidence for the alleged transfer of business is submitted (see T 670/95, point 2; T 870/92 of 8 August 1997, point 2; T 413/02, point 3). This conclusion has mostly been justified by an analogy to Rule 20(3) EPC according to which a transfer of a patent application or a patent (see Rule 61 EPC) shall have effect vis-à-vis the EPO only when and to the extent that documents satisfying the EPO that the transfer has taken place have been produced. While the board notes that doubts concerning this analogy persist (see for details T 1091/02, point 3.3), it will, for the sake of argument and without deciding this point, assume in favour of the respondent that Rule 20(3) EPC reflects a general procedural principle which can also be applied to the transfer of oppositions. It will therefore examine whether, before expiry of the period for filing the appeal, sufficient documentary evidence for the alleged transfer of business was submitted by the appellant.

3.5.2 As set out above (point 3.2), the notice of appeal, albeit in a somewhat incorrect manner, explicitly referred to the information provided by the letter of ROMIRA GmbH. The board therefore considers that, as from the receipt of the notice of appeal, the evidence attached to the letter of ROMIRA GmbH, i.e. the copy of the Agreement, should be treated as if directly submitted by the appellant.

3.5.3 The submitted copy of the Agreement showed that the original opponent had sold its Luranyl[®] business to the appellant and that this business concerns a certain engineering plastic blend based on polyphenylenether and high impact polystyrene. The technological relationship with the present opposition was thereby made plausible. The copy further showed that the Agreement aimed at transferring various tangible and intangible business assets including patents, know-how and other intellectual property rights to the appellant.

3.5.4 In view of this evidence, doubts about the transfer of the relevant business could only concern the execution of the contract. Since Article 8.1 of the Agreement contained several alternatives for the determination of the closing date (see above, section II and point 2.3), there was, when the appeal period expired, *prima facie* some uncertainty as to the exact date on which the Agreement had to be executed. The common declaration of BASF AG and the appellant according to which the transfer of the business was effective as from 14 August 2002 and the further explanations of the appellant were not yet on file. On the other hand, the fact that the appellant considered itself entitled to

claim opponent status and that the original opponent had not filed an appeal could be regarded as an indirect sign for the execution of the Agreement prior to the expiry of the appeal period.

3.5.5 In view of the above considerations, the question arises what level of certainty documentary evidence has to provide in order to fulfil the requirements of Rule 20 EPC. The board is not aware of any appeal decision that has held that the documents to be submitted according to this provision have to prove the alleged transfer "up to the hilt". Such a yardstick of full and absolute proof would indeed be overly strict since in many situations documentary evidence alone could then hardly suffice. As the wording of Rule 20(1) EPC suggests ("satisfying the EPO that the transfer has taken place"), something less is required. The board takes the view that the requirements of Rule 20 EPC are complied with if the documents submitted before expiry of the appeal period are such as to render it credible to the competent organ of the EPO, evaluating the documents in a reasonable way and in the light of all the circumstances, that the alleged facts are true. The mere fact that another document might have been a more direct piece of evidence than the one submitted by the appellant does not invalidate the proof actually offered (see T 273/02 of 27 April 2005, point 2.6).

3.5.6 When applying the above standard in the present case, the board considers that the documents on file when the appeal period expired were sufficient to demonstrate the alleged transfer of business to the satisfaction of the EPO. The documents proved that BASF's Luranyl business which was related to the present opposition

had been the object of a comprehensive asset purchase agreement concluded between BASF and the appellant almost six months before the filing of the notice of appeal. Although it could not be completely ruled out that the agreement was invalid or had remained unexecuted, there was no discordant hint pointing to such a possibility which furthermore was incompatible with the procedural actions undertaken by the appellant.

4. *Referral of questions to the Enlarged Board of Appeal?*

4.1 As set out above (point 1.2), a question of law has to be referred to the Enlarged Board of Appeal pursuant to Article 112 EPC only if an answer to the question is required for reaching a decision on the pending appeal. For the following reasons the board considers that none of the referrals requested by the parties fulfils this condition.

4.2 The first question both parties requested to refer (question (a) of the appellant and question 1a of the respondent) concerns the formal requirements to be complied with before the transfer of opponent status can be accepted. As it follows from the above analysis (see point 3), the board considers that the appellant has fulfilled all formal requirements for a transfer of opponent status before expiry of the appeal period even if one assumes in favour of the respondent that all the provisions laid down in Rule 20 EPC, apart from its paragraph 2, first sentence, had to be applied *per analogiam* to the transfer of oppositions. As already stated (point 3.4 and 3.5.5), the board is not aware of any decision which advocated stricter formal requirements than those on the basis of which the

analysis was made. Thus, a referral of the first question is not required for deciding on the admissibility of the present appeal or for ensuring uniform application of the law.

4.3 The other question both parties requested to refer (question (b) of the appellant and question 1c of the respondent) concerns the legal consequence of non-compliance with the above formal requirements. Since the requirements have been complied with by the appellant, an answer to this question is not required.

4.4 The question 1b of the respondent concerns an issue the answer to which, in the view of the board, directly follows from the holding of the Enlarged Board of Appeal in its decision G 4/88 (see above, point 2.2). Thus there is no need for a referral of this question either.

5. *Request of respondent for allowance of time to respond*

So far the respondent has limited its submissions to the issue of the admissibility of the appeal and has not yet made any comments about the substantive merits of the appeal. According to Article 10a(1)(b) and (2) of the Rules of Procedure of the Boards of Appeal, the reply of a respondent has to be filed within four months of notification of the grounds of appeal and has to contain the respondent's complete case. However, these provisions only entered into force on 1 May 2003 and are therefore not applicable to the present appeal. Furthermore, in view of the seriousness of the objections raised against the admissibility of the appeal, the board had restricted the discussion during

the oral proceedings to that issue. It therefore uses its discretion to allow the request of the respondent for a further time period of four months in order to reply to the substantive grounds of appeal.

Order

For these reasons it is decided that:

1. The requests of the parties for referral of questions to the Enlarged Board of Appeal are refused.
2. The appeal is admissible.
3. A period of four months from the date of notification of the decision of the board is set for reply to the statement of grounds of appeal of the appellant.

The Registrar:

The Chairman:

E. Görgmaier

R. Young