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**Datasheet for the decision  
of 14 January 2026**

**Case Number:** T 0417/22 - 3.3.02

**Application Number:** 08762734.5

**Publication Number:** 2164428

**IPC:** A61L27/06, C23C30/00, B22F7/00,  
A61L27/04, A61F2/30, A61F2/34,  
B22F3/105, A61B17/86, A61F2/28

**Language of the proceedings:** EN

**Title of invention:**  
PROSTHETIC ELEMENT AND RELATIVE METHOD TO MAKE IT

**Patent Proprietor:**  
Limacorporate S.p.A.

**Opponents:**  
Peter Brehm Holding GmbH & Co. KG  
WALDEMAR LINK GmbH & Co. KG

**Headword:**  
Intervention and intervener's appeal in the appeal stage

**Relevant legal provisions:**  
EPC Art. 105, 107 sentence 1, 111(1)  
EPC R. 100(2)

**Keyword:**

Admissibility of the intervener's appeal filed in the appeal stage (no)

Remittal to the opposition division after withdrawal of all appeals (no)

Reimbursement of appeal fee - lack of legal basis (yes) - reimbursement ordered (yes)

**Decisions cited:**

G 0003/04, G 0002/24, T 0417/22, T 1286/23

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0417/22 - 3.3.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.02**  
**of 14 January 2026**

**Appellant:** Limacorporate S.p.A.  
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**Appellant:** Peter Brehm Holding GmbH & Co. KG  
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**Representative:** Grünecker Patent- und Rechtsanwälte  
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**Party as of right:** WALDEMAR LINK GmbH & Co. KG  
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**Representative:** Glawe, Delfs, Moll  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
2 December 2021 concerning maintenance of the  
European Patent No. 2164428 in amended form.**

**Composition of the Board:**

**Chairman**            M. Kollmannsberger  
**Members:**            T. Bokor  
                              A. Zellner

## **Summary of Facts and Submissions**

- I. The present proceedings before the Board arose from the appeals of the patent proprietor and the original opponent (opponent 1) against the decision of the Opposition Division, issued in writing on 2 December 2021, to maintain the European patent in amended form under Article 101(3)(a) EPC. The appeals of the patent proprietor and the opponent 1 were filed on 10 February 2022 and 14 February 2022, respectively.
- II. An intervention was filed on 2 August 2024. The intervener stated that the grounds filed with their intervention constitute grounds for both opposition and appeal, and paid the opposition and appeal fees.
- III. The opponent 1 withdrew their appeal with letter dated 12 May 2025 and received on 13 May 2025.
- IV. The patent proprietor withdrew their appeal with letter dated and received 14 May 2025. In the withdrawal statement, they submitted that the proceedings should be closed.
- V. With letter dated 15 May 2025 the intervener referred to the then pending referral G 2/24, and requested, among others, that the proceedings should be stayed in view of the pending referral.
- VI. With the interlocutory decision T 0417/22 dated 7 July 2025 and notified to the parties on 27 August 2025 the Board stayed the proceedings until the termination of the proceedings in the referral G 2/24 before the Enlarged Board of Appeal. For the details of the procedure leading to the stay of the

proceedings reference is made to the interlocutory decision.

- VII. The Enlarged Board's decision G 2/24 was issued on 25 September 2025.
- VIII. With letter dated 9 October 2025 the proprietor referred to G 2/24 and requested the termination of the proceedings without delay.
- IX. With letter dated 10 October 2025 the intervener provided arguments on the admissibility and allowability of the claim requests of the proprietor. They also submitted new facts on the patentability of the claimed subject-matter together with supporting evidence, and requested remittal to the Opposition Division for the examination of the new matter, arguing that the remittal was procedurally justified.
- X. On 21 October 2025, the Board issued a communication pursuant to Rule 100(2) EPC, stating that a remittal did not seem possible. The Board considered that the appeal proceedings had to be deemed terminated, as all parties appealing against the decision had withdrawn their appeal. As the intervener's appeal was inadmissible, it could not keep the appeal proceedings pending. No further oral proceedings were foreseen for the remaining legal issues. The parties were given a two-month time limit for responding.
- XI. With letter dated 23 October 2025 the proprietor agreed with the Board's assessment and requested the closure of the proceedings without any further delay.
- XII. With letter dated 19 December 2025 the intervener acknowledged the Board's communication and agreed that

the appeal proceedings could not continue in view of the decision G 2/24 of the Enlarged Board. They requested the reimbursement of the appeal fee.

XIII. The opponent 1, party to the proceedings, did not make submissions after the withdrawal of their appeal.

### **Reasons for the Decision**

1. It was undisputed between the parties that the case turns on the admissibility of the intervener's appeal, which had been filed simultaneously with their intervention and only during the already pending appeal proceedings.
2. In the referral G 2/24 the Enlarged Board of Appeal was expected to provide an answer to the following question:  
*"After withdrawal of all appeals, may the proceedings be continued with a third party who intervened during the appeal proceedings? In particular, may the third party acquire an appellant status corresponding to the status of a person entitled to appeal within the meaning of Article 107, first sentence, EPC?"*
3. The Enlarged Board of Appeal answered the referral question as follows:  
**"After withdrawal of all appeals, appeal proceedings may not be continued with a third party who intervened during the appeal proceedings in accordance with Article 105 EPC.**  
**The intervening third party does not acquire an appellant status corresponding to the status of a person entitled to appeal within the meaning of Article 107, first sentence, EPC."**

4. It was also undisputed between the parties that the Enlarged Board's decision provided a definitive answer that the intervener's appeal had to be considered inadmissible, contrary to the possibility foreseen by the referring decision T 1286/23 leading to the referral G 2/24.
  
5. In the communication pursuant to Rule 100(2) EPC (see point X. above) the Board provided the following assessment of the intervener's request for remittal and the expected outcome of the proceedings (points 6 to 8 of the communication):

*"The reasons why the Board cannot grant the intervener's request for a remittal to the opposition division were set out in point 9 of the Board's communication dated 22 May 2025: A remittal implies that the Board still has the power to decide on substantive issues, see Article 111(1) EPC. However, according to the ratio decidendi of G 3/04, now essentially confirmed by G 2/24, the Board has no longer any power to decide on substantive issues following the withdrawal of all appeals. The inadmissibility of the intervener's appeal is now clear, given the outcome of G 2/24.*

*As mentioned previously, the Board firmly holds that an inadmissible appeal cannot keep substantive appeal proceedings pending because this would clearly circumvent the ratio decidendi of G 3/04. The same applies with even greater force to the ratio decidendi of G 2/24. The Enlarged Board unequivocally states that an intervener joining the proceedings at the appeal stage cannot acquire the status of an appellant.*

*These considerations are not affected by any new facts that the intervener raised in its latest submissions, concerning the invalidity of the patent for whatever reason. It remains the case that the Board no longer has any powers to examine such substantive issues. Without these powers, the Board cannot transfer them to the opposition division. This is particularly the case given that the remittal would implicitly reinstate the Board's missing powers, as it would presumably regain the power to decide on substantive issues if the opposition division's decision after the remittal were to be appealed."*

6. The Board also explained, with reference to G 0003/04, Reasons 11, that the appeal fee paid by the intervener must be reimbursed because there had been no legal basis for filing the appeal in the first place.
7. From the totality of the intervener's submission dated 19 December 2025, in particular in view of the express request for the reimbursement of the appeal fee, the Board understands that also the intervener accepts the Board's assessment of the procedural situation as set out in the Board's communication.
8. Accordingly, the Board establishes that the substantive appeal proceedings have terminated without a decision on the merits, on the day of withdrawal of the last admissible appeal, i.e. on 14 May 2025. The intervener's appeal is to be rejected as inadmissible, and the appeal fee paid by the intervener is to be reimbursed.

## Order

### For these reasons it is decided that:

1. The intervener's appeal is rejected as inadmissible.
2. The appeal fee paid by the intervener is reimbursed.

The Registrar:

The Chairman:



U. Bultmann

M. Kollmannsberger

Decision electronically authenticated