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**Datasheet for the decision  
of 6 August 2025**

**Case Number:** T 0989/24 - 3.3.05

**Application Number:** 21218241.4

**Publication Number:** 4207404

**IPC:** H01M8/08, H02J3/28

**Language of the proceedings:** EN

**Title of invention:**  
PERMANENTLY AVAILABLE ENERGY

**Applicant:**  
Phan Ngoc, Ngan

**Headword:**  
Permanently available Energy/Phan Ngoc

**Relevant legal provisions:**  
RPBA 2020 Art. 13(2)

**Keyword:**  
Amendment after summons - exceptional circumstances (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0989/24 - 3.3.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 6 August 2025**

**Appellant:** Phan Ngoc, Ngan  
(Applicant) 104, chaussée de Tervuren  
1410 Waterloo (BE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 27 May 2024  
refusing European patent application No.  
21218241.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** E. Bendl  
**Members:** G. Glod  
O. Loizou

## Summary of Facts and Submissions

- I. The applicant's (appellant's) appeal lies from the examining division's decision rejecting European patent application No. 21 218 241.4 for not fulfilling the requirements of Article 123(2) EPC.
- II. In the communication under Article 15(1) RPBA, the board was of the preliminary opinion that the appeal was likely to be dismissed.
- III. In reply to this, by letter dated 15 June 2025 the appellant submitted a new request with an amended claim 1, which was again replaced with a new sole request during the oral proceedings.

Claim 1 of this request reads as follows:

*"1. Method for feeding renewable energy to the grid to cope with energy deficit situations during short and extended periods of time, using the following units and operating them as follows:*

*a- the units that are named in [0007], described in [0006] and provided to reduce the releases of thermal energy to the environment caused by solar energy, wind energy, and hydraulic energy, in view of reducing global warming, and that are used in the following modes:*

- i. a normal energy capture mode of operation, whereby solar energy 3, wind energy 7, and hydraulic energy 11 are captured under a form that allows their sequestration in stable materials that are Mg, Ca, Na and/or K hydroxides,*
- ii. said form being electrical energy (4,*

*8, 12) that is used in 14 (located in plant 13) to electrolytically convert Mg, Ca, Na, and/or K chlorides in aqueous solution (such as sea and ocean water, or aqueous solutions of salts extracted from mines) to Mg, Ca, Na and or K hydroxides (ending in storage 18), which then sequester these primary energies as chemical energy,*

*b- The shutting down of the energy capture mode of the units described in a-, and use them to feed the grid with their own energy production, (that is used - per [0021] - by the equipment of the units described in a-), to feed grid 19, whenever there is a need to fill the energy deficit of the grid,*

*c- The switching back of the units described in a- to their normal energy capture mode for the long term global warming combat, when there is no longer a need to feed the grid."*

- IV. The appellant argued in the oral proceedings that this request was to be admitted into the appeal proceedings since he did not know that the reference to the French patent in the claim, present in claim 1 of the request submitted in reply to the board's preliminary opinion, was not allowed.
- V. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of a single request including claim 1 as submitted during oral proceedings before the board and claim 2 of the request underlying the decision.

## **Reasons for the Decision**

### 1. Article 13(2) RPBA

Under Article 13(2) RPBA any amendment to a party's appeal case made after notification of a communication under Article 15, paragraph 1, shall in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

In the case in hand there are no exceptional circumstances for the following reasons.

Claim 1 of the current sole claim request was submitted during the oral proceedings following the board's communication pursuant to Article 15(1) RPBA. In that communication the board had agreed with the opposition division's decision on Article 123(2) EPC and had raised an objection under Article 83 EPC. In reply to this, the appellant had submitted a new request, which was discussed during the oral proceedings. After the board had announced its conclusion that the new request filed by letter dated 15 June 2025 had not been admitted into the appeal proceedings, the appellant filed the current sole request on file.

There were no surprising developments during the oral proceedings which would have triggered the submission of a new request. It is known that the date of compliance for Article 83 EPC is the filing date of the patent application (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, II.C.2), which is 30 December 2021 in the case in hand. The Belgian and French patent applications referred to in the description were published on 12 April 2022 and 16

September 2022, respectively. This means that the information disclosed in these documents was not available to the skilled person on the filing date of the present application. It is also known that sufficiency of disclosure must be assessed on the basis of the application as a whole (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, II.C.3.1). Therefore, the discussion under Article 13(1) RPBA and the question of whether the appellant has demonstrated that the amendment made *prima facie* overcomes the issues raised by the board and does not give rise to new objections was not a surprising one. It certainly does not lead to exceptional circumstances justifying the submission of a new request.

Even if exceptional circumstances were acknowledged, the criteria set out under Article 13(1) RPBA, which the board may rely on (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, V.A.4.5.4 e)), would not be fulfilled. The objection under Article 83 EPC is *prima facie* not overcome. The disclosure of the Belgian and French patent applications (BE 20210015 and FR 2102299) referred to in paragraph [0001] of the description is important for understanding the invention; however, as indicated above, it was not publicly available on the filing date of the patent application in hand. Furthermore, no details about steps i) and ii) aiming to sequester the energy in stable materials that are Mg, Ca, Na and/or K hydroxides (preventing the created hydroxides from reacting any further) are provided in the application. Additionally, the reference in claim 1 to paragraphs [0007], [0006] and [0021] gives rise to a new objection under Article 84 EPC. It is not clear which units the claim refers to, since the units are not clearly defined in paragraphs [0006] and [0007] of the

description. It is established case law that, in a claim, a reference to the description is only allowed in exceptional cases, but there is no such exception in the case in hand (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, II.A.2.4).

To summarise, there are no exceptional circumstances as required by Article 13(2) RPBA and the appellant has not demonstrated that the amendment made *prima facie* overcomes the issues raised by the board and does not give rise to new objections as required by Article 13(1) RPBA.

Consequently, this new sole request is not taken into account and is thus not part of the proceedings.

2. Article 113(1) EPC

The appellant alleged that his right to be heard was violated since the examining division considered that the process claimed would release energy without providing evidence. In addition, its search would not have used the right keywords.

The argument that the process in claim 1 releases energy does not appear to be part of the decision. In addition, the search was performed based on the wording of claim 1 as filed, which was no longer part of the decision. Article 113(1) EPC only relates to decisions and not to search reports or communications pursuant to Article 94(3) EPC.

Furthermore, the objection under Article 123(2) EPC, on which the examining division based their decision, was already raised in the examining division's communication of 29 January 2024.

Therefore, the appellant's allegation is not convincing.

There are no other pending allowable requests.

## Order

### For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Vodz

E. Bendl

Decision electronically authenticated