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**Datasheet for the decision
of 26 March 2026**

Case Number: T 0535/25 - 3.2.08

Application Number: 17849813.5

Publication Number: 3717785

IPC: F16B3/00

Language of the proceedings: EN

Title of invention:
LABYRINTHINE FIXING SYSTEM

Applicant:
KUBIK, Magdalena

Relevant legal provisions:
EPC Art. 123(2), 113(1)

Keyword:
Errors in the proceedings before the examining division (no)
Amendments - allowable (no)

Decisions cited:
J 0014/98, J 0015/91, J 0010/15



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Case Number: T 0535/25 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 26 March 2026

Appellant: KUBIK, Magdalena
(Applicant) Ul. Kreta 6
96-124 Krezce (PL)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 16 December 2024 refusing European patent application No. 17849813.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman P. Acton
Members: G. Buchmann
F. Bostedt

Summary of Facts and Submissions

- I. The appeal is against the decision of the examining division to refuse the European patent application.

- II. The examining division's decision was based on the documents filed on 23 December 2022 (claims and description; received on 26 December 2022) and on 14 October 2022 (drawings). The examining division refused the application because the subject-matter of independent claim 1 contained subject-matter which extended beyond the content of the application as filed, contrary to Article 123(2) EPC, and claim 1 also lacked clarity, contrary to Article 84 EPC.

- III. The appellant's requests on appeal
 - (a) In her statement setting out the grounds of appeal, the appellant submitted that the examining division's decision to refuse the patent application was "invalid" and "should be reverse[d] in its entirety". The grounds of appeal refer to specific points set out in a letter, entitled "Complaint" and addressed to the European Patent Office on 2 April 2025. The Complaint refers to 45 "Attachments" also filed on 2 April 2025. In the Complaint, the appellant outlines errors and complaints relating to the proceedings before the examining division and which in her view invalidate these proceedings.

 - (b) In the statement setting out the grounds of appeal, the appellant did not expressly request the grant of a patent. However, in Point 1, sixth and seventh bullet point (with reference to several points in

the Complaint), the appellant challenged the examining division's reasons regarding Articles 123(2) and 84 EPC.

Therefore, in favour of the appellant, the submission relating to the sixth and seventh bullet point is understood as an implicit request for a patent to be granted on the basis of the request on which the decision under appeal is based (see above, Point II.).

- (c) The Board notes that, on pages 1 and 2 of the Complaint (i.e., the introductory text before the paragraph starting with I.), the appellant made several requests to the European Patent Office, including the reimbursement of the fee paid for the international preliminary examination, an extension of the term of the patent protection, and disciplinary actions. However, these requests were not reiterated in the statement setting out the grounds of appeal. Moreover, the grounds of appeal do not make any reference to these requests, in particular no reference is made to the text on pages 1 and 2 of the Complaint (i.e. the introductory text before the paragraph starting with I.) at all. These requests are therefore clearly not directed to the Board and are thus not part of the appeal proceedings.

- (d) Consequently, the appellant's requests are as follows.

First request: the decision under appeal is set aside due to the errors and complaints regarding the proceedings before the examining division, as set out in the statement of grounds of appeal.

Second request: a patent is granted on the basis of the documents on which the appealed decision is based, i.e. the claims and description of 23 December 2022 (received on 26 December 2022), and the drawings of 14 October 2022.

- IV. The appellant was summoned to oral proceedings scheduled for 10 December 2026. In the letters of 25 February 2026 and 28 February 2026, the appellant indicated that she will not attend the oral proceedings scheduled for 10 December 2026.

The Board cancelled the oral proceedings.

- V. The relevant submissions of the appellant are set out in the Reasons for the Decision.

Reasons for the Decision

1. Decision in written proceedings

The decision is rendered in written proceedings. The appellant did not request oral proceedings on appeal. The Board initially summoned the appellant to oral proceedings scheduled for 10 December 2026. In the letters of 25 February 2026 and 28 February 2026, the appellant indicated that she will not attend the oral proceedings scheduled for 10 December 2026, for the reason that she had nothing further to add verbally to what she had already stated in writing. Given this, the Board did not consider it to be expedient to hold oral proceedings and cancelled them.

2. **First request:** alleged errors and complaints regarding the proceedings before the examining division
- 2.1 The appellant identified the following issues in the statement setting out the grounds of appeal.
 - 2.1.1 During the **international phase**, the EPO made several errors, particularly with regard to the International Preliminary Report on Patentability (IPER) (see grounds of appeal, Point 1, first bullet point with reference to Point I. of the Complaint and to Attachment 1, i.e. the IPER, and Attachment 30, i.e. the decision under appeal).
 - 2.1.2 The **oral proceedings** before the examining division did not cover the topic for which she had requested the oral proceedings (see grounds of appeal, Point 1, second bullet point with reference to Point II of the Complaint).
 - 2.1.3 The reasons given by the examining division in the **annex to the summons** were not related to the topic for which oral proceedings had been requested (see grounds of appeal, Point 1, third bullet point with reference to Point II.2 of the Complaint and to Attachment 22, i.e. the summons to oral proceedings and the annex to the summons); and moreover the annex to the summons was a "falsified document" (see grounds of appeal, Point 1, fourth bullet point, with reference to Point II.5 of the Complaint and to Attachment 22).
 - 2.1.4 The examining division summarised the appellant's arguments incorrectly in its **decision** and thus relied on "falsified facts" (see grounds of appeal, Point 1, fifth bullet point, with reference to points II.12 and II.13 of the Complaint; see in addition the reference

to the same points of the Complaint in Point 1, sixth bullet point).

- 2.1.5 The **minutes** incorrectly indicated that the appellant was given an opportunity to file further amendments at the end of the oral proceedings (see grounds of appeal, page 2, last paragraph, to page 3; see also Complaint, pages 21 and 22, Points II.10 and II.11).
- 2.1.6 The appellant argued in **Point 2 of the grounds of appeal** that the Board of appeal had the competence to deal with decisions taken in *valid* process, which was not the case here, however, since the examining division's decision had been developed in result of an invalid patent process.
- 2.1.7 The appellant also argued, in the Complaint, that she was "deprived" of the **right to file new requests after the deadline for written submissions** (see Complaint, page 19, Point II.7; page 20, Point II.8; page 21, Point II.10; Point II.10 was also referred to in the grounds of appeal under page 2, final paragraph).
- 2.2 The Board finds that the errors and complaints raised by the appellant do not justify setting aside the examining division's decision. In particular, the Board does not consider there to be a procedural violation or a violation of the right to be heard under Article 113(1) EPC.
 - 2.2.1 As to the alleged errors in the **international phase** (see above Point 2.1.1), the Board is not competent to deal with these issues. The Boards of Appeal do not have the competence to correct errors or procedural violations committed by the EPO acting as the International Search Authority (ISA) or International

Preliminary Examining Authority (IPEA) during the international phase under the Patent Cooperation Treaty (see J 14/98, J 15/91, J 10/15). In the absence of any special provision in the EPC (for example, former Article 153(3) EPC 1973), the Board's jurisdiction is limited to decisions made by the EPO in its capacity as a European patent granting authority during the European phase.

- 2.2.2 The appellant submitted that the **oral proceedings** before the examining division did not cover the topic for which she had requested oral proceedings (see above Point 2.1.2). According to the appellant, she had requested oral proceedings to discuss the "remarks" section of the division's communication of 6 September 2022. In particular, she had intended to present the features of her invention using "the example of an embodiment of this invention", which were different to the features of installation indicated in the communication from the division (see Complaint, Points II.1, II.3, II.5). During the oral proceedings, the examining division instructed her to first explain where the subject-matter of the claims was disclosed in the original application. According to the appellant, she was thus deprived of the right to be heard under Article 113(1) EPC (see Complaint, Points II.5, II.12).

These allegations do not demonstrate that a procedural violation occurred and, in particular, do not amount to a violation of the appellant's right to be heard. The examining division summoned the applicant to oral proceedings, setting out in the annex to the summons what issues would be discussed - in particular, the question of added-matter under Article 123(2) EPC. She was heard on this issue. The examining division's insistence that this question be discussed first does

not amount to a procedural violation. Since the non-compliance of claim 1 with Article 123(2) EPC (and Article 84 EPC) stood against the grant of a patent, the examining division did not need to discuss further issues to reach its conclusion that the application should be refused.

2.2.3 The appellant argued that the reasons provided by the examining division in the **annex to the summons** were unrelated to the topic for which she had requested oral proceedings (see above Point 2.1.3).

(a) In this context, the appellant alleged that, during a telephone conversation on 4 November 2022, the examiner raised only one objection, namely regarding the clarity of the word "assembly" in the submissions of 14 October 2022 (see Complaint, Points II.1, II.4 and II.5). In her view, these submissions were thus discussed and, apart from the one objection, no other objection was raised during the telephone conversation against the submissions 14 October 2022 (Complaint, Point II.5). The appellant then filed new submissions on 23 December 2022 (received by the EPO on 26 December 2022) which were supposed to take the examiner's objection into consideration (see Complaint, Point II.1). In her view, the amendments filed with this letter were thus discussed and "agreed with Examiner" (Complaint, Point II.5).

However, the amendments made to the application documents cannot be said to have been "agreed" by the examiner who conducted the telephone conversation. A single examiner cannot "agree" to amendments; the assessment of whether amendments comply with the provisions of the EPC is the

responsibility of the entire division.

The appellant further argued that the annex to the summons did not "refer to" and did not "concern" the submissions of 23 December 2022 (see Complaint, Point II.5, pages 16 and 18) and that the objections in the annex were instead related to the previous submissions of 14 October 2022.

The Board notes, however, that the annex to the summons for oral proceedings clearly "refers to" the submissions of 23 December 2022, since the annex indicates that the examination was carried out on the description and claims submitted on 23 December 2022 (received on 26 December 2022; see page 1 and Point 1.1 of the annex to the summons).

The Board also considers that, for the examining division, the problems present in the submissions filed on 14 October 2022 were still present in the documents submitted on 23 December 2022. Therefore, the problems identified in the annex to the summons (lack of compliance with, inter alia, Article 123(2) and 84 EPC) indeed "concerned" the submissions of 23 December 2022.

- (b) The appellant also submitted that the annex to the summons "contains objections concerning for example disclosure of the amendments in application originally filed what relates to the document of application originally filed" (see Complaint, Point II.3, see also Complaint, Point II.5; emphasis by appellant). What was relevant in her view was, however, the "presentation of the invention's on the example of the embodiment of the invention" (see Complaint, Points II.3 and II.5).

The Board can find no fault in the examining division's approach. The examining division raised objections in relation to Article 123(2) EPC. In this assessment, what is decisive is indeed the content of the application as filed, i.e., the *documents* originally submitted.

- (c) The appellant also alleged that the annex to the summons constituted a "falsified document" (see grounds of appeal, Point 1, fourth bullet point). The Board notes, however, that the appellant is not alleging that the annex to the summons itself was falsified, but rather that it contained false information. She referred to Point II.5 of the Complaint to support this allegation. At this point in the Complaint, the appellant takes particular issue with the paragraph at Point 1.1 of the annex to the summons (see Complaint, Point II.5, in particular pages 16 and 18), in which the examining division held the following: "This communication follows the last submission from the Applicant received on 26.12.2022 with letter dated 23.12.2022. The previous submission from the Applicant received on 14.10.2022 was not replied to substantially as it was indicated by the Applicant during the phone conversation on 16.11.2022 that documents filed on 14.10.2022 were work-in-progress-versions of the official submission that was in preparation by that time. That is the reason why comments regarding the amended drawings sheet submitted on 14.10.2022 are mentioned in this communication for the first time".

The Board does not consider the examining division's introductory remark in the annex to the

summons to be incorrect. Even if, for the sake of argument, this were an inaccurate summary of the procedural situation at the time, this error in the *annex* would not constitute a procedural violation that would justify setting aside the *decision*.

- 2.2.4 The appellant submitted that the examining division had incorrectly summarised her arguments in the **decision** and had thus relied on "falsified facts" (see above Point 2.1.4). In this context, the appellant referred to points II.12 and II.13 of the Complaint, in which she alleged that the examining division's decision contained inaccurate summaries of her statements during the oral proceedings.

However, the Board cannot verify what the appellant said at the oral proceedings before the examining division. Rather, it is for the appellant to clarify on appeal what she said at the oral proceedings and what her arguments were (as was done by the appellant), so that the Board can review the decision in light of these clarified arguments, if necessary. Therefore, even if the summaries of the appellant's statements were not entirely accurate, this would in the present case not constitute a procedural violation sufficient, as such, to justify setting aside the decision.

- 2.2.5 The appellant submitted that the **minutes** incorrectly indicated that she had been given an opportunity to file further amendments at the end of the oral proceedings (see above Point 2.1.5). She alleged that the manner in which the oral proceedings were conducted deprived her of the right to file amendments, see Complaint, pages 21 and 22, Point II.11.

The Board notes that the minutes do indeed indicate

that "[w]hen asked, the applicant submitted that she had no further requests" (see penultimate line of the minutes). However, even if the minutes were wrong on this point and the applicant was not asked this question at the end of oral proceedings, this would not amount to a deprivation of her right to file amendments during the oral proceedings. Furthermore, even if the *minutes* were incorrect, this would not, as such, justify setting aside the *decision*.

2.2.6 In **Point 2 of the grounds of appeal**, the appellant submitted that the Board of Appeal had the competence to deal with decisions taken in a *valid process* (see above, Point 2.1.6). She argued that this was not the case here, however, since the examining division's decision had been developed in result of an invalid patent process. The appellant submitted that the appeal procedure before the Boards of Appeal constituted part of the invalid patent process.

However, the appeal proceedings are separate from the examining division's proceedings. Furthermore, the role of the Boards of Appeal is to review the decision under appeal in a judicial manner (Article 12(2) RPBA). Such a review may indeed include determining whether procedural violations occurred, i.e., in the words of the appellant, whether the "patent process" before the examining division was "invalid". Therefore, the Boards of Appeal are competent to "deal with" a decision, even if it was taken in such an "invalid" process.

2.2.7 In the Complaint, the appellant submitted that she was "deprived" of the **right to file new requests after the deadline set for written submissions** (see above Point 2.1.7). The appellant argued that, prior to the oral proceedings, the examining division informed the

applicant that no further amendment may be made without the division's consent and, given that the applicant had already had more than one year to file amendments, that the examining division intended to strictly apply the provisions in Rule 116(1) EPC and in Rule 137(3) EPC.

The Board considers that this information provided by the examining division did not deprive the applicant of her right to file amendments. Rule 116(1) EPC, in combination with Rule 116(2), second sentence, EPC, gives the examining division the discretion not to admit amendments to a patent application before and after the final date set in accordance with Rule 116(1) EPC; Rule 137(3) EPC gives the examining division the power not to consent to any further amendment after the first. The examining division's announcement that these provisions would be applied "strictly" did not deprive the applicant of her right to file any amendments. It should also be noted that the appellant acknowledged that she had no intention of filing any amendments (see Complaint, Point II.10 on page 21).

- 2.2.8 For the sake of completeness, the Board notes the following in respect of the appellant's first request.

The sixth and seventh bullet points of Point 1 of the grounds of appeal are related to the substantive reasons of the decision under appeal, which will be addressed below under Point 3. The Board is aware of the fact that the sixth bullet point also refers to Points I., II.1, II.12, II.13 of the Complaint. These points of the Complaint concern, inter alia, procedural issues which have been addressed in the present decision under the appellant's first request as follows:

- Point I. of the Complaint relates to the international phase and has been addressed under Point 2.1.1 and Point 2.2.1, above;
- Point II.1 of the Complaint has been addressed under Point 2.2.2, above;
- Point II.12 of the Complaint has been addressed under Point 2.2.2 and Point 2.2.4, above;
- Point II.13 of the Complaint has been addressed under Point 2.2.4, above.

2.3 In conclusion, the appellant's first request is rejected.

3. **Second request:** a patent is granted on the basis of the documents on which the appealed decision is based

3.1 The appellant requested that a patent is granted on the basis of the documents on which the appealed decision is based, i.e., the claims and description of 23 December 2022 (received on 26 December 2022), and the drawings of 14 October 2022.

The appellant referred in this context to Points I., II.1, II. 12, II.13, II.25, II.27 of the Complaint (see grounds of appeal, Point 1, sixth bullet point) and Points II.15, II.16, II.18 to II.28 of the Complaint (see grounds of appeal, Point 1, seventh bullet point). As to Points I., II.1, II.12, II.13 of the Complaint, see also Point 2.2.8, above.

3.2 The appellant's second request cannot be granted. The amended claim 1 contravenes Article 123(2) EPC, which requires that the patent application not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed,

for the following reasons.

- 3.3 The amended claim 1 contains the feature according to which "there is only one way to carry Erring Part through Labyrinth Part with reference to two indicators".

The application as originally filed does not mention any indicator which might be taken as reference to carry the Erring Part through the Labyrinth Part.

According to claim 1, the "two indicators" are

- "the intention concerning kind of fixing" and
- "initial step of the connection process".

None of these two possible indicators are mentioned in the application as originally filed. The appellant's arguments on this issue are not convincing. In particular, she argued that the subject-matter of the two indicators could not extend beyond the application as filed because these two indicators concern the "capability of the invention as originally disclosed" (Complaint, Points II.16, II.18 and II.22; see also Complaint, Point II.19). However, the question of whether the invention as disclosed was "capable" of something is not decisive for the assessment of Article 123(2) EPC; instead, what is decisive is whether the subject-matter of the claim is directly and unambiguously disclosed in the application as filed.

In line with the examining division's decision (see point 16 of the decision under appeal), the feature regarding reference to two indicators constitutes subject-matter which extends beyond the content of the application as originally filed.

For this reason alone, a patent cannot be granted on the basis of the claims of 23 December 2022.

- 3.4 In addition, the amended claim 1 requires "8 different ways" of connecting the Erring Part and Labyrinth Part.

The application as originally filed does, however, not mention 8 different ways of connecting the Erring part and the Labyrinth Part. Only one way of connecting is disclosed, with two alternatives: the first described moving the Labyrinth Part while keeping the Erring Part in the same position, the second described moving the Erring part while keeping the Labyrinth Part in the same position. This results at most in only two possible ways of connecting the two parts.

Therefore, the feature regarding 8 different ways of connecting the Erring Part and Labyrinth Part constitutes subject-matter which extends beyond the application as originally filed.

- 3.5 Due to the deficiencies mentioned in Points 3.3 and 3.4, claim 1 contravenes Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated