Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 21 August 2026

Case Number: T 0546/26 - 3.5.05

Application Number: 24213473.2

Publication Number: 4560648

IPC: G16H50/30, G16H50/50

Language of the proceedings: EN

Title of invention:
Generating synthetic training data

Applicant:
Bayer Aktiengesellschaft

Headword:
Substantial procedural violation/BAYER

Relevant legal provisions:
EPC Art. 109(1), 113(2)
EPC R. 103(1)(a), 111(2)
RPBA 2020 Art. 11, 12(8)

This datasheet is not part of the Decisior
It can be changed at any time and without notic

Keywords:

Substantial procedural violation - (yes): appealed decision is not based on all the features of the claim request on file + decision not sufficiently reasoned
Interlocutory revision - examining division should have rectified decision
Remittal to the examining division (yes): fundamental deficiency apparent in first-instance proceedings
Reimbursement of appeal fee - (yes): equitable by reason of a substantial procedural violation

Decisions cited:

T 0647/93, T 2475/17, T 1051/20

This datasheet is not part of the Decisior
It can be changed at any time and without notic

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 0546/26 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 21 August 2026

Appellant: (Applicant)	Bayer Aktiengesellschaft Kaiser-Wilhelm-Allee 1 51373 Leverkusen (DE)
Representative:	BIP Patents c/o Bayer Intellectual Property GmbH Alfred-Nobel-Straße 50 40789 Monheim am Rhein (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted/electronically transmitted on 26 March 2026 refusing European patent application No. 24213473.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	E. Konak
	F. Bostedt

Summary of Facts and Submissions

I. The appeal is against the examining division's decision according to the state of the file to refuse the present application. The examining division decided that claim 1 of the sole request filed on 6 November 2025 did not comply with Article 56 EPC with regard to the following prior-art document:

D1: US 2023/010686 A1.

II. In its statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the **sole request** on which the contested decision is based, or, that the case be remitted to the examining division for further prosecution.

III. Claim 1 of the **sole request** reads as follows:

"A computer-implemented method of generating synthetic training data, the method comprising the steps:

- providing a data set (TD1), the data set (TD1) comprising a variety of non-annotated medical records, wherein each medical record of the variety of non-annotated medical records represents a patient or part thereof, wherein each medical record is or comprises a medical image (I1, I2, I3, I4, I5) of the patient or a part thereof,

- for each medical record of the variety of non-annotated medical records: generating a semantic representation (SR) of the medical record,

- providing a generative model (IGM), wherein the generative model (IGM) is a conditional diffusion model,

- training the generative model (IGM) in a self-supervised training procedure using the variety of non-annotated medical records and their semantic representations (SR) as training data, wherein the generative model (IGM) is trained to reconstruct each medical record or a portion thereof using the respective semantic representation (SR) of the medical record as a conditioning input,

- providing one or more prompts (P) and/or reference medical records (RI) and/or noisy data (ND),

- generating one or more synthetic medical records based on the one or more prompts (P) and/or reference medical records (RI) and/or noisy data (ND) using the trained generative model (IGM^t),

- outputting the one or more synthetic medical records, storing the one or more synthetic medical records in a data storage, transmitting the one or more synthetic medical records to a separate computer system, and/or using the one or more synthetic medical records for training another machine learning model."

Reasons for the Decision

1. The board remits the case to the examining division for further prosecution, since fundamental deficiencies in

the examination proceedings are apparent to the board (Article 11 RPBA).

1.1 Claim 1 of the claim request filed on 6 November 2025 includes the following features (board's feature labelling):

(a) A computer-implemented method of generating synthetic training data, the method comprising the steps:
(b) providing a data set, the data set comprising a variety of non-annotated medical records, wherein each medical record of the variety of non-annotated medical records represents a patient or part thereof,
(c) wherein each medical record is or comprises a medical image of the patient or a part thereof,
(d) for each medical record of the variety of non-annotated medical records: generating a semantic representation of the medical record,
(e) providing a generative model,
(f) wherein the generative model is a conditional diffusion model,
(g) training the generative model in a self-supervised training procedure using the variety of non-annotated medical records and their semantic representations as training data, wherein the generative model is trained to reconstruct each medical record or a portion thereof using the respective semantic representation of the medical record as a conditioning input,
(h) providing one or more prompts and/or reference medical records and/or noisy data,
(i) generating one or more synthetic medical records based on the one or more prompts and/or reference

medical records and/or noisy data using the trained generative model,

(j) outputting the one or more synthetic medical records, storing the one or more synthetic medical records in a data storage, transmitting the one or more synthetic medical records to a separate computer system, and/or using the one or more synthetic medical records for training another machine learning model.

1.2 **Features (c) and (f)** were added to claim 1 as part of the amendments filed on 6 November 2025. The decision under appeal is a decision according to the state of the file, which refers to the **communication dated 8 December 2025** for the grounds of the decision. The communication dated 8 December 2025 is the annex to the summons to oral proceedings arranged before the examining division.

1.3 In point 2.2 of this communication, the examining division analysed the features of claim 1 on which it based its decision. Although page 1 of this communication indicates that the examination was based on "*claims, numbers 1-13 filed in electronic form on 6 November 2025*", claim 1 examined in point 2.2 does not include **feature (c)**. The examining division did not examine this claim feature under other points of this communication, either. In particular, the communication does not mention anywhere the *"medical image" limitation* that the appellant argues distinguishes present claim 1 from prior-art document **D1**.

1.4 Therefore, it seems that the contested decision is based on a set of claims other than those filed by the appellant, in breach of Article 113(2) EPC. This constitutes a **substantial procedural violation** because

the principle of party disposition hinders the deciding body to go beyond what is requested by the parties ("*ne eat iudex ultra petita partium*") and is a fundamental procedural principle.

If this principle is infringed, the party's right to be heard is equally violated since the party was apparently not heard on the claim request decided upon by the examining division (cf. **T 647/93**, headnote). In addition, by not addressing a feature of claim 1 of the present claim request which the applicant argued was inventive, the examining division failed to sufficiently reason its decision within the meaning of Rule 111(2) EPC (**T 2475/17**, Reasons 1.4), which also constitutes a substantial procedural violation.

1.5 Moreover, the examining division did not rectify the decision under appeal by means of an **interlocutory revision** under Article 109(1) EPC, although the appellant had drawn its attention in the statement of grounds of appeal (see section IV, point A) to the fact that not all distinguishing features, including the "*medical image*" *limitation*, were considered in the assessment of inventive step in the decision under appeal.

1.6 Since the fundamental deficiencies apparent in the examination proceedings amount to a substantial procedural violation, **reimbursement of the appeal fee in full** is also equitable (Rule 103(1)(a) EPC).

2. Request for oral proceedings

2.1 The appellant requested that the case be remitted to the examining division for further prosecution (see statement of grounds of appeal, sections I and VI). It

also requested oral proceedings (see statement of grounds of appeal, section VI), but did not indicate whether these should take place if the request for remittal was not granted.

2.2 In any event, if the case is remitted to the examining division for further prosecution without any consideration of the substantive issues, the board's decision to set aside the decision under appeal and to remit the case for further prosecution is not adverse to the appellant. Consequently, a hearing before the board solely to discuss whether or not to remit the case to the examining division is not deemed necessary or appropriate (see, for example, **T 1051/20**, Reasons 4.2, and the decisions cited therein). Hence, the decision is handed down without holding oral proceedings (cf. Article 12(8) RPBA).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the examining division for further prosecution.

3. The appeal fee is to be reimbursed in full.

The Registrar: The Chair:

S. Lichtenvort K. Bengi-Akyürek

Decision electronically authenticated