

**ANLAGE 3**

Leitsätze der veröffentlichten (bzw. zur Veröffentlichung vorgesehenen) Entscheidungen der Jahre 2014 und 2015; Vorlageentscheidungen finden sich in Anlage 4<sup>1</sup>

**ANNEX 3**

Headnotes to published decisions (or to be published) delivered in 2014 and 2015; referring decisions can be found in Annex 4<sup>1</sup>

**ANNEXE 3**

Sommaires des décisions publiées (ou prévues pour publication) des années 2014 et 2015 ; les décisions de saisine se trouvent dans l'annexe 4<sup>1</sup>

**Aktenzeichen: G 1/11, ABI. EPA 2014, A122**  
**Beschwerde-Aktenzeichen: J 21/09 - 3.1.01**  
**Anmelder: BAUER Maschinen GmbH**  
**Bezeichnung der Erfindung: Bodenabtragsvorrichtung**  
**Datum: 19.03.2014**

Leitsatz

Ist für die Behandlung einer Beschwerde gegen eine Entscheidung der Prüfungsabteilung über die Nichtrückzahlung von Recherchegebühren gemäß Regel 64 (2) EPÜ, die nicht zusammen mit einer Entscheidung über die Erteilung eines europäischen Patents oder die Zurückweisung einer europäischen Patentanmeldung erlassen worden ist, eine Technische Beschwerdekammer oder die Juristische Beschwerdekammer zuständig?"

**Case number: G 1/12, OJ EPO 2014, A114**  
**Appeal number: T 445/08**  
**Patent proprietor: Zenon Technology Partnership**  
**Title of invention: Water filtration using immersed membranes**  
**Date: 30.04.2014**

Catchword

The questions referred to the Enlarged Board of Appeal are answered as follows:

Question (1):

The answer to reformulated question (1) – namely whether when a notice of appeal, in compliance with Rule 99(1)(a) EPC, contains the name and the address of the appellant as provided in Rule 41(2)(c) EPC and it is alleged that the identification is wrong due to an error, the true intention having been to file on behalf of the legal person which should have filed the appeal, is it possible to correct this error under Rule 101(2) EPC by a request for substitution by the name of the true appellant – is yes, provided the requirements of Rule 101(1) EPC have been met.

Question (2):

Proceedings before the EPO are conducted in accordance with the principle of free evaluation of evidence. This also applies to the problems under consideration in the present referral.

Question (3):

In cases of an error in the appellant's name, the general procedure for correcting errors under Rule 139, first sentence, EPC is available under the conditions established by the case law of the boards of appeal.

Question (4):

Given the answers to questions (1) and (3), there is no need to answer question (4).

**Case number: G 2/12, to be published**  
**Appeal number: T 1242/06**  
**Patent proprietor: State of Israel - Ministry of Agriculture**  
**Title of invention: Method for breeding tomatoes having reduced water content and product of the method**  
**Date: 25.03.2015**

Catchword

1. The exclusion of essentially biological processes for the production of plants in Article 53(b) EPC does not have a negative effect on the allowability of a product claim directed to plants or plant material such as a fruit.
2. In particular, the fact that the only method available at the filing date for generating the claimed subject-matter is an essentially biological process for the production of plants disclosed in the patent application does not render a claim directed to plants or plant material other than a plant variety unallowable.
3. In the circumstances, it is of no relevance that the protection conferred by the product claim encompasses the generation of the claimed product by means of an essentially biological process for the production of plants excluded as such under Article 53(b) EPC.

<sup>1</sup> Diese Leitsätze erscheinen in der Anlage 3 nur in der Verfahrenssprache.

<sup>1</sup> These headnotes are published in Annex 3 in the language of the proceedings only.

<sup>1</sup> Ces sommaires ne sont publiés dans l'Annexe 3 que dans la langue de la procédure.

**Case number: G 1/13, OJ EPO 2015, A42**

**Appeal number: T 22/09**

**Headword: Fischer-Tropsch Catalysts/SASOL TECHNOLOGY II**

**Date: 25.11.2014**

Catchword

The questions referred to the Enlarged Board of Appeal are answered as follows:

1. Where an opposition is filed by a company which subsequently, under the relevant national law governing the company, for all purposes ceases to exist, but that company is subsequently restored to existence under a provision of that governing national law, by virtue of which the company is deemed to have continued in existence as if it had not ceased to exist, all these events taking place before a decision of the Opposition Division maintaining the opposed patent in amended form becomes final, the European Patent Office must recognise the retroactive effect of that provision of national law and allow the opposition proceedings to be continued by the restored company.
2. Where, in the factual circumstances underlying Question 1, a valid appeal is filed in due time in the name of the non-existent opponent company against the decision maintaining the European patent in amended form, and the restoration of the company to existence, with retroactive effect as described in Question 1, takes place after the expiry of the time limit for filing the notice of appeal under Article 108 EPC, the Board of Appeal must treat the appeal as admissible.
3. Not applicable.

**Case number: G 2/13, to be published**

**Appeal number: T 83/05**

**Patent proprietor: Plant Bioscience Limited**

**Title of invention: Method for selective increase of the anticarcinogenic glucosinolates in Brassica species**

**Date: 25.03.2015**

Catchword

1. The exclusion of essentially biological processes for the production of plants in Article 53(b) EPC does not have a negative effect on the allowability of a product claim directed to plants or plant material such as plant parts.
- 2(a) The fact that the process features of a product-by-process claim directed to plants or plant material other than a plant variety define an essentially biological process for the production of plants does not render the claim unallowable.
- 2(b) The fact that the only method available at the filing date for generating the claimed subject-matter is an essentially biological process for the production of plants disclosed in the patent application does not render a claim directed to plants or plant material other than a plant variety unallowable.
3. In the circumstances, it is of no relevance that the protection conferred by the product claim encompasses the generation of the claimed product by means of an essentially biological process for the production of plants excluded as such under Article 53(b) EPC.

**Case number: G 3/14, to be published**

**Appeal number: T 373/12**

**Patent proprietor: Freedom Innovations, LLC**

**Title of invention: Novel enhanced coating for prosthetic liners processes, products and improved umbrellas**

**Date: 24.03.2015**

Catchword

In considering whether, for the purposes of Article 101(3) EPC, a patent as amended meets the requirements of the EPC, the claims of the patent may be examined for compliance with the requirements of Article 84 EPC only when, and then only to the extent that, the amendment introduces non-compliance with Article 84 EPC.

**Case number: T 373/12, OJ EPO 2014, A115**

**Patent proprietor: Freedom Innovations, LLC**

**Headword: Examination of clarity of amended claims by opposition divisions and boards of appeal**

**Date: 02.04.2014**

Catchword

The following questions are referred to the Enlarged Board of Appeal:

1. Is the term "amendments" as used in decision G 9/91 of the Enlarged Board of Appeal (see point 3.2.1) to be understood as encompassing a literal insertion of (a) elements of dependent claims as granted and/or (b) complete dependent claims as granted into an independent claim, so that opposition divisions and boards of appeal are required by Article 101(3) EPC always to examine the clarity of independent claims thus amended during the proceedings?
2. If the Enlarged Board of Appeal answers Question 1 in the affirmative, is then an examination of the clarity of the independent claim in such cases limited to the inserted features or may it extend to features already contained in the unamended independent claim?
3. If the Enlarged Board answers Question 1 in the negative, is then an examination of the clarity of independent claims thus amended always excluded?

4. If the Enlarged Board comes to the conclusion that an examination of the clarity of independent claims thus amended is neither always required nor always excluded, what then are the conditions to be applied in deciding whether an examination of clarity comes into question in a given case?

**Case number: T 2017/12, OJ EPO 2014, A76**

**Applicant: Snapnames.com, Inc.**

**Title of invention: Domain name acquisition and management system and method**

**Date: 24.02.2014**

Catchword

The following question is referred to the Enlarged Board of Appeal: Where a notice of appeal is filed but the appeal fee is paid after expiry of the time limit of Article 108 EPC, first sentence, is this appeal inadmissible or deemed not to have been filed?

**Aktenzeichen: T 1553/13, ABI. EPA 2014, A84**

**Patentinhaber: Tenneco GmbH**

**Bezeichnung der Erfindung: Abgasanlage**

**Datum: 20.02.2014**

Leitsatz

Der Großen Beschwerdekammer wird folgende Frage vorgelegt:

Ist eine Beschwerde unzulässig oder gilt sie als nicht eingelegt, wenn die Einlegung der Beschwerde und die Zahlung der Beschwerdegebühr nach Ablauf der Beschwerdefrist des Artikels 108 Satz 1 EPÜ erfolgen?