

**ANLAGE 4****Vorlagen an die Große Beschwerdekammer<sup>1</sup>****Vorlagen der Beschwerdekammern  
Referrals by boards of appeal  
Questions soumises par les chambres de recours**

I. Conformément à l'article 112(1) a) CBE, la chambre de recours juridique a soumis à la Grande Chambre de recours, par sa décision **J 3/95** du 28 février 1997, la question de droit suivante :

1. Dans le cadre de la Convention sur le brevet européen, quelles suites administratives ou juridictionnelles convient-il de réserver aux requêtes fondées sur la violation alléguée d'un principe fondamental de procédure et qui tendent à la révision d'une décision passée en force de chose jugée prise par une chambre de recours ?

2. Convient-il, le cas échéant, d'en prescrire l'inscription sur le Registre européen des brevets ?

L'affaire est en instance sous le numéro **G 1/97**.

II. In decision **T 742/96** dated 9 June 1997, Technical Board of Appeal 3.2.5 referred the following point of law to the Enlarged Board of Appeal under Article 112(1)(a) EPC:

Are the boards of appeal, in application of the principle of good faith, bound to notify the appellant of a missing appeal fee when the notice of appeal is filed so early that the appellant could react and pay the fee in time, even if there was no indication – either in the notice of appeal or in any other document filed in relation to the appeal – from which it could be inferred that the appellant would, without such notification, inadvertently miss the time limit for payment of the appeal fee?

The case is pending under Ref. No. **G 2/97**.

III. Die Technische Beschwerdekammer 3.2.5 hat der Großen Beschwerdekammer gemäß Artikel 112 (1) a) EPÜ mit Entscheidung **T 301/95** vom 27. Juli 1997 folgende Rechtsfrage vorgelegt:

1. Ist ein Einspruch, der durch einen mittelbaren Stellvertreter ("Strohmann") eingeleitet wird, zulässig?

2. Falls die Frage zu 1. verneint wird, inwieweit ist der Einwand der Strohmännigkeit zu prüfen, wenn Umstände geltend gemacht werden, die den begründeten Verdacht erwecken, der Einsprechende handle nicht in eigenem Interesse?

Das Verfahren ist unter dem Aktenzeichen **G 3/97** anhängig.

IV. In decision **T 649/92** dated 2 July 1996, Technical Board of Appeal 3.3.4 referred the following point of law to the Enlarged Board of Appeal under Article 112(1)(a) EPC:

1. Is a respondent patentee entitled to challenge the admissibility of an opposition on grounds relating to the identity of an appellant opponent during the course of the appeal, where no such challenge to admissibility had been raised before the opposition division?

<sup>1</sup> Die Vorlagen an die Große Beschwerdekammer erscheinen in der Anlage 4 nur in der Verfahrenssprache.

**ANNEX 4****Referrals to the Enlarged Board of Appeal<sup>1</sup>**

2. If the answer to Question 1 depends on the particular circumstances, what are the legal principles governing the circumstances that the board of appeal should take into account in assessing whether a challenge to the admissibility of the opposition is allowable at the appeal stage?

3. If the answer to Question 1 can be yes, how is the requirement of Article 99(1) EPC to the effect that any person may give notice of opposition to the European patent to be interpreted, and in particular should it be interpreted to the effect that anybody may give notice of opposition in his own name, but not in the name of a nominal opponent, that is an opponent who merely lends his name for the proceedings while allowing the proceedings to be controlled by another?

4. If the answer to Question 3 means that Article 99 EPC precludes a nominal opponent, in what circumstances, if any, can a suspected nominal opponent be required to provide evidence to establish that the opposition is genuinely his own, and what evidence can such a suspected nominal opponent be required to give to prove that he is a genuine opponent?

5. If the answers to the above questions involve a restrictive view to be applied immediately in all pending proceedings?

The case is pending under Ref. No. **G 4/97**.

V. In case **T 1054/96** Technical Board of Appeal 3.3.4 referred, by a decision issued during oral proceedings on 13 October 1997, the following point of law under Article 112(1)(a) EPC:

1. To what extent should the instances of the EPO examine an application in respect of whether the claims are allowable in view of the provision of Article 53(b) EPC that patents shall not be granted in respect of plant varieties for the production of plants, which provision does not apply to microbiological processes or the products thereof, and how should a claim be interpreted for this purpose?

2. Does a claim which relates to plants but wherein specific plant varieties are not individually claimed ipso facto avoid the prohibition on patenting in Article 53(b) EPC even though it embraces plant varieties?

3. Should the provisions of Article 64(2) EPC be taken into account when considering what claims are allowable?

4. Does a plant variety, in which each individual plant of that variety contains at least one specific gene introduced into an ancestral plant by recombinant gene technology, fall outside the provision of Article 53(b) EPC that patents shall not be granted in respect of plant varieties or essentially biological processes for the production of plants, which provision does not apply to microbiological processes or the products thereof?

<sup>1</sup> The Referrals to the Enlarged Board of Appeal are published in Annex 4 in the language of proceedings only.

<sup>1</sup> Les questions soumises à la Grande Chambre de recours ne sont publiées que dans la langue de la procédure.