

ANNEX 4**REFERRALS TO THE ENLARGED BOARD OF APPEAL****Referrals by boards of appeal**

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.07 referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 30 January 2012 in case T 445/08:

(1) 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 a request for substituting this other legal or natural person admissible as a remedy to "deficiencies" provided by Rule 101(2) EPC?

(2) If the answer is yes, what kind of evidence is to be considered to establish the true intention?

(3) If the answer to the first question is no, may the appellant's intention nevertheless play a role and justify the application of Rule 139 EPC?

(4) If the answer to questions (1) and (3) is no, are there any possibilities other than restitutio in integrum (when applicable)?

The case is pending under **G 1/12**.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.04 referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 31 May 2012 in case T 1242/06:

(1) Can the exclusion of essentially biological processes for the production of plants in Article 53(b) EPC have a negative effect on the allowability of a product claim directed to plants or plant material such as a fruit?

(2) In particular, is a claim directed to plants or plant material other than a plant variety allowable even if 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?

(3) Is it of relevance in the context of questions 1 and 2 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?

The case is pending under **G 2/12**.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.07 referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 21 June 2013 in case T 22/09:

1. Where an opposition is filed by a company which is dissolved before the opposition division issues a decision maintaining the opposed patent in amended form, but that company is subsequently restored to the register of companies under a provision of the national law governing the company, by virtue of which the company is deemed to have continued in existence as if it had not been dissolved, must the European Patent Office recognise the retroactive effect of that provision of national law and allow the opposition proceedings to be continued by the restored company?

2. Where an appeal is filed in the name of the dissolved company against the decision maintaining the patent in amended form, and the restoration of the company to the register of companies, with retroactive effect as described in question 1, takes place after the filing of the appeal and after the expiry of the time limit for filing the appeal under Article 108 EPC, must the board of appeal treat the appeal as admissible?

3. If either of questions 1 and 2 is answered in the negative, does that mean that the decision of the opposition division maintaining the opposed patent in amended form automatically ceases to have effect, with the result that the patent is to be maintained as granted?

The case is pending under **G 1/13**.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.04 has referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 8 July 2013 in case T 83/05:

1. Can the exclusion of essentially biological processes for the production of plants in Article 53(b) EPC have a negative effect on the allowability of a product claim directed to plants or plant material such as plant parts?

2. In particular:

(a) Is a product-by-process claim directed to plants or plant material other than a plant variety allowable if its process features define an essentially biological process for the production of plants?

(b) Is a claim directed to plants or plant material other than a plant variety allowable even if 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?

3. Is it of relevance in the context of questions 1 and 2 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?

4. If a claim directed to plants or plant material other than a plant variety is considered not allowable because the plant product claim encompasses the generation of the claimed product by means of a process excluded from patentability under Article 53(b) EPC, is it possible to waive the protection for such generation by "disclaiming" the excluded process?

The case is pending under **G 2/13**.

Die Technische Beschwerdekammer 3.2.06 hat in der Sache T 1553/13 mit Zwischenentscheidung vom 20. Februar 2014 der Großen Beschwerdekammer gemäß Artikel 112 (1) a) EPÜ folgende Rechtsfrage 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?

Das Verfahren ist anhängig unter dem Aktenzeichen **G 1/14**.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.5.06 has referred the following point of law to the Enlarged Board of Appeal with interlocutory decision of 24 February 2014 in case T 2017/12:

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?

The case is pending under **G 2/14**.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.2.08 has referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 2 April 2014 in case T 373/12:

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?

The case is pending under **G 3/14**.