

Enlarged Board of Appeal,
European Patent Office,
Richard-Reitzner-Allee 8
D-85540 Haar,
Germany

Attention of Mr Wiek Crasborn

Sent by email to: EPAmicuscuriae@epo.org

CHARTERED INSTITUTE OF PATENT ATTORNEYS

AMICUS CURIAE BRIEF – G4/19 – 11 SEPTEMBER 2020

The Chartered Institute of Patent Attorneys (CIPA) is the professional and examining body for patent attorneys in the UK, representing virtually all the 2,500 registered patent attorneys in the UK, whether in industry or in private practice. Total membership is over 4,000 and includes judges, barristers, trainee patent attorneys and other professionals with an interest in intellectual property. CIPA represents the views of the profession to policy makers at national, European and international level, with representatives sitting on a range of influential policy bodies and working groups in the UK and overseas.

SUMMARY

It is CIPA's opinion that there is no legal basis in the EPC for any prohibition on double patenting as between parent applications/patents to divisional applications/patents or priority founding applications/patents to priority claiming applications/patents. There are no relevant double patenting prohibitions in the EPC. The answer to the first question¹ must therefore be "No". It follows that questions 2.1 and 2.2¹ do not require answers.

SUBSTANTIVE ARGUMENTS

The answer to the first question must be "No", because there is no basis for the EPO to restrict the grant of patents in a manner not warranted by any specific provision of the EPC. The Decision T 0318/14 is a very well written and carefully thought out one, demonstrating that there is no prohibition on double patenting between parent and divisional applications/patents or priority founding applications/patents to priority claiming applications/patents in the EPC.

For the reasons very clearly set out in paragraph 69 of T 0318/14, there is deliberately no limitation on double patenting in Art. 76(1) EPC or anywhere else in the EPC.

The reasoning set out in paragraph 73 of T 0318/14 clearly demonstrates that the so-called gap in the provisions of the EPC was deliberate. It was due to a lack of agreement rather than to an omission.

CIPA would be happy to attend any Oral Proceedings the Enlarged Board may hold in this matter, if the Enlarged Board feels that this would be useful to them in their deliberations on this referral.

John D Brown, on behalf of the chartered Institute of Patent Attorneys.

ⁱ See the Order on page 57 of Decision T 0318/14