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# Abstracts of decisions

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## Abstracts of decisions

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## 1. Article 053 EPC | T 0521/24 | Board 3.2.02

### Article 053 EPC

<b>Case Number</b>	T 0521/24
<b>Board</b>	3.2.02
<b>Date of decision</b>	2025.09.15
<b>Language of the proceedings</b>	DE
<b>Internal distribution code</b>	D
<b>Inter partes/ex parte</b>	Ex parte
<b>EPC Articles</b>	Article 053(c) EPC
<b>EPC Rules</b>	
<b>RPBA</b>	
<b>Other legal provisions</b>	
<b>Keywords</b>	patentability – medical methods – therapy
<b>Cited decisions</b>	
<b>Case Law Book</b>	<a href="#">I.B.4.5.1c</a> , 11th edition

In [T 521/24](#) betraf die Anmeldung gemäß Hauptantrag ein Verfahren (Ansprüche 1 bis 5) und eine Behandlungsvorrichtung (Anspruch 6) zur kosmetischen Verbesserung der körperlichen Erscheinung sowie der Beschleunigung der nicht therapeutischen Regeneration nach körperlicher Belastung. Durch die körperliche Belastung insbesondere nach einer sportlichen Aktivität kommt es zu einer Ermüdung. Die Beseitigung dieses Ermüdungszustands wird durch das beanspruchte Verfahren beschleunigt. Bei den beanspruchten Verfahren wird mindestens eine Extremität einer Person von einer mit mindestens einer Strömungsmaschine verbundenen Kammer aufgenommen. Die Kammer wird anschließend gasdicht verschlossen. Der Druck in der Kammer wird gegenüber dem atmosphärischen Umgebungsdruck alternierend auf einen negativen Druck abgesenkt und auf einen Überdruck erhöht, wobei die Druckdifferenz zwischen dem negativen Druck und dem Überdruck zwischen 30 mbar und 80 mbar beträgt.

Die Prüfungsabteilung kam zum Schluss, dass die Ansprüche 1 bis 5 des vorliegenden Hauptantrags auf Verfahren zur therapeutischen Behandlung des menschlichen oder tierischen Körpers gerichtet seien. Die Kammer war anderer Meinung. Eine Therapie im Sinne des Art. 53 c) EPÜ ist zwar nicht auf die erfolgreiche Behandlung einer Krankheit begrenzt, sondern kann symptombezogene und präventive Behandlungen umfassen. Allerdings setzt sie einen pathologischen Zustand voraus (Rechtsprechung der Beschwerdekammern des EPA, 11. Aufl. 2025, I.B.4.5.1).

Eine Therapie wird in den Verfahrensansprüchen des Hauptantrags, die ausdrücklich auf die Regeneration nach körperlicher Belastung gerichtet sind, nicht erwähnt. Die ursprüngliche Anmeldung offenbart keine Therapie, die geeignet ist, einen pathologischen Zustand eines Menschen oder Tiers zu behandeln. Der Prüfungsabteilung ist zwar insoweit zuzustimmen, dass die reine Erwähnung einer "nicht therapeutischen" Regeneration nicht ausreicht, eine Therapie aus dem Schutzbereich der Ansprüche auszuschließen. Allerdings ist mit körperlicher Belastung, die laut der Beschreibung typischerweise als Folge einer sportlichen Aktivität auftritt, in der ursprünglichen Anmeldung kein pathologischer Zustand gemeint.

Die Behauptung der Prüfungsabteilung, dass die Verfahrensschritte zwangsläufig therapeutische Effekte erzeugen würden, ist nicht begründet. Solche Effekte sind in der Anmeldung weder erwähnt noch impliziert. Sie sind auch nicht aus anderen sich im Verfahren befindlichen Dokumenten herleitbar. Die Annahme der Prüfungsabteilung, dass die ursprüngliche Anmeldung eine Therapie offenbare, die auf die Anwendung bei schwachen Venen, Lymphgefäßen und Bindegewebe erweitert werde, ist ebenfalls unzutreffend. Die ursprüngliche Anmeldung offenbart lediglich, dass das erfindungsgemäße Verfahren so schonend ist, dass seine Anwendung auch bei schwachen Venen, Lymphgefäßen und Bindegewebe, sowie bei Orangerhaut möglich ist. Eine Therapie zur Behandlung eines pathologischen Zustands ist damit nicht gemeint.

Die Tatsache, dass sich die ursprüngliche Anmeldung auf eine "intermittierende [...] Vakuumtherapie" und eine "intermittierende [...] Kompressionstherapie" bezieht, impliziert auch nicht, dass der Schutzbereich der Verfahrensansprüche eine therapeutische Behandlung des menschlichen oder tierischen Körpers im Sinne des Art. 53 c) EPÜ umfasst. In dieser Hinsicht ist es nicht relevant, dass eventuell Vakuum oder Unterdruck mit bestimmten Parametern zu therapeutischen Zwecken geeignet sind, denn es gibt keinen Hinweis darauf, dass solche Parameter denjenigen entsprechen, die in den Ansprüchen 1 bis 5 definiert sind.

Aus diesen Gründen waren die Ansprüche 1 bis 5 des Hauptantrags nicht von der Patentierbarkeit (Art. 53 c) EPÜ) ausgenommen. Die angefochtene Entscheidung war aufzuheben.

099-10-25

## 2. Article 056 EPC | T 1465/23 | Board 3.5.05

### Article 056 EPC

<b>Case Number</b>	T 1465/23
<b>Board</b>	3.5.05
<b>Date of decision</b>	2025.06.24
<b>Language of the proceedings</b>	EN
<b>Internal distribution code</b>	C
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	Articles 056, 112(1)(a) EPC
<b>EPC Rules</b>	
<b>RPBA</b>	Article 21 RPBA
<b>Other legal provisions</b>	
<b>Keywords</b>	inventive step (no) – credible technical effect achieved over whole scope claimed (no) – distinguishing feature arbitrary and non-functional modification of the prior art – "terminating" the problem-solution approach
<b>Cited decisions</b>	G 0001/19, G 0002/21, G 0001/24, T 0022/82, T 0939/92, T 0072/95, T 0176/97, T 1188/00, T 1294/16, T 0814/20, T 1924/20, T 1344/21, T 1737/21, T 2004/21, T 0746/22, T 1628/22, T 0287/23, T 0449/23, T 1580/23, T 1999/23 UPC_CFI_1/2023, Central Division Munich
<b>Case Law Book</b>	<a href="#">I.D.4.1.3</a> , <a href="#">I.D.4.4.3b</a> ), <a href="#">I.D.9.6</a> , 11th edition

In case [T 1465/23](#), the opposed patent addressed the problem of securing wireless communications for hearing devices. The board was not satisfied that the technical effects mentioned by the respondent (proprietor) were credibly achieved by the claimed features over the whole scope of claim 1 as granted.

Given that the alleged technical effect was not credibly achieved and the board could not identify an effect either, it was not possible for the board to formulate an objective technical problem that was directly and causally related to the claimed invention, in particular to the alleged distinguishing features (b) to (h). The board recalled the principles established in G 1/19, that the problem-solution approach may be "terminated" at this stage if the distinguishing features do not credibly achieve any technical effect over the whole scope claimed. The introduction of a distinguishing feature having no credible technical effect may then be considered to be no more than an arbitrary modification of the design of a known subject-matter which, being arbitrary, cannot involve an inventive step.

The respondent argued that the principles of G 1/19 were limited to computer-implemented simulations and that the board should instead have applied the "ab initio implausibility" standard addressed in the referral case underlying G 2/21. This line of argument was not persuasive. Recalling the purpose of Art. 112(1) EPC, the board observed that the Enlarged Board in G 1/19 itself designated its findings in point 82 of the Reasons as a "general principle" and this confirmed that a technical effect must be achieved over the whole scope of a claim to be considered as the basis for the objective technical problem. The respondent further argued that the expressions "substantially all embodiments" in G 1/19 and "substantially the whole scope of the claims" in T 814/20 allowed for a more lenient application of the test "credibly achieved over the whole scope claimed". However, the board noted the concept of "substantially over the whole scope claimed" appeared to provide merely a "narrow safe harbour" for well-defined inventions that may have isolated, peripheral flaws; it could not rescue a claim that was fundamentally deficient such that the distinguishing features were considered to have no effect at all.

The respondent also raised specific doubts in view of the board "terminating" the problem-solution approach after the conclusion that there was no credible technical effect over the whole scope claimed. Reflecting on the two paths provided for in the established practice to overcome such an objection: amendment of the claim to a narrower scope by the patentee, or reformulation of the objective technical problem to a less ambitious one by the board, the board noted that in some instances there may be no credible technical effect whatsoever that could be attributed to the distinguishing features. In such a case, the board considered these distinguishing features to be an arbitrary or non-functional modification of the prior art, which cannot support an inventive step. Consequently, this particular way of applying the problem-solution approach did not represent a "failure" or an "incomplete application" of the problem-solution approach, rather it was its logical endpoint: the demonstration that the claimed differences provided no technical effect at all, i.e. no contribution over the prior art, constituted the very proof of their "obviousness". Overall, the board stated that if there was no technical effect that was credibly derivable from the wording of a claim on the basis of its distinguishing features, it was usually unnecessary to – artificially – formulate an (unsolved) objective technical problem, such as finding an "alternative way to achieve a (non-existent) technical effect". In such cases, the distinguishing features simply constituted arbitrary or non-functional modifications of the available prior art which could not involve an inventive step within the meaning of Art. 56 EPC.

100-10-25

### 3. Article 088 EPC | T 2565/22 | Board 3.2.02

#### Article 088 EPC

<b>Case Number</b>	T 2565/22
<b>Board</b>	3.2.02
<b>Date of decision</b>	2025.05.27
<b>Language of the proceedings</b>	EN
<b>Internal distribution code</b>	D
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	Articles 054(2), 088 EPC
<b>EPC Rules</b>	
<b>RPBA</b>	
<b>Other legal provisions</b>	
<b>Keywords</b>	priority – "OR" claim – partial priority (yes) – application of G 1/15
<b>Cited decisions</b>	G 0001/15
<b>Case Law Book</b>	<a href="#">II.D.6.3.3</a> , 11th edition

In [T 2565/22](#) the patent concerned a system for replacing a deficient native heart valve. The proprietor submitted in the written procedure that for each feature of claim 1 a basis could be found in the priority application D34. In its communication the board expressed the preliminary view that only a partial priority was validly claimed. At the oral proceedings, the proprietor did not provide any further argument but merely referred to its written submission in this respect.

The board explained that, compared with D34, granted claim 1 had been broadened by deleting the feature "adapted to be deployed by exerting substantially radial forces from within by means of a deployment device". Claim 1 could be regarded as a generic OR-claim in the sense of G 1/15. The two alternatives comprised by the claim were:

- (a) a device comprising a support frame "adapted to be deployed by exerting substantially radial forces from within by means of a deployment device to a deployed state", such as a balloon-expandable stent; and
- (b) a device comprising a support frame which is not adapted in this way, i.e. non-balloon-expandable or self-expandable.

Contrary to the proprietor's submission, D34 did not disclose the mechanism by which the frame expands in a generic way. Even though the expansion mechanism was not specified each time the frame was mentioned, D34 was directed to devices adapted to be deployed by exerting substantially radial forces from within by means of a deployment device. Unlike D35, D34 did not disclose any self-expandable frames or

deployment methods that did not involve deployment means such as a balloon catheter. The fact that nitinol was disclosed as a material for the frame in D34 did not imply that its shape memory properties were used to provide a self-expandable frame, i.e. a stent made of nitinol was not necessarily self-expanding even though this material had been used for this purpose in several prior art documents. Therefore, D34 did not disclose the combination of features of granted claim 1 without the feature omitted by granted claim 1. The board was thus of the opinion that only part (a) above enjoyed priority. Accordingly, D1 was prior art under Art. 54(2) EPC for part (b) and could be considered in deciding whether there had been an inventive step.

101-10-25

## 4. Article 099 EPC | T 1127/23 | Board 3.3.03

### Article 099 EPC

<b>Case Number</b>	T 1127/23
<b>Board</b>	3.3.03
<b>Date of decision</b>	2025.06.18
<b>Language of the proceedings</b>	EN
<b>Internal distribution code</b>	D
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	Article 099 EPC
<b>EPC Rules</b>	
<b>RPBA</b>	
<b>Other legal provisions</b>	
<b>Keywords</b>	admissibility of appeal (yes) – transfer of opponent status (yes) – universal succession
<b>Cited decisions</b>	G 0004/88, G 0002/04
<b>Case Law Book</b>	<a href="#">III.O.2.1</a> , <a href="#">III.O.2.2</a> , 11th edition

In [T 1127/23](#) the respondent (patent proprietor) argued that the appeal of appellant 1 (company Y GmbH) was inadmissible because the transfer of the opposition from company X OG (original opponent 1) to company Y GmbH (its universal successor) was invalid. Appellant 1 admitted that it had been acting as a straw man on behalf of a third party. Since that third party had paid for the opposition, the opposition had been a business asset in the third party's books according to the general principles of bookkeeping. Therefore, the opposition had not been an asset of company X OG which could be transferred to Y GmbH as part of the universal succession. Moreover, only the third party who paid for the opposition could have instructed X OG to withdraw the opposition and take other procedural steps regarding the opposition proceedings.

The board did not agree with the respondent. The status of opponent cannot be freely transferred (G 2/04). In G 4/88 the Enlarged Board distinguished between two cases in which the status of opponent may however be transferred: (i) in the case of universal succession of the opponent or (ii) when a relevant part of the opponent's business has been transferred, in which case the transfer or assignment of the opposition to a third party must be made as part of the transfer or assignment of the opponent's business assets together with the assets in the interests of which the opposition was filed. The board explained that in view of G 4/88 the status of opponent is validly transferred in the case of universal succession without further requirements having to be fulfilled. This implied that, in the case of universal succession, there was no need to make any further distinction between the opponent

acting as a straw man or in its own interests, nor was it necessary to examine whether the opposition that had been filed could have been considered as an asset of the opponent, to determine whether the status of opponent had been validly transferred. Such a distinction would add an additional condition to those provided for in point 4 of the Reasons in G 4/88, which was not foreseen therein. Only when part of the opponent's assets had been transferred, was it necessary to examine whether the opposition related to the opponent's business assets and could therefore have been transferred at the same time as those assets. In the present case, since a universal succession had taken place, the opposition had been validly and automatically transferred to the universal successor in law of company X OG from the date of the effective succession, regardless of whether X OG had acted as a straw man.

According to the board, the payment of the opposition costs by a third party and the general principles of bookkeeping were not relevant in the context of a universal succession since it was not necessary to examine whether a particular asset, and the opposition relating to it, had been transferred. Furthermore, accounting rules could not have any bearing on a party's status. The status of opponent was purely procedural, and the basis on which it was obtained was a matter of procedural law governed by the EPC. For the same reasons, the question of who had control over opposition proceedings and could decide, among other things, to withdraw the opposition, was not relevant for determining who could act as opponent. A person who fulfils the requirements of the EPC for filing an opposition becomes a party to the opposition proceedings (Art. 99(3) EPC), and in these proceedings, only the procedural acts performed by this party are relevant, regardless of the instructions they may receive from a third party.

Finally, the board pointed out that the respondent acknowledged that there was no abuse of procedure in the present case. The board did not see how the possibility of such an abuse occurring in other situations could be a valid ground for deciding that, in this case, appellant 1 did not have the status of opponent and appellant, and for declaring its appeal inadmissible.

The board concluded that company Y GmbH was entitled to act as opponent and appellant in the present case and that its appeal was admissible.

102-10-25

## 5. Article 105 EPC | G 0002/24 | EBA

### Article 105 EPC

<b>Case Number</b>	<b>G 0002/24</b>
<b>Board</b>	EBA
<b>Date of decision</b>	2025.09.25
<b>Language of the proceedings</b>	EN
<b>Internal distribution code</b>	A
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	Articles 099, 100, 105, 106, 107, 112, EPC ; Articles 099, 105, 107 EPC 1973
<b>EPC Rules</b>	Rules 076, 084, 089 EPC
<b>RPBA</b>	Article 21 RPBA 2020
<b>Other legal provisions</b>	
<b>Keywords</b>	intervention during the appeal proceedings (yes) – appellant status of the intervener at the appeal stage (no) – continuation of the appeal proceedings with the intervener after withdrawal of all appeals (no) – referral to the Enlarged Board of Appeal – admissibility (yes) – uniform application of law
<b>Cited decisions</b>	G 0001/86, G 0002/91, G 0004/91, G 0007/91, G 0008/91, G 0009/92, G 0001/94, G 0001/99, G 0003/04, T 0611/90, T 0392/97, T 1026/98, T 1007/01, T 1108/02, T 0193/07, T 1682/13, T 0439/17, T 1839/18, T 1286/23
<b>Case Law Book</b>	<a href="#">III.P.2</a> , <a href="#">III.P.2.2</a> , <a href="#">V.B.2.3</a> , <a href="#">V.B.2.3.3</a> , <a href="#">V.B.2.3.7</a> , <a href="#">V.B.2.5.1</a> , 11th edition

In [G 2/24](#) the Enlarged Board ("EBA") answered the referred questions as follows: "After withdrawal of all appeals, appeal proceedings may not be continued with a third party who intervened during the appeal proceedings in accordance with Article 105 EPC.

The intervening third party does not acquire an appellant status corresponding to the status of a person entitled to appeal within the meaning of Article 107, first sentence, EPC."

The EBA found the referral admissible. It held that the referral concerned an aspect of fundamental importance and the final decision on the appeal hinged on the answer to the referred questions. It explained that while Art. 21 RPBA allows for the further

development of the case law and grants boards ample discretion for referral, in view of the legislative intent of Art. 112 EPC to ensure a uniform application of the law, a board was expected to substantiate why it considers an earlier ruling to have been superseded by a subsequent change in the law, there to be potential gaps in its reasoning or the existence of a new factual or procedural situation. The EBA took note of the referring board's criticism of G 3/04.

The EBA concluded that the findings of G 3/04 continue to apply. None of the provisions relevant to the referral (i.e. Art. 99(1), 105 and 107 EPC) had been amended in a substantive manner after G 3/04 had been issued.

The EBA reaffirmed that appeal proceedings are of a judicial nature and the appeal is designed as a remedy on facts and law for parties to proceedings before the administrative departments of the EPO with the aim of eliminating an "adverse effect" of the impugned decision. The scope of the appeal proceedings is primarily determined by the decision under appeal, the appellant's requests submitted with the notice of appeal and the statement of grounds of appeal, and, in inter partes proceedings, the submissions of the other party or parties in reply to the appellant's statement of grounds of appeal. The appeal is not an ex officio procedure but depends on the appellant to initiate, determine the scope of, and conclude it within that party's power of disposal, in accordance with the principle of party disposition.

The EBA further held that a party entitled to appeal within the meaning of Art. 107, first sentence, EPC is only the person who formally participated in the proceedings before the administrative department that issued the impugned decision, unless a third party's entitlement to participate in those proceedings had been ignored due to procedural error or incorrect application of law. An adverse effect within the meaning of this provision only exists if a decision falls short of the request of a party to the proceedings or deviates from it without their consent. Any other "negative" or "disadvantageous" impact or effect on a third party does not fulfil the legal threshold.

On interventions by third parties, the EBA stated that the exceptional nature of this legal remedy inherently precludes an extensive interpretation and application thereof. An intervener at appeal cannot procedurally benefit from any status in the preceding administrative proceedings and becomes a party as of right. Intervention at appeal needs to fit into the legal and procedural framework of the boards of appeal as the first and final judicial instance in proceedings under the EPC. The principle of party disposition, the binding nature of the parties' requests and the prohibitions of ruling ultra petita and reformatio in peius limit the option for procedural action of all involved in appeal proceedings, including interveners. Parties to appeal proceedings as of right do not have a legal status independent of the appeal. Awarding an intervener such status would require an explicit legal provision in the EPC.

Therefore, if the sole or all appeals are withdrawn, the proceedings end with regard to all substantive issues for all parties involved and cannot be continued with an intervener at the appeal stage or any other non-appealing party.

103-10-25

## 6. Article 112a EPC | R 0019/23 | EBA

### Article 112a EPC

<b>Case Number</b>	R 0019/23
<b>Board</b>	EBA
<b>Date of decision</b>	2025.02.27
<b>Language of the proceedings</b>	DE
<b>Internal distribution code</b>	D
<b>Inter partes/ex parte</b>	Ex parte
<b>EPC Articles</b>	Articles 021, 022(1)(a), 022(1)(c), 112a, 112a(2)(c), 113(1) EPC
<b>EPC Rules</b>	
<b>RPBA</b>	
<b>Other legal provisions</b>	REE, IPREE, RPDBA, RDR, Article6(1) ECHR
<b>Keywords</b>	petition for review – clearly inadmissible – applicability of Article 112a to decisions of the Disciplinary Board of Appeal (no)
<b>Cited decisions</b>	R 0010/20, D 0003/20
<b>Case Law Book</b>	<a href="#">V.B.3.4.3</a> , <a href="#">V.C.5</a> , 11th edition

In [R 19/23](#) beantragte der Antragsteller unter anderem wörtlich, die zu überprüfende Entscheidung der Beschwerdekammer in Disziplinarangelegenheiten aufzuheben und die Wiedereröffnung des Verfahrens vor der zuständigen Beschwerdekammer anzuordnen.

Die Große Beschwerdekammer (nachfolgend "GBK") erklärte, dass sie die Auffassung des Antragstellers, wonach die GBK gemäß Art. 112a EPÜ für die Überprüfung von Entscheidungen der Beschwerdekammer in Disziplinarangelegenheiten (nachfolgend "BKD") zuständig sei, nicht teilt. Vielmehr folgte sie der in der Entscheidung D 3/20 zum Ausdruck gebrachten Auffassung, dass ein Beschwerdeführer, der sich gegen eine Entscheidung des Sekretariats oder der Prüfungskommission wendet, keine Möglichkeit hat, eine "Große Beschwerdekammer in Disziplinarangelegenheiten" anzurufen und der dahingehende Antrag des Beschwerdeführers daher als unzulässig zu verwerfen ist.

Der GBK zufolge teilte sich das Vorbringen des Antragstellers in der schriftlichen Antwort in Vorbereitung auf die mündliche Verhandlung und während der mündlichen Verhandlung in zwei Argumentationslinien:

- Vom Verwaltungsrat gesetztes "Sekundärrecht" könne das von den Vertragsstaaten des EPÜ erlassene Primärrecht nicht "verdrängen, aufheben oder umgehen".

- Die Anwendbarkeit von Art. 112a EPÜ auf Entscheidungen der BKD sei auch im Hinblick auf die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte (nachfolgend "EGMR") zu Art. 6 (1) der Europäische Konvention zum Schutz der Menschenrechte und Grundfreiheiten (nachfolgend "EMRK") geboten.

Die GBK merkte an, dass die Nennung der Beschwerdekammern ohne Beschränkung auf ganz bestimmte, im EPÜ vorgesehene Beschwerdekammern in Art. 112a EPÜ und ohne ausdrücklichen Ausschluss der BKD nicht als Hinweis auf eine Geltung dieser Vorschrift für alle Kammern, einschließlich der BKD, angesehen werden könne. Die GBK erinnerte ferner daran, dass der Gesetzgeber des EPÜ 2000 die BKD nicht in den mit "Beschwerdekammern" überschriebenen Art. 21 EPÜ aufgenommen hat. Zur Zuständigkeit der GBK verweise Art. 22 (1) a) im Hinblick auf Art. 112 und Art. 22 (1) c) bezüglich Art. 112a EPÜ aber auf die "Beschwerdekammern" und damit auf die in Art. 21 genannten Kammern und folglich nicht auf die BKD.

In Bezug auf die erste Argumentationslinie des Antragstellers kam die GBK zu dem Schluss, dass die Prüfungsvorschriften (d.h. Vorschriften über die europäische Eignungsprüfung für zugelassene Vertreter, Ausführungsbestimmungen hierzu, Ergänzende Verfahrensordnung der Beschwerdekammer in Disziplinarangelegenheiten und Teil IV der Vorschriften in Disziplinarangelegenheiten von zugelassenen Vertretern) als autonomes Recht kein Sekundärrecht im Verhältnis zum EPÜ als Primärrecht in dem Sinne darstellen, dass sie dazu dienen würden, die Ziele des EPÜ unmittelbar zu verwirklichen. Damit verbleibe es bei der mangelnden Anwendbarkeit von Art. 112a (und 112) EPÜ auf – und damit der mangelnden Zuständigkeit der GBK für – Verfahren vor der BKD.

Betreffend die zweite Argumentationslinie des Antragstellers befand die GBK, dass die BKD zwar Art. 113 (1) EPÜ anwenden muss, deren zutreffende Anwendung aber nicht der Überprüfung durch die GBK nach Art. 112a EPÜ unterliegt. Nach der Rechtsprechung des EGMR zu Art. 6 (1) EMRK müsse in Streitigkeiten betreffend zivilrechtliche Rechte und Pflichten eine einzige gerichtliche Instanz vorgesehen werden. Diese sei mit der BKD gegeben. Mit der Schaffung von Art. 112a EPÜ sei der Gesetzgeber also über das von Art. 6 (1) EMRK geforderte Maß sogar hinausgegangen, sodass die Nichtanwendung von Art. 112a EPÜ bezüglich Art. 113 (1) EPÜ keinen rechtlichen Bedenken begegne (s. R 10/20).

Im Gesamtergebnis verwarf die GBK den auf Art. 112a (2) c) EPÜ wegen Verletzung des Rechts auf rechtliches Gehör gestützten Überprüfungsantrag als offensichtlich unzulässig.

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## 7. Article 123(2) EPC | T 0405/24 | Board 3.5.05

### Article 123(2) EPC

<b>Case Number</b>	T 0405/24
<b>Board</b>	3.5.05
<b>Date of decision</b>	2025.09.30
<b>Language of the proceedings</b>	EN
<b>Internal distribution code</b>	D
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	Article 123(2) EPC
<b>EPC Rules</b>	
<b>RPBA</b>	
<b>Other legal provisions</b>	
<b>Keywords</b>	amendments – added subject-matter (yes) – claim interpretation
<b>Cited decisions</b>	G 0001/24, T 0367/20, T 0945/20, T 0470/21, T 2034/21, T 0193/22, T 2048/22
<b>Case Law Book</b>	<a href="#">II.E.1.3.9</a> , <a href="#">II.A.6.1</a> , 11th edition

In [T 405/24](#) the board agreed with the opposition division and the respondents that granted claim 1 contained added subject-matter. Feature 1.7 bore no limitation in respect of the type of "filtered packets" being "routed" to the "proxy system".

The appellant argued that "routing filtered packets to a proxy system" in the context of claim 1 was to be broadly construed, i.e. it should not be narrowly interpreted as "network-layer routing" only. Rather, it should include any kind of "sending", "forwarding" or "logging". The unit "RG1" in step #19 of Fig. 3B at the very least "forwarded" to the proxy device "PD1" those packets (comprising encrypted data) which were not "dropped" but "logged". Thus, the skilled person in the field of data communications would have understood that such "forwarding" was providing a basis for the "routing" action of feature 1.7. According to the appellant, if multiple technically sensible interpretations of a certain claim feature existed, the one which was supported by the patent description should prevail.

The board was not persuaded by the appellant's argument. First, the board considered that even if the Order of G 1/24 (which related to assessing compliance with Art. 52 to 57 EPC only) could be extrapolated to the assessment of compliance with Art. 123(2) EPC, there was no indication in G 1/24 that "consulting" or "referring to" the description and drawings could translate into adopting a claim interpretation which ensured that the disputed feature was originally disclosed and thus necessarily fulfilled Art. 123(2) EPC. Such an approach, which according to the board inherently

assumed that there may be only one "correct" interpretation of a claim feature, namely the one derivable from the original description as its intended meaning, would not lead to an objective assessment of compliance with Art. 123(2) EPC. The board did not follow the approach of T 367/20 (for the event of "mutually exclusive" interpretations) nor T 2048/22 (claim ambiguities). Rather, the board relied on the body of case law which holds that all technically reasonable interpretations of a disputed claim feature are to be taken into account when assessing compliance with Art. 123(2) EPC (see e.g. T 945/20, T 470/21, T 2034/21, T 193/22).

Second, even if, for the sake of argument, the "forwarding" of logged packets (comprising encrypted data) to the proxy device "PD1" in step #19 constituted a specific instance of the more general "routing filtered packets to a proxy system", this would still fail to justify the claimed generalisation, which also encompassed, among other things, network-layer routing of filtered packets not being necessarily logged.

Thus, the board concluded that the ground for opposition under Art. 100(c) EPC in conjunction with Art. 123(2) EPC prejudiced the maintenance of the patent as granted. The same objections applied to auxiliary requests 1 to 7 and 9 to 15. Auxiliary requests 8 and 2b were not admitted into the appeal proceedings. Since there were no allowable claim requests on file, the appeal was dismissed.

105-10-25

## 8. Article 134 EPC | T 0412/24 | Board 3.5.05

### Article 134 EPC

<b>Case Number</b>	T 0412/24
<b>Board</b>	3.5.05
<b>Date of decision</b>	2025.07.25
<b>Language of the proceedings</b>	EN
<b>Internal distribution code</b>	D
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	Articles 125, 133, 134 EPC
<b>EPC Rules</b>	Rules 076(2), 152 EPC
<b>RPBA</b>	Article 15(1) RPBA 2020
<b>Other legal provisions</b>	Articles 1161 French Civil Code, L. 227-6 French Commercial Code, Articles 48(1) and Rule 8(1) UPCA, Article 19 of the Statute of the CJEU
<b>Keywords</b>	representation – complete and self-contained set of rules on representation – Art. 125 EPC to fill gap but not to modify EPC framework – president of opponent company acting also as professional representative – admissibility of opposition (yes)
<b>Cited decisions</b>	G 0003/97, J 0015/86, T 1893/22 UPC_CoA_563/2024, C-515/17 P, C-561/17 P
<b>Case Law Book</b>	<a href="#">III.V.1</a> , <a href="#">IV.C.2.1.1</a> , <a href="#">IV.C.2.1.2</a> , 11th edition

In [T 412/24](#) the appellant (patent proprietor) had contested the admissibility of the (first) opposition relying on the following points concerning the (first) opponent: (i) the opponent's professional representative could not represent the company since he was simultaneously managing the legal entity he represented; (ii) the identity of the opponent could not be unequivocally determined; (iii) the opponent could not act as such because carrying out activities reserved to professional representatives without the necessary qualifications circumvented the principles of representation; and (iv) the opponent's change of name affected the admissibility of the opposition.

Concerning the representation, Mr N, the representative of the (first) opponent, a French company in the form initially of a société simplifiée unipersonnelle (SASU) then of a société à responsabilité limitée (SARL), was the president of the SASU and also a professional representative.

The board stated that – contrary to the proprietor's allegations – Art. 133 and 134 EPC together with R. 152 EPC and the Decision of the President of the EPO of 12 July 2007 on the filing of authorisations (OJ SE 3/2007, 128) constituted a

complete and self-contained set of rules on representation in proceedings established by the EPC. A legal person having its seat in an EPC contracting state is not obliged to be represented by a professional representative (Art. 133(1) EPC). Furthermore, persons whose names appear on the list of professional representatives are entitled to act in all proceedings established by the EPC (Art. 134 EPC). A legal person having its seat in an EPC contracting state can act in proceedings before the EPO through its legal representatives. At the time the opposition was filed, Mr N in his capacity as president of the SASU was entitled to represent the SASU since under French law (Art. L. 227 Commercial Code) he was entitled to act on behalf of the legal person in all circumstances. As a professional representative, Mr N would have been entitled to act not only as the president of the SASU, but also as a professional representative appointed by that legal person.

For the sake of completeness, the board explained why neither the references to French and German law, nor the reference to general principles under Art. 125 EPC could lead to the conclusion that the company was prevented from appointing Mr N as its professional representative before the EPO. At the oral proceedings before the board, the appellant referred to the order of UPC\_CoA\_563/2024. The board noted that the conclusion in that case rested on the specific provisions of the UPCA, in particular Art. 48(1) UPCA (mirroring Art. 19 of the Statute of the CJEU) and R. 8(1) UPCA, which require that both natural and legal persons be represented. The CJEU had identified as one of the objectives of mandatory representation in CJEU proceedings ensuring that the representative of a legal person is sufficiently distant from the party represented (C-515/17 P and C-561/17 P). According to the board, however, even if this were regarded as a general principle of the EPC contracting states, it could not be transposed to the EPC framework. Principles of procedural law under Art. 125 EPC may be invoked to fill gaps, but not to modify the EPC framework. Introducing a corollary of the prohibition of self-representation into a system that expressly allows it would however amount to such a modification.

On the identity of the opponent, the board held that the opposition was clearly filed on behalf of SARL Cabinet NÜ. The only uncertainty, based on the submissions of the proprietor itself, concerned whether Mr N was representing the opponent as a European patent attorney or in his capacity as the president of that company. Nonetheless, this alleged ambiguity could not raise any doubt about the identity of the opponent. As regards the change of the opponent's name, the board observed that there had been no change of the identity of the opponent.

The alleged circumvention of the law was also rejected. The board noted that this would occur if a person not entitled to act as a professional representative performed all the activities typically carried out by professional representatives while assuming the role of a party, in order to circumvent the prohibition on unqualified representation, but Mr N was a qualified professional representative.

In line with T 1893/22, which related to the earlier application, the board concluded that the (first) opposition was admissible. The appeal was dismissed.

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## 9. Article 12(3) RPBA | T 2271/22 | Board 3.4.03

### Article 12(3) RPBA 2020

<b>Case Number</b>	T 2271/22
<b>Board</b>	3.4.03
<b>Date of decision</b>	2025.07.29
<b>Language of the proceedings</b>	FR
<b>Internal distribution code</b>	D
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	
<b>EPC Rules</b>	
<b>RPBA</b>	Articles 12(3), 12(5), 13(2) RPBA 2020
<b>Other legal provisions</b>	
<b>Keywords</b>	insufficient substantiation of request – reply to statement of grounds of appeal – decision rejecting the opposition – requirements of Art. 12(3) RPBA met (no) – discretion not to admit submission
<b>Cited decisions</b>	
<b>Case Law Book</b>	<a href="#">V.A.4.3.5a</a> ), <a href="#">V.A.4.3.5b</a> ), 11th edition

Dans l'affaire [T 2271/22](#) la division d'opposition a rejeté l'opposition conformément aux dispositions de l'art. 101(2) CBE. La requérante a demandé l'annulation de la décision de rejet de l'opposition et la révocation du brevet dans son ensemble.

Dans sa réponse au mémoire exposant les motifs du recours, l'intimée a déclaré qu'elle maintenait "toutes les requêtes déposées en 1<sup>ere</sup> [sic] instance". Ce n'était qu'en réponse à la notification selon l'art. 15(1) RPCR que l'intimée a précisé qu'il s'agissait bien de la première requête subsidiaire déposée le 2 juin 2021 et de la deuxième requête subsidiaire déposée le 28 mars 2022.

La chambre a relevé que, dans sa réponse aux motifs du recours, l'intimée n'avait donné aucun argument pour soutenir la recevabilité et le fondement de ces requêtes subsidiaires au cas où la chambre partagerait le point de vue de la requérante en ce qui concerne les revendications telles que délivrées. En particulier, l'intimée était restée silencieuse sur la question d'une activité inventive basée sur les caractéristiques techniques ajoutées. La chambre a aussi noté que la requérante avait attaqué ces requêtes subsidiaires dans son mémoire de recours.

La chambre n'a pas accepté l'argument de l'intimée que, la décision attaquée ayant maintenu le brevet conformément à la requête principale, l'art. 12(3) RPCR, selon

lequel le mémoire et la réponse doivent présenter de façon claire et concise les motifs pour lesquels il est demandé d'annuler, de modifier ou de confirmer la décision attaquée, ne s'appliquerait pas aux requêtes subsidiaires dans l'espèce. La chambre a clarifié que, si l'intimée demande de manière subsidiaire le maintien du brevet conformément à une requête subsidiaire, elle doit présenter dans sa réponse au mémoire de recours les motifs pour lesquels il est demandé de modifier ou de confirmer la décision attaquée et d'exposer expressément et de façon précise l'ensemble des requêtes, faits, arguments et preuves invoqués, même si cette requête subsidiaire avait déjà été déposée pendant la procédure d'opposition et jamais traitée par la division d'opposition. Par conséquent, les exigences de l'art. 12(3) RPCR n'étaient clairement pas remplies en ce qui concerne ces requêtes subsidiaires.

La présentation d'arguments quelques jours avant la procédure orale prévue ne pouvait, en l'absence de circonstances exceptionnelles, remplacer l'exposé exigé par l'art. 12(3) RPCR.

En conclusion, la chambre a considéré que les deux requêtes subsidiaires n'étaient pas motivées et, par conséquent, n'étaient pas recevables dans la procédure de recours (art. 12(3) et (5) RPCR).

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## 10. Article 12(4) RPBA | T 0989/23 | Board 3.3.02

### Article 12(4) RPBA 2020

<b>Case Number</b>	T 0989/23
<b>Board</b>	3.3.02
<b>Date of decision</b>	2025.04.04
<b>Language of the proceedings</b>	EN
<b>Internal distribution code</b>	C
<b>Inter partes/ex parte</b>	Inter partes
<b>EPC Articles</b>	Articles 114(2), 123(1) EPC
<b>EPC Rules</b>	
<b>RPBA</b>	Article 12(4), 12(6) RPBA 2020
<b>Other legal provisions</b>	
<b>Keywords</b>	amendment to case – board's power to review first-instance decisions to admit submissions – admissibly raised and maintained (no)
<b>Cited decisions</b>	T 0326/87, T 0669/90, T 0640/91, T 0201/92, T 0986/93, T 1209/05, T 1549/07, T 1652/08, T 1852/11, T 2197/11, T 1568/12, T 0026/13, T 0572/14, T 0487/16, T 0617/16, T 1768/17, T 2603/18, T 0364/20
<b>Case Law Book</b>	<a href="#">IV.C.5.1.5</a> , <a href="#">IV.C.5.1.7</a> , <a href="#">V.A.3.4.3</a> , <a href="#">V.A.4.2.2b</a> ), <a href="#">V.A.4.3.6i</a> ), 11th edition

In [T 989/23](#) auxiliary request 17, filed with the statement of grounds of appeal, had first been filed in the opposition proceedings on the final date set under R. 116 EPC. The opposition division had decided that this auxiliary request was not open for examination as to its admissibility since it had been filed within the set time limit. Auxiliary request 17 was not considered by the opposition division since a higher-ranking auxiliary request was found allowable. The appellant-opponent requested that auxiliary request 17 not be admitted into the appeal proceedings, arguing that the division had misunderstood its discretionary powers.

In view of the line of case law holding that submissions admitted by the opposition division could not be excluded from consideration on appeal (e.g. T 487/16, T 1768/17, T 617/16, T 26/13, T 989/23, T 1568/12, T 2603/18, T 3201/19) the board first addressed the extent of its power of review. It explained that like an opposition division's decision to disregard late-filed submissions, a decision to admit such submissions into the opposition proceedings was a discretionary procedural decision which formed part of the opposition division's final decision on the merits of an opposition. A decision to admit late-filed submissions adversely affected the party

contesting their admittance (in view of a possible adverse decision on appeal based on the admitted submissions, T 1549/07). Therefore, a board had the power to review an opposition division's procedural decision to take into consideration submissions filed late in opposition proceedings. Otherwise, the parties' right to a judicial review of an essential part of the opposition division's decision would be denied. Moreover, on appeal, a board would be compelled to accept a legal and factual framework, even if it is based on an erroneous exercise of discretion. As a consequence, requests, facts or evidence that had been admitted into opposition proceedings could be disregarded on appeal if the opposition division's decision suffered from an error in the use of discretion (T 1209/05, T 1652/08, T 1852/11, T 2197/11, T 572/14, T 341/15, T 326/22, T 776/17). The board thus had the power and duty to review the opposition division's decision to admit auxiliary request 17 into the opposition proceedings.

The board held that the filing of requests for amendment of the patent was governed by Art. 123(1) EPC, which gave the opposition division the discretionary power not to admit new requests for amendment (e.g. T 755/96, OJ 2000, 174; T 980/08, T 1178/08, T 966/17, R 6/19, T 256/19, R 11/20). The exercise of this discretion had to take account of the following: In inter-partes proceedings, each party had to be given equal opportunity to present their case and a fair chance to respond to new matter raised by the other party or parties or by the opposition division. Both the opposition division and the parties had to observe the principle of good faith (T 669/90, OJ 1992, 739; T 201/92). To expedite the proceedings and implement the principle of fairness towards the other party or parties, each party had to submit all facts, evidence, arguments and requests for amendments relevant to their case as early and completely as possible (T 326/87, OJ 1992, 522; T 430/89; T 951/91, OJ 1995, 202). This case law had been developed mainly in the context of Art. 114(2) EPC, pertaining to facts and evidence. Nevertheless, in view of the principles set out above, the rationale of this case law also applied to a patent proprietor's requests for amendment of the patent (e.g. T 582/08). Whether amended sets of claims should be considered in opposition proceedings or not did not merely depend on their filing within the time limit under R. 116 EPC, but also on the specific circumstances of the case (see also T 364/20). Consequently, the opposition division erred in denying that it had discretionary power to disregard auxiliary request 17. As a consequence, this procedural decision did not establish that auxiliary request 17 was "admissibly raised" in opposition proceedings.

The board agreed with the opponent that the filing of additional sets of amended claims (including auxiliary request 17) on 23 January 2023 was not a diligent and appropriate reaction to the opponent's submissions filed on 14 April 2022 and reiterated on 2 September 2022, or to the opposition division's communication of 30 May 2022. Since part of the defences submitted by the proprietor was not able to overcome the board's conclusions on lack of inventive step and a later filed part raised new issues, the board did not admit auxiliary request 17 into the appeal proceedings.

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