

Decision of the Administrative Council of 12 December 2002 approving amendments to the Rules of Procedure of the Boards of Appeal of the European Patent Office CA/D 17/02

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 23, paragraph 4, thereof,

Having regard to the amendments to the Rules of Procedure of the Boards of Appeal, adopted on 28 October 2002 under Rule 10, paragraph 3, of the Implementing Regulations to the European Patent Convention,

HAS DECIDED AS FOLLOWS:

Article 1

The amendments to the Rules of Procedure of the Boards of Appeal, as shown in the Annex to this decision, are hereby approved.

Article 2

This decision shall enter into force on 1 May 2003.

Done at Munich, 12 December 2002

For the Administrative Council
The Chairman

Roland GROSSENBACHER

ANNEX

DECISION

Amendments to the Rules of Procedure of the Boards of Appeal OJ EPO 1980, 171 as amended in OJ EPO 1983,7, OJ EPO 1989, 361 and OJ EPO 2000, 316

In accordance with Rule 10, paragraph 3 of the Implementing Regulations to the Convention on the Grant of European Patents, the Presidium referred to in Rule 10, paragraph 1, of the Implementing Regulations to the Convention on the Grant of the European Patents, amends the Rules of Procedure of the Boards of Appeal as follows:

Article 1

(1) The text of Article 1 is amended as follows:

"(1) The Presidium referred to in Rule 10, paragraph 4 EPC, shall before the beginning of each working year draw up a scheme for the distribution among the Boards of Appeal of all appeals that may be filed during the year, designating the members who may serve on each Board and their respective alternates. The scheme may be amended during the working year."

(2) The Presidium may delegate to the Chairman of each Board the task of designating members responsible for the examination of each appeal assigned to his Board as and when it is received by the Registry of the Boards of Appeal."

(2) The following new Article 3a is inserted in the Rules of Procedure of the Boards of Appeal:

"Article 3a
Procedural compliance

(1) The Chairman shall for each appeal designate a member of the Board or himself to consider the admissibility of the appeal.

(2) The Chairman or a member designated by him shall ensure that the parties comply with these Rules and with directions of the Board and shall propose action to be taken as appropriate."

(3) The text of Article 5, paragraph 2, is amended as follows:

"(2) The Presidium referred to in Rule 10, paragraph 1 EPC, may entrust to the Registrars the execution of functions which involve no technical or legal difficulties, in particular in relation to arranging for inspection of files, issuing summonses to oral proceedings and notifications and granting requests for further processing of applications."

(4) The following new Article 10a is inserted in the Rules of Procedure of the Boards of Appeal:

"Article 10a
Basis of Proceedings

(1) Appeal proceedings shall be based on

(a) the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC;

(b) in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal;

(c) any communication sent by the Board and any answer thereto filed pursuant to directions of the Board.

(2) The statement of grounds of appeal and the reply shall contain a party's complete case. They shall set out clearly and concisely the reasons why the decision under appeal is challenged or supported and should contain, expressly or by specific reference to material filed in the first instance proceedings, all the facts, arguments and evidence relied on and all requests made. Unless otherwise authorised by the Board, copies of papers referred to shall be attached as annexes.

(3) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit in (1)(b).

(4) Without prejudice to the power of the Board to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings, everything presented by

the parties under (1) shall be taken into account by the Board if and to the extent it relates to the case under appeal and meets the requirements in (2).

(5) Extension of time limits may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request."

(5) The following new Article 10b is inserted in the Rules of Procedure of the Boards of Appeal:

"Article 10b

Amendment to a party's case

(1) Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject matter submitted, the current state of the proceedings and the need for procedural economy.

(2) Other parties shall be entitled to submit their observations on any amendment not held inadmissible by the Board ex officio.

(3) Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings."

(6) The following new Article 10c is inserted in the Rules of Procedure of the Boards of Appeal:

"Article 10c

Interventions

Articles 10a and 10b shall apply mutatis mutandis to interventions commenced while an appeal is pending."

(7) The text of Article 11 is amended as follows:

"Article 11

Oral Proceedings

(1) If oral proceedings are to take place, the Board may send a communication drawing attention to matters which seem to be of special significance, or to the fact that questions appear no longer to be contentious, or containing other observations that may help concentration on essentials during the oral proceedings.

(2) A change of date for oral proceedings may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request made as far in advance of the appointed date as possible and copied to any other parties who shall as promptly as possible inform the Board whether or not they agree.

(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.

(4) The Chairman presides over the oral proceedings and ensures their fair, orderly and efficient conduct.

(5) When a case is ready for decision during oral proceedings, the Chairman shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.

(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chairman.

(8) The following new Article 11a is inserted in the Rules of Procedure of the Boards of Appeal:

"Article 11a
Costs

(1) Subject to Article 104(1) EPC, the Board may on request order a party to pay some or all of another party's costs which shall, without limiting the Board's discretion, include those incurred by any

(a) amendment pursuant to Article 10b to a party's case as filed pursuant to Article 10a(1);

(b) extension of a time limit;

(c) acts or omissions prejudicing the timely and efficient conduct of oral proceedings;

(d) failure to comply with a direction of the Board;

(e) abuse of procedure.

(2) The costs ordered to be paid may be all or part of those incurred by the receiving party and may *inter alia* be expressed as a percentage or as a specific sum. In the latter event, the Board's decision shall be a final decision for the purposes of Article 104(3) EPC. The costs ordered may include costs charged to a party by its professional representative, costs incurred by a party itself whether or not acting through a professional representative, and the costs of witnesses or experts paid by a party but shall be limited to costs necessarily and reasonably incurred."

(9) A new paragraph 1 is inserted in Article 12 of the Rules of Procedure of the Boards of Appeal:

"1) In the written phase of proceedings, replies to requests and directions on matters of procedure shall be given by means of communications."

(10) The current paragraph 1 of Article 12 becomes paragraph 2.

Article 2

Articles 10a, 10b, 10c and 11a(1)(a) shall apply to proceedings in which the notice of appeal was received by the European Patent Office after the date of the entry into force of these amendments.

Article 3

The amendments to the Rules of Procedure of the Boards of Appeal contained in Article 1 of this decision shall enter into force on the same day on which the decision of the Administrative Council of the European Patent Organisation approving these amendments enters into force.

Done at Munich, 28.10.2002
For the Presidium
The Chairman of the Presidium
P. Messerli
Vice-President in charge of DG 3

