



**Große Beschwerdekammer
Enlarged Board of Appeal
Grande Chambre de recours**

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number G 1/21
Appeal Number T 1807/15 - 3.5.02
Application Number 04758381.0
Publication Number 1609239

**Respondent
(Patent Proprietor)** Andrew AG

**Appellant
(Opponent)** Rohde & Schwarz GmbH & Co KG

**Minutes
of the oral proceedings by videoconference
before the Enlarged Board of Appeal
of
28 May 2021**

Composition of the Enlarged Board of Appeal

Chairman: F. Blumer
Members: W. van der Eijk
T. Bokor
R. Arnold
E. Chatzikos
G. Eliasson
A. Ritzka

Minute writer: N. Michaleczek

Time of commencement: 09:03 hrs

Time of conclusion: 14:55 hrs

Non-public session: from 09:15 hrs to 13:00 hrs

Present on behalf of Andrew AG (respondent and patent proprietor): no one,
as announced with a letter dated 26 April 2021.

Present on behalf of Rohde & Schwarz GmbH & Co KG (appellant and opponent): Mr S. Tatzel, Mr O. Hassa and Mr T. Kimpfbeck, professional representatives, identified respectively by EPO ID cards.

Present on behalf of the President of the European Patent Office (EPO): Mr M. Z. Ficsor, Ms H. Pihlajamaa and Mr T. Imscher.

The Chairman declared the public oral proceedings open.

He indicated further that, in view of the current situation and the fact that party representatives and external members of the Enlarged Board were likely to be affected by travel restrictions, the oral proceedings had been arranged as a videoconference, and that the public as well as the employees of the European Patent Office had the opportunity to follow the proceedings by livestream.

The Chairman then stated the subject of the proceedings and briefly summarised the facts as they appeared from the file. Reference was made, in particular, to the letter dated 24 May 2021 in which the appellant filed four objections against the internal members of the Enlarged Board of Appeal for reasons of suspected partiality and of personal interest, as well as ten procedural requests, numbered as 1 to 11 (there was no request 10).

As regards the admissibility of the new objections against the members of the Enlarged Board in the appellant's letter of 24 May 2021, the Chairman declared that these objections under Article 24 EPC, together with the corresponding procedural requests, had to be discussed in a non-public session with the appellant.

The public oral proceedings were therefore interrupted by the Chairman at 09:15 hrs.

The Enlarged Board, together with the representatives of the appellant, retired to a separate virtual room.

The public oral proceedings were resumed at 13:03 hrs.

Referring to the appellant's letter of 24 May 2021, the Chairman announced that the objections 1 to 4 raised under Article 24(3) EPC were rejected as inadmissible.

As regards the procedural requests, the Chairman announced that:

- Request 1 had been rejected by the order of 27 May 2021.
- Request 2 had been accepted.
- Requests 3 to 6 for information were refused.



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- Requests 7 and 8 for changing the composition of the Enlarged Board were refused.
- Request 9 was moot because of the refusal of requests 3 to 6.
- Request 10 did not exist.
- Request 11 was moot because requests 7 and 8 had been refused.

The Chairman then indicated that the appellant had raised a new issue during the non-public session which needed to be considered during the public session of the oral proceedings. He gave the floor to the appellant with regard to this new issue.

The appellant referred to the Communication from the Registry of the Enlarged Board of Appeal dated 21 May 2021 to which were annexed, *inter alia*, the comments of the President of the EPO dated 27 April 2021 in paper copy.

The appellant stated that this communication had been received on 26 May 2021, i.e. two days before the oral proceedings.

The appellant thus claimed not to have had sufficient time to study and to analyse the comments of the President of the EPO and to submit their observations on the President's comments and the complex legal issues involved, as provided for by Article 9 of the Rules of Procedure of the Enlarged Board of Appeal.

The appellant requested therefore the postponement of the oral proceedings in order to be able to provide their observations in writing.

They indicated further that this new request for postponement was submitted in order to ensure that their right to be heard was not infringed.

After a short interruption of the oral proceedings, the Chairman invited the representatives of the President of the EPO to present their comments on the new issue raised by the appellant and on the request for postponement of the oral proceedings.

The representatives of the President of the EPO and of the appellant addressed the Enlarged Board and answered questions put to them by the Enlarged Board.

Asked by the Chairman, the appellant's representatives stated that they would need one month to submit their written observations on the comments of the President of the EPO dated 27 April 2021, and that they would accept to be summoned to new oral proceedings within a shorter period than the two-month time limit specified in Rule 115 (1) EPC.

After a last deliberation, the Chairman stated the Enlarged Board had understood that the response to the EPO President's comments would be filed by the appellant by 25 June 2021.



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As there were no further remarks from the appellant, the Chairman announced that oral proceedings would continue in the first week of July and that new summons would be issued in this respect.

He then closed the oral proceedings.

The Minute Writer:

The Chairman:

N. Michaleczek

F. Blumer

Minutes electronically authenticated

