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**Datasheet for the decision
of 11 February 2016**

Case Number: G 2302/15

Language of the proceedings: EN

Petitioner:

Administrative Council of the European Patent Organisation

Respondent:

...

Headword:

Request for a proposal of removal from office

Relevant legal provisions:

EPC Art. 23(1)
RPEBA Art. 12a(10), 18(3)

Keyword:

"Case terminated by the withdrawal of the request from the Administrative Council for a proposal that a member of the boards of appeal be removed from office under Article 23(1) EPC"

"Reimbursement of all the respondent's procedural costs proposed"

"Publication (yes)"

Decisions cited:

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Catchword:

-



Case Number: Art. 23 2/15

D E C I S I O N
of 11 February 2016

Petitioner: Administrative Council of the
European Patent Organisation
Bob-van-Benthem-Platz 1
D-80469 Munich (DE)

Representatives: ...

Respondent: ...

Representative: ...

Composition of the Board:

Chairman: M.-B. Tardo-Dino
Members: K. Klett
A. Dimitrova
E. Dufrasne
R. Moufang
U. Oswald
H. Meinders

Summary of Facts and Submissions

I. These proceedings concern the request of 26 October 2015 (hereinafter: AC request) made on behalf of the Administrative Council of the European Patent Organisation (hereinafter: petitioner) by its Chairman for a proposal from the Enlarged Board of Appeal that the respondent be removed from office as a member of the boards of appeal, in accordance with Article 23(1), first sentence, EPC and Article 12a of the Rules of Procedure of the Enlarged Board of Appeal (RPEBA).

II. In the AC request, the Chairman referred to the Council's decision of 15 October 2015 (CA/D 14/15), enclosed along with the request, which specified that the facts, arguments and evidence to be examined by the Enlarged Board for the purpose of this new request were essentially contained in the opinion of the Disciplinary Committee (hereinafter: DC), a copy of which was re-submitted together with all annexes.

The enclosed AC decision referred to the facts "established by the DC as proven" and to facts "assessed" by the DC.

The request also stated that the representatives of the AC remained at "the Board's disposal should any further information be required including in view of the Board's position on the inadmissibility of the previous request, which [had] to date [been] unknown".

III. The request was registered by the Enlarged Board under the reference Art. 23 2/15. The composition of the

Enlarged Board was laid down by order of 17 November 2015.

- IV. The decision of the Enlarged Board dated 17 September 2015 in the earlier case Art. 23 1/15 was notified in writing to the parties on 16 November 2015.
- V. In a communication of 18 November 2015 the Enlarged Board asked the petitioner whether, after having been notified of the full reasons for decision Art. 23 1/15, it intended to reconsider the request of 26 October 2015.
- VI. On 11 January 2016 the Enlarged Board received a letter with the heading "*Case Art. 23 1 2/15 before the Enlarged Board of Appeal. Submissions by the AC*". In this letter it was explained that the petitioner, after being informed of the Enlarged Board's decision on its first request (case Art. 23 1/15), had decided to submit a new request for a proposal from the Enlarged Board, this being the decision notified by the Chairman of the Administrative Council to the Enlarged Board on 26 October 2015; secondly, it was stated that "with the present request" (of 11 January 2016) "*only those allegations found proven by the DC and meriting the sanction of dismissal*" [are] brought before the Enlarged Board".

The composition of the Enlarged Board had to be changed by order of 12 January 2016, due to pre-existing commitments of one of its members.

- VII. A summons to oral proceedings scheduled for 11 and 12 February 2016 was issued on 13 January 2016.

- VIII. On 14 January 2016, the Enlarged Board sent a communication to the petitioner to ask it to clarify the status of the request(s) on file.
- IX. The petitioner answered by letter of 27 January 2016 indicating that the submission of 11 January 2016 contained the request of the AC to the Enlarged Board that it make a proposal for the removal from office of the respondent. It added that its previous letter of 26 October 2015 should not be handled as a request pursuant to Article 23(1) EPC and Article 12a RPEBA, and that, should the Enlarged Board consider otherwise, said letter of 26 October 2015 was therewith withdrawn.
- X. The respondent replied by letters of 27 January and 1 February 2016.
- XI. Oral proceedings took place on 11 February 2016. During the oral proceedings the representatives of the petitioner declared that the request of 26 October 2015 was withdrawn.
- XII. The respondent took note of the withdrawal and requested reimbursement of all costs incurred regarding these proceedings. He contended that the submissions of 11 January and 27 January 2016 should not be considered as a new request. He also requested publication of the decision, and furthermore that the decision in case Art. 23 1/15, which was available on the EPO website for only one day, before being removed, be made available to the public once again.

Reasons for the decision

1. *The procedural situation*

1.1 It is clear from the wording of the letter of 26 October 2015 that the petitioner thereby intended to file a request under Art. 23(1) EPC and Article 12a RPEBA. The withdrawal of this request was confirmed by its representatives during the oral proceedings. Therefore, in accordance with the principle of party disposition, this withdrawal terminates case Art. 23 2/15.

1.2 As to the submissions of 11 January and of 27 January 2016, which the petitioner considered a new request, these will be registered under a new reference.

The new composition of the Enlarged Board for dealing with these submissions will be set up in compliance with Article 10 of the Business Distribution Scheme of the Enlarged Board, account being duly taken of the availability of the members.

At the time of the oral proceedings on 11 February 2016, it was not possible to appoint a composition because one of the external members was no longer available for consideration of the new case, due to other commitments.

2. *Request for reimbursement of costs*

2.1 The representatives of the petitioner referred to Article 12a(10) RPEBA and stated that they would leave it to the Board to decide on this matter.

2.2 Pursuant to this article the Enlarged Board may on request propose the reimbursement of some or all costs incurred in the proceedings by the respondent if the request to make a proposal for their removal from office has been rejected.

2.3 The withdrawal of the request in case Art. 23 2/15 was clarified only during the oral proceedings. Prior to that, the respondent could not be sure of the way in which the proceedings would continue in view of the latest submissions of 11 and 27 January 2016. Consequently, he had to prepare his defence in the light of all the submissions on file; that caused him to incur costs which turned out to be unnecessary as a result of the withdrawal; therefore the reimbursement is to be proposed.

3. *Request for publication*

3.1 The respondent contended that public declarations have been made in the press that are detrimental to him. In order to offset that, he requested the publication of the present decision and re-publication of the decision in case Art. 23 1/15.

3.2 According to Art. 18(3) RPEBA, the final decision of the Enlarged Board of Appeal in proceedings under Article 23(1), first sentence, EPC, may be published, due regard being taken of the confidentiality of the proceedings.

3.3 In the present case the decision is final in the sense that it terminates case Art. 23 2/15 without a proposal being made by the Enlarged Board on the basis of the

request introducing the case, albeit for non-substantive reasons. This termination of the present case is not altered by the fact that there will be new proceedings on the basis of the submissions of 11 and 27 January 2016, which amount to a new case independent of the present case now terminated.

The decision will be published, account being taken of confidentiality requirements.

- 3.4 The respondent requested re-publication of the decision in case Art. 23 1/15, which was removed from public access shortly after being published.

The Enlarged Board, in its present composition, cannot decide on the re-publication of the decision of 17 September 2015. However, it will refer the issue of re-publication of that decision to the Chairman of the Enlarged Board in its composition for the decision issued on 17 September 2015.

Order

For these reasons it is decided that:

1. Case Art. 23 2/15 is terminated with the withdrawal of the request of 26 October 2015.
2. Reimbursement of all costs incurred by the respondent in the present proceedings before the Enlarged Board of Appeal is proposed.
3. The decision in case Art. 23 2/15 is to be published.

The Registrar:

The Chairman:

W. Crasborn

M.-B. Tardo-Dino