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DECISIONS OF THE ENLARGED BOARD OF APPEAL

Decision of the Enlarged Board of Appeal dated 18 February 2002

G 3/99

(Language of the proceedings)

Composition of the board:

Chairman: P. Messerli

Members: J.-C. Saisset

C. Andries

G. Davies

R. Teschemacher

E. Turrini

H. P. walter

**Patent proprietor/Respondent: Howard Florey Institute of Experimental
Physiology and Medicine**

Opponent/Appellant: Aglietta, Amendola, et al.

Opponent/Party as of right: Paul Lannoye

Headword: Admissibility of joint opposition or joint appeal/HOWARD FLOREY

Article: 58, 99, 99(1), 104, 107, 110(1), 112(1)(a), 133, 133(4), 134 EPC

Rule: 1, 26(2)(c), 36(3), 55, 55(a), 56(2), 60(2), 66(1), 100, 100(1) EPC

**Keyword: "Admissibility - Fee for opposition - persons acting in common in
filing notice of opposition - common opposition - joint opposition" -**

"Admissibility - Fee for appeal - persons acting in common in filing notice of appeal - common appeal - joint appeal" - "Common representative"

Headnote

I. An opposition filed in common by two or more persons, which otherwise meets the requirements of Article 99 EPC and Rules 1 and 55 EPC, is admissible on payment of only one opposition fee.

II. If the opposing party consists of a plurality of persons, an appeal must be filed by the common representative under Rule 100 EPC. Where the appeal is filed by a non-entitled person, the Board of Appeal shall consider it not to be duly signed and consequently invite the common representative to sign it within a given time limit. The non-entitled person who filed the appeal shall be informed of this invitation. If the previous common representative is no longer participating in the proceedings, a new common representative shall be determined pursuant to Rule 100 EPC.

III. In order to safeguard the rights of the patent proprietor and in the interests of procedural efficiency, it has to be clear throughout the procedure who belongs to the group of common opponents or common appellants. If either a common opponent or appellant (including the common representative) intends to withdraw from the proceedings, the EPO shall be notified accordingly by the common representative or by a new common representative determined under Rule 100(1) EPC in order for the withdrawal to take effect.

Summary of facts and submissions

I. In its decision T 272/95 dated 15 April 1999 (OJ EPO 1999, 590), Technical Board of Appeal 3.3.4 referred the following questions to the Enlarged Board of Appeal pursuant to Article 112(1)(a) EPC:

(1) Is an opposition admissible which otherwise meets the requirements of Article 99 EPC and Rule 55 EPC if it is filed jointly by two or more persons and only one opposition fee is paid?

(2) If the answer to question 1 is in the affirmative and a common representative was named under Rule 100(1) EPC in the notice of opposition, is an appeal valid even if it is not filed by this person?

(3) If the answers to questions 1 and 2 are in the affirmative, which other requirements, if any, have to be met by a joint opposition or a joint appeal in order to safeguard the rights of the patent proprietor?

II. In the referring decision, the Board stated that the answers to these questions are required to decide on the objections raised by the respondent as regards the admissibility of the opposition and of the subsequent appeal T 272/95.

III. The facts leading to the present referral may be summarised as follows:

(1) As regards the opposition:

(a) A professional representative within the meaning of Article 134 EPC filed in the same letter two separate oppositions on 10 January 1992, paying simultaneously two opposition fees. The representative explained that he was not sure whether or not the first opposition was admissible under Article 99(1) EPC. It was filed "Namens und im Auftrag der Fraktion der Grünen im Europäischen Parlament [hereafter: "Fraktion der Grünen"], nämlich der Abgeordneten" followed by a list of 26 Members of the European Parliament mentioned by name. The list included Mrs Aglietta, the first named, and Mr Paul Lannoye, Chairman of the "Fraktion der Grünen", who was appointed as common representative (i.e. in total a group of 27 natural persons). For this reason, the professional representative filed

simultaneously a second opposition on behalf of Mr Paul Lannoye alone, indicating that the two oppositions would be conducted in an identical manner.

(b) On 11 November 1992, the formalities officer sent a communication pointing out that:

- it was doubtful that the group "Fraktion der Grünen" was a legal person or could be considered to be a body equivalent to a legal person;

- however, the first opposition could be considered as filed by a plurality of individual persons acting in common under Rule 100(1), last sentence, EPC, provided that the professional representative was authorised to represent each of the individual persons in question;

- the second opposition as such raised no problem; however, if the first opposition was to be considered as a "common opposition", the Chairman of the "Fraktion der Grünen" could be party to the same proceedings only once.

The professional representative was invited to clarify whether the Chairman of the "Fraktion der Grünen" maintained his individual opposition, in which case he would be deleted from the list of the opponents in common in order to make it clear that two different oppositions had been filed, with the possibility to be represented by the same professional representative and to act in concert with the opponents in common; or whether he preferred to participate in the "common opposition", thus acting with the other common opponents; in such case his individual opposition would become redundant and consequently would be struck out.

It was further stated in the communication that, regardless of the course of action to be adopted in the proceedings, there was no ground for refunding one of the opposition fees paid.

(c) On 21 January 1993, the professional representative replied stating his preference for the first alternative. Thus, he decided to maintain two separate oppositions: the first opposition (hereafter: opposition 01) being the opposition filed in common by the members of the "Fraktion der Grünen", as they were individually named in the notice of opposition, but without Mr Lannoye, Chairman of the "Fraktion der Grünen", i.e. 26 persons in total (hereafter: common opponents 01); and the second opposition (hereafter opposition 02) being the opposition filed in the name of the Chairman of the "Fraktion der Grünen" (hereafter: opponent 02).

(d) On 3 May 1993, the professional representative filed two authorisations, one for each of the two oppositions: the first authorising him to represent 18 of the 26 persons acting in common in the opposition 01 (one of the persons who signed this authorisation was Mrs Aglietta, who was the first person named in the list of joint opponents); the second authorising him to represent Mr Lannoye, Chairman of the "Fraktion der Grünen", in opposition 02 filed in the name of the latter.

(e) The patentee, in its statement dated 10 November 1993, as regards the admissibility of the two oppositions, simply submitted that, if the opposition of the group was intended to be filed in the name of a group of individuals, this should have been done originally, within the time limit for filing an opposition.

(f) In its decision taken at the end of the oral proceedings held on 8 December 1994, the opposition division found that the two oppositions were admissible since they fulfilled all the requirements of Article 99(1) EPC and of Rule 55 EPC. As regards opposition 01, the opposition division stated that, since the names of the individual members of the "Fraktion der Grünen" were listed in the notice of opposition, there was no objection to considering this opposition as having been filed in common by the group of individuals named in the notice of opposition. The opposition division considered it was immaterial in this respect whether all the listed individuals were still members or not of the "Fraktion der Grünen" and that this issue was to be regarded as academic since the admissibility of the individual opposition by Mr Lannoye,

Chairman of the "Fraktion", i.e. opposition 02, was not in doubt. The opposition was rejected on grounds connected to the substance of the case.

(g) In a letter dated 12 December 1994, received at the EPO on 14 December, i.e. after the decision had been announced orally at the end of the oral proceedings held on 8 December, but before the despatch of the written reasons of the decision of the opposition division to the parties on 18 January 1995, the professional representative announced that he relinquished his authorisation as regards opposition 01 and that future correspondence should be sent to the "Greens in the European Parliament for the attention of Mrs Linda Bullard".

(2) As regards the appeal:

(a) By fax received in the EPO on 28 March 1995, Mrs L. Bullard filed a notice of appeal signed by herself against the decision of the opposition division on behalf of five Members of the European Parliament, all of whom had been mentioned in the list of common opponents in the opposition procedure. The first person named on the list of these five persons was Mrs Aglietta, who had also been the first named on the list of joint opponents. Mrs L. Bullard acknowledged that the written reasons for the decision of the opposition division had been notified to "Aglietta, Amendola et. al., Fraktion der Grünen", and indicated that the EPO would be informed in due course of the situation regarding legal representation. The first person named as common appellant in the notice of appeal was the same as the first person named as common opponent in the notice of opposition, i.e. Mrs Aglietta.

(b) In a communication under Rule 36(3) EPC, dated 4 April 1995, the appellant was informed by a formalities officer of Directorate-General 2 of the EPO that the notice of appeal had been signed by an unauthorised person and was invited to file a copy duly signed by an authorised person within two months. Failure to do so would result in the document being deemed not to have been received.

(c) By letter dated 12 April 1995 received at the EPO on 22 April, Mrs L. Bullard sent an authorisation, dated 28 March 1995 and signed by the five persons named in the notice of appeal, investing in her the power to act on their behalf until such a time as a legal representative had been nominated.

(d) On 3 May 1995, the referring Board sent a communication questioning whether there was a valid appeal and the identity of the appellant because the notice of appeal had been signed neither by one of the appellants named therein, nor apparently by a person entitled to act under one of the provisions of Article 134 EPC.

(e) By a fax received in the EPO on 26 May 1995, a new professional representative was appointed on a form dated 24 May 1995 by the five persons named in the notice of appeal. There was no appointment of a professional representative made by the "Fraktion der Grünen", as such.

(f) In a reply to the communication of 3 May 1995, received in the EPO on 13 July 1995, the new professional representative stated that the appellants in this case were the group of original opponents acting in common with the exception of one of them who had died in the meantime. (This person was one of the five persons listed in the notice of appeal and who had signed the authorisation for Mrs L. Bullard and for the new representative before his death). Enclosed with this response were:

- copies of the notice of appeal received in the EPO on 28 March 1995 countersigned by all these persons, including Mrs Aglietta, who was the first person named in the list of joint opponents;

- authorisations signed by each of them, including Mrs Aglietta, some dated 24 April 1995, some dated between 22 and 30 June 1995 and others undated, in favour of the new representative;

- a letter from opponent 02 dated 10 July 1995 informing the EPO that he intended to continue as a party as of right to the appeal pursuant to Article 107 EPC and to represent himself.

(g) As indicated *supra* in points I and II, Technical Board of Appeal 3.3.4 decided to refer the case to the Enlarged Board of Appeal.

IV. The facts in the present referral may be summarised as follows:

(1) By fax received in the EPO on 20 September 1999, the representative of the patentee commented on the referred questions as follows:

- as to question 1, if the opposition 01 is to be regarded as admissible, the opposition and any subsequent appeal can only proceed in the name of the originally named common opponents;

- as to question 2, the entitlement to the right of an opponent in a "common opposition", when a single fee has been paid, belongs to the group as a whole and does not belong to any one member of the group; there are no legal reasons (unless there has been a transfer of rights) justifying the filing of an appeal other than by the common representative in accordance with Rule 100 EPC;

- as to question 3, the group of common opponents must remain the same on appeal and withdrawal or termination of the interest of any one member of the group must have the effect of withdrawing or terminating the interest of the group as a whole.

(2) On 14 April 2000, a first communication was sent to all persons concerned and put publicly on record in the present proceedings in order to provide an opportunity for comment on the legal issues raised by the referred questions. This was done without prejudice either to any final ruling which the Enlarged Board might make on the status of these persons in the opposition or in the appeal procedure or to the

question whether different persons having filed an opposition in common may act individually.

(3) In a second communication dated 28 August 2001, these persons were invited to comment on the provisional opinion of the Enlarged Board of Appeal before 9 November 2001.

(4) Only the patentee replied, stating that it had no comments on the communication.

(5) No request for oral proceedings before the Enlarged Board of Appeal was filed.

Reasons for the decision

Admissibility of the referral

1. The points of law to be decided were referred to the Enlarged Board of Appeal in accordance with Article 112(1)(a) EPC.

2. The referring Board has accurately stated that the admissibility of the opposition and the subsequent appeal is dependent upon the answers to the referred questions and argued why these questions relate to important points of law (see points 1 and 2 of the reasons for the decision).

3. Although the terms "common opposition" or "joint opposition" are not explicitly mentioned in the EPC, they correspond exactly to the situation dealt with in Rule 100(1), last sentence, EPC, which relates to "third parties acting in common in filing notice of opposition", "third parties" meaning simply a plurality of persons. In the present decision these persons are called "common opponents", persons acting in common in the subsequent appeal are called "common appellants" and the generic term "joint members" is used to refer without distinction to common opponents or to common appellants. Cases relating to common opponents paying only one

opposition fee are regularly encountered and dealt with before the opposition division. This is not only true for the "Onco mouse" case cited by the referring Board (opposition case concerning application No. 85 304 440.7, not No. 85 030 449.0), but also for several oppositions filed in common over many years by, for instance, Unilever PLC and Unilever NV, which, notwithstanding the similarity of their company names, are two different legal persons. These oppositions have been considered to be admissible on the basis of Rule 100(1) EPC. However, in decision T 543/99 (not published in the OJ EPO), it was decided that these companies, i.e. Unilever PLC and Unilever NV considered as "related companies", should each have paid an opposition fee when they filed an opposition. This shows that a clarification of the law is required.

4. As already stated in decision G 8/92 of the Enlarged Board of Appeal (not published in the OJ EPO), even if the Enlarged Board considers as a matter of principle that, for a referral to be admissible, the appeal has to be admissible, this does not apply if the referral itself concerns the admissibility of the appeal. Without this exception, in cases like the present one, the Boards would be denied the opportunity to refer questions on important points of law concerning the admissibility of an appeal. This would contradict Article 112(1)(a) EPC where no restrictions of that kind appear.

5. For these reasons, the referral is admissible.

Admissibility of an opposition filed jointly by two or more persons, if only one opposition fee is paid

6. In spite of the fact that two separate oppositions were simultaneously filed in the notice of opposition, it is clear from the declarations made at that time by the professional representative that his unambiguous intention was to ensure that at least one valid opposition was filed. He emphasised that the two oppositions would anyway be conducted in an identical manner and explained that the filing of two

separate oppositions and the payment of two opposition fees was done only to ensure that at least one of them would be admissible.

7. The admissibility of the second opposition, i.e. opposition 02, has never been seriously challenged as it clearly fulfilled all the requirements of the EPC. Thus, as regards the existence of a valid opposition procedure, the admissibility of opposition 01 might appear *prima facie* of no consequence. However, only opponent 01 filed an appeal against the decision of the opposition division so that the admissibility of the sole appeal depends on the admissibility of opposition 01.

8. As regards opposition 01, as correctly pointed out by the formalities officer in the communication dated 11 November 1992, there is a doubt in the notice of opposition as regards the interpretation to be given to the wording: "Namens und im Auftrag der Fraktion der Grünen..., nämlich der Abgeordneten...". Does that mean that opposition 01 was filed by a professional representative under Articles 133 and 134 EPC on behalf of the "Fraktion der Grünen", i.e. on behalf of a legal person or a body equivalent to a legal person, with the consequence that opposition 01 was to be considered as filed by only one opponent, namely the "Fraktion der Grünen", represented by a professional representative? Alternatively, does it mean that it was filed on behalf of the natural persons listed by name in the notice of opposition with the consequence that opposition 01 was to be considered as an opposition filed in common under Rule 100(1) EPC by the natural persons listed by name and represented by a common representative determined under Rule 100(1) EPC?

9. Article 99 EPC gives any person the right to file an opposition. According to the case law of the Boards of Appeal, there are several decisions dealing with the interpretation to be given to the wording "any person". In decision T 635/88, OJ EPO 1993, 608, point 2 of the reasons, for instance, the Board clearly stated that "any person" in Article 99 EPC is to be construed in line with Article 58 EPC as meaning: (a) any natural person, (b) any legal person or (c) any body equivalent to a legal person by virtue of the law governing it. The legal personality of a named entity

under the EPC is decided on the same basis as before national courts, namely the capacity to sue or to be sued in its own name and on its own account. The fact that "any person" has to be interpreted in line with Article 58 EPC results in particular from Rule 55(a) EPC which refers directly to Rule 26(2)(c) EPC which lists the same entities. Thus, as regards an opposition filed in common by a plurality of persons, each of the common opponents must be either a natural person, or a legal person, or a body equivalent to a legal person by virtue of the law governing it, or a combination thereof.

10. It follows from Rule 100(1) EPC that several persons acting in common in filing a notice of opposition are filing only one opposition and from Article 99(1), last sentence, EPC, that only one opposition fee must be paid in due time in order for the opposition to be deemed to have been filed. The payment of the opposition fee is linked to the filing of one opposition and not to the number of persons who file the opposition. An opposition filed in common, apart from the fact that it is filed by more than one person, is as much a single opposition as an opposition filed by only one person. Consequently, the common opponents are obliged to act in common through their duly determined common representative. There is no procedural difference with respect to an opposition filed by a single natural person, by a single legal person or by a single body equivalent to a legal person by virtue of the law governing it; they have to fulfil the same requirements and to pay a single opposition fee. There is no uncertainty on this point because Article 99(1), last sentence, EPC, makes it clear that only one opposition fee is due for a single opposition.

11. Where, as in the referred case, it is doubtful whether the opposition is filed on behalf of a body which enjoys legal personality in its own right, or on behalf of several natural persons acting in common, the opposition division shall invite the opponents to establish that the body is a legal person or an equivalent thereto. If this is not established, the opposition is to be considered as having been filed on behalf of the several natural persons as common opponents.

12. According to the case law of the Boards of Appeal (see T 25/85, OJ EPO 1986, 81, point 6 of the reasons; G 3/97 and G 4/97, OJ EPO 1999, 245, 270, point 2.1 of the reasons), the opponent has to be determined before the expiry of the time limit for opposition, subject to any deficiency being remedied under Rule 56(2) EPC. Thus, a person who was not originally named as a common opponent cannot later join the opposition or the subsequent appeal procedure.

13. It may arise that during the opposition one (or more) of the common opponents decides to withdraw from the proceedings. According to Rule 60(2), first sentence, EPC, the opposition proceedings may be continued by the EPO of its own motion in the event of the death or legal incapacity of an opponent. The Enlarged Board takes the view that it is also justified to continue the opposition proceedings if one (or more) of the common opponents decides to withdraw from the opposition proceedings, since otherwise a single common opponent, not being the common representative, could of its own motion end the opposition. The remaining common opponents remain party to the proceedings (see *infra* point 15, second sentence).

14. In an opposition filed in common, there must in all cases be a common representative (Article 133(4) EPC and Rule 100 EPC) and only that common representative is entitled to act in the opposition proceedings on behalf of all the common opponents taken as a whole. Consequently, an individual common opponent not being the common representative, or a subgroup of the group who filed the opposition in common, but without their common representative, is not allowed to act or intervene on his own or on behalf of one or more or all of the other individuals (cf. however point 20). Thus, only the common representative is entitled to sign the filed documents (Rule 100 EPC and Rule 36(3) EPC), the signature of other individuals not being required.

15. As regards the proceedings before the opposition division, an opposition filed in common is to be dealt with as an opposition filed by only one party and all the procedural acts taken by the opposition division in the course of opposition

proceedings filed in common are applicable to each and every common opponent jointly. The group of common opponents is to be considered as a whole, i.e. as a single party represented by a common representative. Acts can only be performed by the common representative on behalf of the group of common opponents. However, in the interest of procedural efficiency, the fact that in the course of the opposition filed in common one (or more) of the common opponents intends to withdraw from the proceedings for whatever reason, has to be notified in due time by the common representative to the EPO and to the other parties. This notification should make clear that this or these person(s) cease to belong to the group of common opponents and consequently are no longer entitled to participate in the proceedings, although still remaining subject to any decision yet to be taken under Article 104 EPC.

Admissibility of an appeal filed by a person who is not the common representative determined under Rule 100(1) EPC

16. Question 2 relates to the validity of an appeal filed by a person who is not the common representative named under Rule 100(1) EPC in the notice of opposition. The Enlarged Board of Appeal considers in this respect that the relevant factual situation for assessing the admissibility of an appeal is the situation at the time when the appeal is filed.

17. The rules of the EPC relating to the admissibility of an appeal require clarifying as regards persons who filed the opposition in common. As stated *supra* these persons must act in common through their duly determined common representative throughout the procedure. Thus, former common opponents intending to file an appeal can only do so jointly with all other remaining common opponents through their duly determined common representative. For the same reasons applying to an opposition filed in common, an appeal filed in common is to be dealt with by the Board of Appeal as a single appeal filed by a single party with the consequence that only one appeal fee is to be paid.

18. As for all appeals, an appeal filed in common by a plurality of persons must be filed by the authorised person. Rule 100(1) EPC, in conjunction with Articles 133 and 134 EPC, defines who is entitled to act before the opposition division and Rule 66(1) EPC states that the same applies before the Boards of Appeal. Thus, as a matter of principle (see supra point 14), only the existing group of common opponents as a whole, represented by their common representative, is entitled to file an appeal in common. The Board of Appeal, which is the only organ entitled to examine on behalf of whom the appeal was filed or the validity of the authorisation of the person who filed the appeal, must send, as is common practice before the instances of the EPO, to the common representative who was acting in the opposition procedure a communication giving him the opportunity to fulfil the necessary requirements of the EPC within a time limit laid down in the communication and inform the person(s) who signed the notice of appeal thereof if that person was not the common representative. If the deficiencies are not remedied by the common representative determined under Rule 100(1) EPC within the prescribed time limit, the notice of appeal shall be deemed not to have been filed. Whereas the formalities officer acting for the opposition division may make the parties to the opposition procedure aware of a missing or deficient signature, he is not competent to issue a communication under Rule 36(3) EPC, since the admissibility of the appeal is at stake (Article 110(1) EPC).

19. As stated supra in points 12 and 15, it may occur that, in the course of the opposition filed in common, one (or more) of the common opponents intends to withdraw from the proceedings for whatever reason. This may also occur at any stage of the subsequent procedure, e.g. when filing the appeal or in the course of the appeal procedure. In order to determine who remains joint member to the subsequent proceedings and who ceases to belong to the group of joint members, notification must be made in due time to the EPO by the common representative. As already stated, persons who cease to belong to the group of joint members are no longer entitled to participate in the proceedings, although still remaining subject to any decision yet to be taken under Article 104 EPC.

20. At any stage of the procedure, be it the opposition or the appeal procedure, it may also happen that the joint member who is the common representative intends to withdraw from being a joint member, i.e. to withdraw from the proceedings. In such circumstances, he must notify his decision to the EPO with the procedural consequence that, for the determination of a new common representative, the provisions of Rule 100(1) EPC have to be applied for the opposition procedure by virtue of the last sentence of this Rule and, for the subsequent appeal procedure, by virtue of Rule 66(1) EPC. It could also occur that the common representative ceases to act in the procedure without the EPO being informed thereof. In both cases, the other joint members must take the appropriate action to continue the procedure in due time and to inform the EPO of the new common representative if determined. However, there is no practical need to acknowledge the validity of procedural acts of a joint member who is not the common representative. Since a procedural act performed by a non-entitled person is treated by the EPO in the same way as a missing signature (T 665/89 cited in "Case law of the Boards of Appeal of the EPO", 3d ed. 1998, VI.K.5 last para. and the Guidelines for Examination in the EPO, A-IX, 3.1, last para.), each joint member or any other person acting on his behalf can perform such an act to avoid missing a time limit, provided the deficiency is remedied within a further time limit set by the Board in the communication under Rule 36 (3) EPC notified to the common representative and sent for information to the non-entitled person who performed the act. The deficiency can be remedied if the procedural act is signed by the common representative. If, for whatever reason, this person ceases to be a joint member, the signature must be given by a new common representative determined pursuant to Rule 100 EPC. The Enlarged Board of Appeal is aware that some additional questions may arise in cases where the common representative declares that he wishes to continue to be the common representative, but refuses to sign the procedural act, or where one or more of the joint members are not domiciled in one of the Contracting States of the EPC. However, these situations are not present *in casu* and the Enlarged Board therefore sees no need to address them in this decision.

21. To summarise, throughout the whole procedure, be it the opposition procedure or the appeal procedure, the joint members are obliged to act in common through their duly determined common representative.

Order

For these reasons, it is decided that the questions of law referred by Technical Board of Appeal 3.3.4 in decision T272/95 are answered as follows:

1. An opposition filed in common by two or more persons, which otherwise meets the requirements of Article 99 EPC and Rules 1 and 55 EPC, is admissible on payment of only one opposition fee.

2. If the opposing party consists of a plurality of persons, an appeal must be filed by the common representative under Rule 100 EPC. Where the appeal is filed by a non-entitled person, the Board of Appeal shall consider it not to be duly signed and consequently invite the common representative to sign it within a given time limit. The non-entitled person who filed the appeal shall be informed of this invitation. If the previous common representative is no longer participating in the proceedings, a new common representative shall be determined pursuant to Rule 100 EPC.

3. In order to safeguard the rights of the patent proprietor and in the interests of procedural efficiency, it has to be clear throughout the procedure who belongs to the group of common opponents or common appellants. If either a common opponent or appellant (including the common representative) intends to withdraw from the proceedings, the EPO shall be notified accordingly by the common representative or by a new common representative determined under Rule 100(1) EPC in order for the withdrawal to take effect.