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**Datasheet for the decision  
of 18 June 2025**

**Case Number:** R 0006/21

**Appeal Number:** T 1897/16 - 3.4.03

**Application Number:** 09405031.7

**Publication Number:** 2219205

**IPC:** H01J37/32, H01J37/34

**Language of the proceedings:** EN

**Title of invention:**

A power supply device for plasma processing

**Patent Proprietor:**

Solvix GmbH

**Opponent:**

TRUMPF Huettinger Sp. z o.o.

**Headword:**

Petition for review

**Relevant legal provisions:**

EPC Art. 56, 112, 112a(2), 112a(2)(c), 113, 113(1), 116,  
123(2)  
EPC R. 104, 106, 109(2)(a)  
RPEBA Art. 13, 14(2)

**Keyword:**

Petition for review - clearly inadmissible or unallowable  
Fundamental violation of Article 113(1) EPC (no)

**Decisions cited:**

R 0001/08, R 0004/09, R 0013/10, R 0001/11, R 0006/11,  
R 0019/11, R 0015/12, R 0008/13, R 0016/13, R 0005/15,  
R 0007/17



**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

**Case Number:** R 0006/21

**D E C I S I O N**  
**of the Enlarged Board of Appeal**  
**of 18 June 2025**

**Petitioner:** Solvix GmbH  
(Patent Proprietor) Zone Industrielle du Vivier 22  
1690 Villaz-St-Pierre (CH)

**Representative:** Blaser, Stefan  
Ammann Patent Attorneys Ltd.  
Schwarztorstrasse 31  
P.O. Box 5135  
3001 Berne (CH)

**Other party:** TRUMPF Huettinger Sp. z o.o.  
(Opponent) Marecka St. 47  
05-220 Zielonka (PL)

**Representative:** Nitschke, Moritz  
Trumpf Hüttinger GmbH & Co. KG  
Bötzingen Straße 80  
79111 Freiburg (DE)

**Decision under review:** **Decision of the Technical Board of Appeal 3.4.03**  
**of the European Patent Office of**  
**5 February 2021.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** E. Mille  
D. Semino

## **Summary of Facts and Submissions**

- I. The petition for review concerns decision T 1897/16 of Technical Board of Appeal 3.4.03 ("board") of 5 February 2021. In this decision, the board set aside the decision under appeal and revoked the European patent No. 2 219 205.
- II. The appellant - patent proprietor ("petitioner") filed a petition for review of the above decision of the board in due time. The petition was based on the grounds that fundamental violations of Article 113 EPC (Article 112a(2)c) EPC) and other fundamental procedural defects pursuant to Rule 104 EPC allegedly occurred during the appeal proceedings. The petitioner requested
- that decision T 1897/16 be set aside and
- that the proceedings before the board be re-opened.
- III. The Enlarged Board in its composition pursuant to Rule 109(2) (a) EPC summoned the petitioner upon its request to oral proceedings and issued a communication pursuant to Article 13 and Article 14(2) RPEBA on 13 January 2025.
- IV. By letter dated 6 February 2025, the petitioner withdrew its request for oral proceedings. The oral proceedings were then cancelled and the review proceedings were continued in writing.
- V. The petitioner's case may be summarised as follows:
- The petitioner objects that the written decision regarding lack of inventive step (Article 56 EPC) was

based on reasons which have not been presented before, are contradictory and/or incomplete, that technical difficulties occurred during the videoconference and that the 4th auxiliary request was not taken into account.

*Section E. i) of the petition - Fresh case / new technical problem to be solved*

The petitioner puts forward that in the statement setting out the grounds of appeal, it took the view that Fig. 6 of D5 would not be an enabling embodiment and that therefore it could not be considered as the closest prior art but that the opponent held the opposite view in its written submissions and the board adopted the latter view in its provisional opinion dated 16 September 2020 and during the oral proceedings, as outlined in the minutes (p. 3, 4th paragraph).

The petitioner argues that the reasons in point 5.1 of the decision under review are different from what the board considered in the above provisional opinion and during the oral proceedings because it is stated in these reasons that the skilled person would realise that the above figure contained an error but would fix this error to make the embodiment working and would then use this embodiment as a starting point for the inventive step assessment. This reasoning was never discussed before according to the petitioner and consequently, the technical problem, i.e. first finding and removing an error and second to improve the resulting embodiment, would be presented for the first time to the parties with the decision. The petitioner thus takes the view that the board made a fresh case in the decision under review, on which it had no

opportunity to comment, so that its right to be heard was violated.

*Section E. ii) of the petition - New and contradictory reasoning*

The petitioner takes the view that in Reasons 5.1 (p. 19, 4th paragraph) of the decision under review, the board mentions that in the embodiments of Fig. 2 and Fig. 5 of D5, which are the most similar to that of Fig. 6, the diode D2 would block any current from pre-charged capacitor C through switch SS and the petitioner takes the view that this was neither previously reasoned by the board nor by the opponent. Therefore, the petitioner would have had no opportunity to comment on this reasoning. In addition, the latter would according to the petitioner be wrong and in contradiction to the teaching of D5, so that it could not be a motivation for the skilled person to fix any error in the embodiment of Fig. 6 of D5.

*Section E. iii) of the petition - New, contradictory and incomplete reasoning*

The petitioner argues that the opposition division considered that the differences between the device according to claim 1 of the 2nd and 3rd auxiliary requests and that according to D5 has the technical effect of feeding excess energy to a capacitor within the power supply unit and ensuring that the energy does not flow back whereas the board in Reasons 6 of the decision under review (p. 28, 2nd paragraph) would for the first time and on its own motion consider that the technical effect with regard to claim 1 of the 1st auxiliary (as well as of the 2nd and 3rd auxiliary requests according to the petitioner) was that the

current can flow only in one direction to the capacitor, without the board explaining why it held this view.

The petitioner also takes the view that it is on its own motion that the board considered that no synergistic effect resulted from the features distinguishing claim 1 of the 2nd and 3rd auxiliary requests from D5 [features (1k i) and (1k ii)], contrary with the opinion of the opposition division in its interlocutory decision (paragraph 21.11). Therefore, the petitioner is of the opinion that they had no opportunity to comment on this position of the board and that consequently, their right to be heard was violated.

*Section E. iv) of the petition - incomplete/  
contradictory reasoning*

Even though the petitioner indicates that it agrees with the board when it considers in paragraph 8 of its preliminary opinion dated 16 September 2020 and in the decision under review that claim 1 of the main request fulfils the requirements of Article 123(2) EPC, it takes the view that the board did not give any reasoning on this topic in the decision and claims that this lack of reasoning would constitute a fundamental procedural defect.

The petitioner further puts forward that if a proper reasoning had been given, it would have become immediately apparent that, contrary with the argument of the board in Reasons 6 of the decision under review (p. 28, 2nd paragraph), the current received by the transformer is a direct and not an alternating current.

The petitioner besides alleges that the decision would be incomplete in that it would fail to define the problem to be solved with regard to inventive step of claim 1 of the 1st, 2nd and 3rd auxiliary requests starting from Fig. 6 of D5, such a failure being according to the petitioner a serious defect since defining the problem is one of the fundamental steps of the problem-solution approach.

The petitioner further argues that whereas the power supply referred to in claim 1 of main request generates a direct current, according to Reasons 6 of the decision under review (p. 28, 2nd paragraph), the board would wrongly and without logical chain of reasoning consider that the current received by the transformer is an alternating current, in contradiction with the said claim 1.

*Section F of the petition - technical difficulties during the videoconference*

The petitioner recognises that it agreed with holding the oral proceedings in appeal by videoconference but puts forward that throughout these oral proceedings, there would have been technical problems, i.e. the microphone of its headset was misplaced so that it was not clear whether all members of the board understood its arguments, problems with the connection to the interpreters occurred, which it addressed during the videoconference as far as they became apparent (see minutes, p. 4, 4th paragraph to p. 5, 1st para and decision under review section XIII (h), p. 14-15 and Reasons 10 p. 32-34) but the board would not give any remedy and refrained e.g. from postponing the oral proceedings. The petitioner then takes the view that due to the technical problems the board would not have



understood or misunderstood its arguments with respect to inventive step. This according to the petitioner would be apparent in the decision under review through several (incorrect) statements that the petitioner claims not having put forward during the oral proceedings and that it puts in parallel with the (correct) statements that it claims having actually put forward during these oral proceedings (list in p. 10 and 11 of the petition).

The petitioner further identifies a breach of its right to be heard in the fact that the second videoconferencing system required for its personal communication with the patent proprietor would have hampered this communication because it had to be switched off during the discussions with the board and that during the interruptions of the oral proceedings, the bit rate for this second video system was lower than that of the main video system so that the communication of the petitioner with the patent proprietor was difficult.

The petitioner concludes from the above that the videoconference was in no way equivalent to a physical meeting and could not be considered as oral proceedings in the sense of Article 116 EPC.

Finally, the petitioner questions whether the videoconference was actually public and whether the members of the board, who were in the present case placed in different rooms, have been allowed to discuss and decide on the case by videoconference.

*Section G of the petition - Disregarding 4th auxiliary request*

The petitioner criticises that the 4th auxiliary request filed during the oral proceedings was not admitted and takes the view that its arguments put forward in sections E and F of the petition would amount to exceptional circumstances justifying the admission of the considered request. Consequently, the non-admission by the board of this request would amount to a violation of the petitioner's right to be heard.

**Reasons for the Decision**

*Admissibility of the petition*

1. The petition for review does not appear to be clearly inadmissible regarding defects related according to the petitioner on new/contradictory/incomplete reasons provided by the board in its written decision, but which did not occur in the oral proceedings or before (sections E. i), E. ii), E. iii) and E. iv) of the petition).
2. As far as these defects are concerned, the petition addresses essentially the reasoning of the decision to be reviewed. Therefore, the benefit of the doubt is to be given to the petitioner as to its possibility to raise corresponding objections during the oral proceedings regarding these defects (see R 1/11, Reasons 1.4) and the Enlarged Board accepts that these procedural defects could not have become apparent until the written reasoned decision was received, so that this objection could not have been raised during the appeal proceedings.

3. Other defects are related according to the petitioner to technical difficulties during the videoconference (section F of the petition) which appeared in the oral proceedings. Corresponding concerns were raised by the petitioner but dismissed by the board (see minutes dated 15 February 2021, paragraph bridging p. 4 and 5 and decision, paragraph bridging p. 33 and 34). Further defects are related according to the petitioner to disregarding the 4th auxiliary request (section G of the petition). Admittance of the 4th auxiliary request had been discussed during the oral proceedings and decided by the Board (see minutes dated 15 February 2021, 4th and 5th paragraph on p. 4 and decision section XIII (h), p. 14-15 and Reasons 10, p. 32-34).
4. As far as the defects put forward by the petitioner with regard to technical difficulties during the videoconference and to disregarding of 4th auxiliary request are concerned, the Enlarged Board takes the view that the clear precondition provided by the case law of the boards regarding an objection under Rule 106 EPC, namely that "The objection must be expressed by the party in such a form that the board is able to recognise immediately and without doubt that an objection under R. 106 EPC is intended" (Case Law of the Boards of Appeal, 10th edition, V.B.3.6, point 2.a)), is not met. Indeed, the board did not identify any objection as being encompassed by Rule 106 EPC, nor did the petitioner submit that any such objection was raised. In this respect the decision under review notably addresses admittance of 4th auxiliary request and the possible influence on that of the technical difficulties, but no objections under Rule 106 EPC were identified in the minutes or in the decision and consequently no reasons were given why such objections

were dismissed.

5. Regarding the defects related to technical difficulties, the petitioner argues that it became evident only in the decision that the board did not well understood its arguments with respect to inventive step, allegedly due to the said technical difficulties, because this decision would contain statements which would not have been put forward by the petitioner (see list in page 10 and 11 of the petition).
6. However, according to the minutes of the oral proceedings (i) the petitioner invoked "that the oral proceedings conducted as video-conference had - in particular at the beginning - been fraught with technical problems" (p. 4, 4th paragraph) and that (ii) "The chairman stated that the technical issues experienced at the beginning of the oral proceedings had in his view not negatively influenced the opportunity of the parties to argue their case. Also, during the discussions no complaints were made" (p. 5, 1st paragraph). It does neither appear in the minutes that this statement of the chairman was challenged by the petitioner during the oral proceedings.
7. It thus appears that technical problems only occurred at the beginning of the oral proceedings. However, the question of inventive step of the claimed invention was actually not discussed at the beginning of these oral proceedings but later on. Therefore, the petitioner's allegation according to which it only appeared in the written decision that the considered technical problems impaired the understanding by the board of its inventive step arguments does not appear plausible.

8. In addition, concerning the above-mentioned list drawn in the petition of statements which would not have been put forward by the petitioner, this allegation cannot be verified by the Enlarged Board since according to the petitioner itself, the allegedly correct statements do not appear in the decision. They therefore cannot be taken for granted according to the Enlarged Board.
9. It thus not appear that the petitioner was deprived from possibly raise an objection under Rule 106 EPC during the oral proceedings in relation with the invoked technical difficulties because their impact on the oral proceedings would have become apparent only in the written decision.
10. Consequently, the Enlarged Board considers that the petition is clearly inadmissible with regard to the defects related to technical difficulties during the videoconference and to disregarding of 4th auxiliary request.

*Allowability of the petition*

*Section E. i) of the petition - Fresh case / new technical problem to be solved*

11. The fact that the opponent would in their written statements consider that, for the reasons they then put forward, Fig. 6 of D5 taken as such (i.e. without error) would on the one hand be an enabling configuration as a first line of argument does not preclude that on the other hand as a second line of argument, they also considered that even regarding this figure as containing an error, the skilled person would have corrected this error in order to also reach such

an enabling configuration.

12. Indeed, section 3.5.1 of the opponent's letter dated 6 October 2017 reads (free translation by the Enlarged Board) "When comparing Fig. 6 with Fig. 5 of D5, the skilled person will notice that the connection point of SS should not have been connected to the cathode of D2 as shown in Fig. 6, but rather to the anode of D2. The skilled person will come to the conclusion that the creator of Fig. 6 may have made a mistake here."
13. Contrary to the petitioner's opinion, this statement would not imply that the opponent would only have argued that even with this error, the embodiment would be working as such.
14. Besides, in section XII (c) of the decision under review, the position of the opponent is summarised as follows: "The skilled person would thus have connected the diode D2 in Figure 6 with its anode instead of with its cathode to the switch SS if need be, to bring it in line with the other embodiments of D5. In the context of D5 as a whole, figure 6 thus represented an enabling embodiment and was suitable as closest prior art." This summary of the opponent's position by the board is as such not challenged by the petitioner.
15. In addition, Reasons 5.1 (paragraph bridging p. 19 and 20) of this decision reads "In the context of D5 as a whole, the skilled person would thus realize that figure 6 contained an error and that diode D2 in that figure should in fact be connected in a similar manner as in the embodiments shown in figure 2 and 5. They would thereby know that diode D2 was to be connected to switch SS with its anode side, as suggested by the

opponent".

16. It thus appears that the correction of an error in Fig. 6 of D5 by the skilled person - by connecting the diode D2 in Figure 6 with its anode instead of with its cathode to the switch SS if need be - in view of the global disclosure of this document so that the embodiment of this figure would be an enabling one and could therefore be used as the closest prior art for the inventive step assessment reflects a line of arguments of the opponent that the board followed but was not raised by it for the first time on its own motion in the decision under review. The petitioner has thus not demonstrated that the board made a fresh case in raising this line of arguments on its own motion in Reasons 5.1 of the decision under review. Therefore, the petitioner could actually comment on this opponent's position adopted by the board at least during the oral proceedings. Their right to be heard cannot therefore be regarded as having been violated.

*Section E. ii) of the petition - New and contradictory reasoning*

17. The Enlarged Board underlines that, while decisions of a board may only be based on grounds or evidence on which the parties have had an opportunity to present their comments (Article 113(1) EPC) so that a party may not be taken by surprise by the reasons for the decision referring to unknown grounds or evidence, the board must be able to draw its own conclusion from the discussion of the grounds put forward (see decisions R 8/13, Reasons 2.1).
18. Thus, the right to be heard does not go so far as to impose a legal obligation on a board to disclose in

advance to the parties how and why, based on the decisive issues under discussion - or at least those foreseeable as the core of the discussion - it will come to its conclusion. This is part of the reasoning given in the written decision (R 1/08, reasons 3.1; R 15/12, Reasons 5; R 8/13, Reasons 2.2; R 16/13, Reasons 3).

19. In the present case, as shown in the paragraph bridging p. 18 and 19 in Reasons 5.1 of the decision under review, it was indeed an argument of the petitioner that in Fig. 6 of D5, with the particular connection of diode D2, current from the current source or capacitor could pass through switch SS without being blocked by diode D2.
20. However, as indicated above regarding section E i) of the petition, contrary to the petitioner's view, the line of argument according to which the skilled person would have found an error in Fig. 6 of D5 in view of the global teaching of this document and corrected this error so that the embodiment shown in this figure was enabled and thus regarded as the closest prior for the assessment of inventive step was actually raised by the opponent (see p. 8, 2nd para. in section XII (c) of the decision under review) and followed by the board in the para. bridging p. 19 and 20 in Reasons 5.1 of the decision. In view of this, the petitioner had the opportunity to comment on this line of argument.
21. Besides, in Reasons 5.1 of the decision under review, the board puts forward (i) that "as pointed out by the opponent in their letter dated 6 October 2017 (page 3, point 2.3.4.2 and footnote 1) each part of a document has to be construed in the context of the document as a whole" (p. 19, para. 3) and concludes that (ii) "In the



context of D5 as a whole, the skilled person would thus realise that figure 6 contained an error and that diode 2 in that figure should in fact be connected in a similar manner as in the embodiment shown in figures 2 and 5" (para. bridging pages 19 and 20).

22. Based on the above, it cannot be established that the elements pointed out by the petitioner according to which in the embodiments of Fig. 2 and Fig. 5 of D5 the diode D2 would block any current from pre-charged capacitor C through switch SS were not discussed during the oral proceedings so that the petitioner would not have had the opportunity to comment on such elements.
23. In addition, even if the board had not disclosed to the parties in advance all the elements of its analysis for arriving at the decision on an issue, e.g. in the case at hand said elements pointed out by the petitioner, which in the decision under review are recited between the above elements (i) and (ii), in the light of the general principles developed in the case law as set out above, this cannot be seen as so determining in the considered decision as to amount to a violation of the petitioner's right to be heard. The analysis provided by the board in the written reasons does not appear to contain anything so surprising that the parties should have been informed about it beforehand.
24. As to the correctness of the analysis made by the board, the Enlarged Board has no competence under Article 112a EPC to examine the merits of the decision and to go into the substance of a case (R 4/09, R 13/10, R 5/15, R 7/17). Therefore, the issue whether such elements are in contradiction to the teaching of D5 as considered by the petitioner is irrelevant in the

context of the examination of the respect of its right to be heard.

*Section E. iii) of the petition - New, contradictory and incomplete reasoning*

25. Regarding the petitioner's point of view that the board in Reasons 6 of the decision under review (p. 28, 2nd para.) would for the first time and on its own motion consider that the technical effect with regard to claim 1 of the 1st auxiliary (as well as of the 2nd and 3rd auxiliary request according to the petitioner) was that the current can flow only in one direction to the capacitor without explaining why it held this view, the passage of the decision under review referred to by the opponent reads "the technical effect of the additional feature is that the current can flow only in one direction to the capacitor, as submitted by the opponent.". This submission by the opponent is besides referred to in the decision under review in its section XII. summarising the arguments of the opponent (p. 9, subsection (f), third sentence). It thus appears that the board actually followed the arguments and reasoning of the opponent on this question but did not raise such arguments on its own motion for the first time in the decision.
26. This is confirmed by sections 3.16 to 3.19 of the grounds of appeal of the opponent regarding the 2nd auxiliary request, which read (free translation by the Enlarged Board) "There are no synergistic effects. (...) two technical tasks result from the two differences:  
Re: (1k i) Storage of surplus energy in the power supply circuit so that it can be reused. Re: (1k ii) Ensuring the flow of energy in one direction only."

27. The Enlarged Board further underlines that in Reasons 10 of the decision under review (p. 33, paragraph 3), the board stated that "The representative of the proprietor expressed the view that the conclusion of the board with respect to auxiliary requests 2 and 3 was surprising and shocking for a physicist. However, the conclusion was reached after an exchange of arguments between the parties. In the end the Board found the arguments of the opponent to be more convincing."
28. From the above, the Enlarged Board does not follow the petitioner's point of view according to which the technical effect of ensuring that the current can flow only in one direction and the absence of synergistic effects of the two distinguishing features would have been raised for the first time by the board on its own motion in the decision under review so that the petitioner would have had no opportunity to respond to this reasoning, in violation of its right to be heard.

*Section E. iv) of the petition - incomplete/  
contradictory reasoning*

29. Concerning the alleged lack of reasoning of the board in the decision under review regarding the fulfilment by claim 1 of the main request of the requirements of Article 123(2) EPC, the Enlarged Board underlines that independently of whether there is such a lack of reasoning, under Article 112a(1) EPC, only a party adversely affected by the decision of a board may file a petition for review (see notably R 1/11). In the case at hand, since the petitioner agrees with the conclusion of the board regarding Article 123(2) EPC, it is not adversely affected by the decision on this topic so that it is not entitled to ground its petition

on an alleged lack of reasoning of the board on the said topic.

30. In any event, under Article 112a(2) EPC, an allegedly insufficient reasoning cannot be considered in review proceedings (see notably R 6/11) unless it involves a fundamental violation of Article 113 EPC. In the case at hand, the petitioner fails to explain why the alleged lack of reasoning by the board of its decision regarding Article 123(2) EPC with regard to claim 1 of the main request would as such amount to a violation of the petitioner's right to be heard.
31. With regard to the petitioner's point of view that the decision under review would be incomplete, in that it would fail to define the problem to be solved with regard to inventive step of claim 1 of the 1st, 2nd and 3rd auxiliary requests starting from Fig. 6 of D5, even though the definition of a problem to be solved is indeed a fundamental step of the problem-solution approach and this approach is privileged by the EPO, it is however not the sole possible approach for an inventive step assessment. Therefore, a possible lack of definition of a problem to be solved could not as such amount to a fundamental defect on which a petition for review could be based.
32. Regarding 1st, 2nd and 3rd auxiliary request, Reasons 6, 7 and 8 of the decision under review explain what are the distinguishing features of claim 1 of these requests and what is the effects of these distinguishing features so that the associated objective technical problem is at least implicitly defined. Therefore, as a matter of fact, this provides sufficient reasonings as to why each of these requests

respectively lacks an inventive step according to the Enlarged Board.

33. Concerning the petitioner's argument that whereas the power supply referred to in claim 1 of main request generates a direct current, according to Reasons 6 of the decision under review (p. 28, 2nd paragraph), the board would wrongly and without logical chain of reasoning consider that the current received by the transformer is an alternating current, in contradiction with the said claim 1, the considered passage of the decision actually relates to Fig. 6 of D5 and reads "in the context of using a transformer to charge the capacitor, a conversion from alternating current [obtained by the transformer] to direct current is required (...) such conversions using diodes". The Enlarged Board fails to see the alleged contradiction or lack of logical chain of reasoning in this portion of the decision under review.

### *Conclusion*

34. What the petitioner primarily appears to complain about is that the board arrived at conclusions different from the petitioner's ones. The Enlarged Board understands that a party may have a different view to the deciding board on technical or legal considerations and may even be convinced that a decision is wrong from a technical or legal point of view and may, therefore, wish to have the case reviewed. However, the Enlarged Board has no competence to review the case as to its merits, including whether correct conclusions had been drawn by the board. Under no circumstances may the petition for review be a means to review the application of substantive law, since a review of the correct application of substantive law would amount to the

Enlarged Board being a third instance. This has been explicitly excluded by the legislator (see also explanatory remarks 1 to 5 on Article 112a EPC, OJ EPO 2007, Special edition no. 4 and established case law since decision R 1/08). Thus, the Enlarged Board has no competence under Article 112a EPC to examine the merits of a board's decision and go into the substance of a case, not even indirectly (see also Case Law of the Boards of Appeal, 10th edn. 2022, V.B.3.1 and V.B.3.4.3, and the decisions cited there, e.g. R 19/11, Reasons 2.2).

35. In light of the considerations set out above, the Enlarged Board concludes that the petitioner's arguments were duly considered by the board, as can be derived from the board's written reasoned decision. As far as the correctness of the decision as to its substance has been objected to by the petitioner, this cannot be reviewed by the Enlarged Board.
36. Therefore, the petition for review is clearly unallowable under Rule 109(2)(a) EPC as far as sections E. (i), E. (ii), E. (iii) and E. (iv) of the petition are concerned.

## Order

### For these reasons it is decided that:

The petition for review is unanimously rejected as being partly clearly inadmissible and partly clearly unallowable.

The Registrar:

The Chairman:



N. Michaleczek

I. Beckedorf

Decision electronically authenticated