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**Datasheet for the decision
of 1 December 2006**

Case Number: T 1012/03 - 3.3.05

Application Number: 97402171.9

Publication Number: 0831079

IPC: C06B 31/28

Language of the proceedings: EN

Title of invention:

Porous prilled ammonium nitrate

Patentee:

SASOL CHEMICAL INDUSTRIES LIMITED

Opponent:

-

Headword:

Porous prilled ammonium nitrate / SASOL CHEMICAL INDUSTRIES LTD

Relevant legal provisions:

EPC Art. 4(2)(3), 5(1)(3), 6(1)(2), 10(1)(2), 16, 17, 18, 21(3)(a)(c), 56, 97 (1), 106, 107 sentence 1, 108 sentence 3, 110(1), 111(1), 112(1)(a), 113(1)(2), 116,
Act revising the European Patent Convention of 29 November 2000: Art. 6, 7, 8
Convention for the Protection of Human Rights and Fundamental Freedoms: Art. 7

Keyword:

"Competence of the so-called Technical Board of Appeals (yes)"
"Appeal restricted to specific points of law (no)"
"Request for having oral proceedings in Munich instead of The Hague not allowable"
"Summons to oral proceedings in The Hague does not violate Article 113(1) EPC"

Decisions cited:

G 0002/90, G 0008/95, G 0005/88, J 0037/89, J 0042/92,
J 0013/02

Catchword:

1. Article 6(2) EPC does not provide a legal basis entitling an applicant who has been summoned to oral proceedings in The Hague to request the oral proceedings to be held in Munich.
2. Article 116(1) EPC in conjunction with Article 10(1)(2)(a)(b) EPC provides a legal basis for an applicant to be summoned to oral proceedings before the Examining Division at the Hague.



Case Number: T 1012/03 - 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 1 December 2006

Appellant:

SASOL CHEMICAL INDUSTRIES LIMITED
1 Sturdee Avenue,
Rosebank
Johannesburg 2196,
Gauteng (ZA)

Representative:

Kador & Partner
Corneliusstrasse 15
D-80469 München (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 09 July 2003
refusing European application No. 97402171.9
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: M. Eberhard
Members: B. Czech
S. Hoffmann

Summary of Facts and Submissions

I. This is an appeal from the decision of the Examining Division, posted on 9 July 2003, refusing European patent application no. 97402171.9.

II. European patent application no. 97402171.9 was filed with the European Patent Office on 18 September 1997 claiming the priority date 19 September 1996 of the prior South African Application no. 9607922 on behalf of the applicant (appellant).

The application was allocated to the Examining Division at The Hague.

III. With a first communication dated 17 May 1999 the Examining Division raised objections with respect to the patentability of the claimed subject matter. Further communications followed the appellant's various replies. The appellant also submitted a conditional request for oral proceedings.

IV. By communication dated 17 December 2002, the Examining Division summoned the appellant to oral proceedings to take place on 3 June 2003 in The Hague.

V. With letter of 3 April 2003 the applicant requested that the oral proceedings scheduled for 3 June 2003 be held in Munich, and, if that request should not be granted it was requested that an appealable decision be issued as soon as possible. The applicant argued that, according to Article 116(1) EPC, the oral proceedings should take place at the European Patent Office, i.e.

- in Munich because according to Articles 6(2) and 4 EPC the seat of the European Patent Office was in Munich.
- VI. In response to this request the Formalities Officer sent a registered letter dated 12 May 2003 wherein it was explained why oral proceedings could be held at the Hague and that the summons issued on 17 December 2002 remained in force. The Examining Division at The Hague offered the possibility of holding the oral proceedings as a video-conference in compliance with the information published by the European Patent Office in OJ EPO 1997, 572. Furthermore, it was stated that the refusal to hold oral proceedings in Munich was not a decision subject to appeal.
- VII. On 22 May 2003 the applicant filed a faxed notice of appeal against the Examining Division's communication dated 12 May 2003 and gave authorisation to deduct the appeal fee from a specified deposit account.
- VIII. With letter dated 28 May 2003 the Formalities Officer informed the applicant that oral proceedings would be held as scheduled on 3 June 2003 in the Hague and that even if the communication of 12 May 2003 was a decision, it was not one that terminated proceedings and could therefore only be appealed together with the final decision.
- IX. The Examining Division held oral proceedings on 3 June 2003 in The Hague in the absence of the applicant and his representative and announced the decision that the European patent application was refused on the basis of Article 97(1) EPC.

- X. As regards the appellant's request to have oral proceedings in Munich, the Examining Division in its written decision posted on 9 July 2003 repeated the reasons already given in the letter dated 12 May 2003, pointing out that as the Examining Division in the present case was in The Hague, the oral proceedings were held in The Hague. Furthermore, the reason for refusal of the application was stated to be a lack of inventive step with respect to the prior art represented by EP-A-648 528 and DE-A-3642139.
- XI. The appellant filed a further notice of appeal dated 1 September 2003 against the decision of the Examining Division dated 9 July 2003 together with grounds of appeal and again gave authorisation to deduct the appeal fee from a specified deposit account.
- XII. The Examining Division did not rectify the decision of 9 July 2003 and remitted the file to the Technical Board of Appeal.
- XIII. The Technical Board of Appeal referred the proceedings initiated by the notice of appeal dated 22 May 2003 to the Legal Board of Appeal. That case was pending under the reference no. J 08/05 until the appeal was later withdrawn by the appellant.
- XIV. As regards the present appeal filed on 1 September 2003 against the decision of the Examining Division dated 9 July 2003 the appellant cited the following documents in support of its arguments:

- D1: K. Haertel in "Münchener Gemeinschaftskommentar zum Europäischen Patentübereinkommen", München 1986), Art. 6 and 7
- D2: Europäisches Patentübereinkommen M. Singer and D. Stauder, 2nd Edition 2000, p. 21-31
- D3: H. Mast GRUR Int. 1973, Heft 1 p. 1-10
- D4: Bundesgesetzblatt Jahrgang 1978, Nr. 17, Teil II, p. 338-343
- D6: Schäfers in Benkard, Europäisches Patentübereinkommen, München 2002, Art. 6, p. 86-87
- D5: Prof. Dr. Dr. R. Singer/Raph Lunzer, Commentary to The European Patent Convention, Revised English edition, London 1995, Art. 6, p. 24-25
- XV. Oral proceedings before the Board took place on 1 December 2006.

XVI. The appellant's arguments can be summarised as follows:

The appellant stressed that its appeal was only concerned with the legal question, namely whether oral proceedings have to be scheduled in Munich if the applicant files a request to this end. The question of patentability was not discussed at the oral proceedings before the Examining Division and discussing the question for the first time before the Board of Appeal would lead to a loss of a right to a decision at two levels.

As the subject matter of the current appeal is determined by the appellant's request to hold oral proceedings in Munich and since also the requests submitted in the appeal proceedings do not concern the

refusal of a European patent application but only a pure question of law relating to procedural matters the proceedings are determined by these petitions ("ne ultra petita"). Consequently, the appellant claimed that according to Article 21(3)(c) EPC, the Legal Board and not the Technical Board of Appeal was competent to decide this case. If the Board did not agree with this view, this legal question should be referred to the Enlarged Board of Appeal.

Referring to Articles 6(1) and (2) EPC the appellant concluded that not only the European Patent Organisation but also the European Patent Office had its seat in Munich. Therefore, the public, i.e. the user of the patent system established by the European Patent Office, was entitled to expect contact with the European Patent Office to take place at its seat and what could be called the "interface" between the public and the European Patent Office was located at its seat. The provision in Article 6(2) EPC, second sentence, namely that the European Patent Office shall have a branch at The Hague, and the recent amendments to, inter alia, Article 17 EPC, gave the European Patent Office the unfettered ability to distribute the work relating to the different stages of a patent application only as far as the internal structure of the European Patent Office was concerned. However, where the user of the European patent system was in direct contact with the European Patent Organisation/the European Patent Office, such proceedings had to take place at the seat of the European Patent Organisation/the European Patent Office, namely at Munich. An exception to this principle was only possible if it was to the benefit of

the user of the European patent system, i.e. where the user agreed to the holding of oral proceedings at the branch, i.e. at The Hague.

A similar regime was provided *expressis verbis* in the EPC for filing European patent applications. Articles 75(1) and 76 EPC provided for the possibility of filing an application at other locations than Munich, but it was clear that the applicant could nevertheless file his application at the seat of the European Patent Office, namely at Munich. In Article 116 EPC, pertaining to oral proceedings, a corresponding *expressis verbis* provision as to where such proceedings could be conducted was missing, so that the user had to conclude that such oral proceedings were to be conducted at the seat of the European Patent Office, namely at Munich.

The appellant argued that the video-conferencing facility offered by the EPO but not requested by the appellant could not supersede the appellant's right to be heard by the Examining Division according to Article 113(1) EPC and that the appellant had to be allowed to present his submissions face to face with the Examining Division at the seat of the European Patent Office.

The appellant took the view that Article 10 EPC did not assign any power to the President of the EPO to decide at which location oral proceedings are to be conducted because Article 10 EPC did not give the President any authority to change the seat of the Office. Should the President be given the power under Article 10 EPC to direct that all oral proceedings had to be undertaken

in The Hague, he would, from the point of view of the user, shift the seat of the Office from Munich to The Hague. The term "transactions" in Article 10(2)(b) EPC could only refer to transactions which were performed by the Office. Matters which did not fall under the scope of "transactions of the Office" were such matters as had a direct influence on the user, for example the holding of oral proceedings, because the user has a right to be personally present at the location where oral proceedings are conducted.

The appellant referred to the headnote, point 1, of the decision of the Enlarged Board of Appeal G 5/88 where it is stated that "the capacity of the President of the European Patent Office to represent the European Patent Organisation by virtue of Article 5(3) EPC is one of his functions but is not one of his powers. The extent of the President's power is governed by the EPC, but not by Article 5(3) EPC". The appellant concluded from this that changing the location of the interface between users and the European Patent Office would, in effect, lead to a change of the seat of the Office from the point of view of the user. Article 10 EPC was concerned with the internal direction of the Office, and did not give the President the power to change the seat of the European Patent Office.

Referring to the decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Revision Act of 29 November 2000 (see Special Edition No. 1, OJ EPO 2003, 202 ff), the appellant argued that Articles 16 to 18 EPC revised by the Diplomatic Conference in November 2000 were not applicable to the present application in that they were

not of a purely organisational or institutional nature. Insofar as the effect of Articles 16 to 18 extended beyond purely organisational or institutional provisions to include oral proceedings, the revised provisions introduced by virtue of the Diplomatic Conference 2000 were *ultra vires*.

The appellant pointed out that the question whether or not the EPO was authorised to summon parties to oral proceedings in The Hague rather than Munich was an important point of law, the answer to which could not be directly and unambiguously derived from the EPC. As the President's power under Article 10(2) was not clearly defined and the President's direction to the Examining Division to hold oral proceedings at The Hague contravened in particular Article 6 EPC, a referral to the Enlarged Board of Appeal would be justified under Article 112(1) EPC.

The appellant requested:

1. that the present appeal be transferred to the Legal Board of Appeal (main request) or in the alternative
2. that a question concerning an important point of law (see sheet 1 filed during the oral proceedings) be referred to the Enlarged Board of Appeal in accordance with Article 112(1)(a) EPC (first auxiliary request) or in the alternative
3. that the decision under appeal be set aside and the case be remitted to the Examining Division for further prosecution on the basis of the set of

claims and the description underlying the appealed decision with the order to conduct oral proceedings at the EPO in Munich (second auxiliary request) or in the alternative

4. that a further question concerning an important point of law (see sheet 2) be referred to the Enlarged Board of Appeal in accordance with Article 112(1)(a) EPC (third auxiliary request).

The question according to sheet 1 reads as follows:

"An appeal against an interim decision of an Examining Division on an important point of law is only appealable with the final decision.

Should the Legal Board of Appeal be competent to decide on such a matter, according to Article 21(3)(c) or the Technical Board of Appeal, according to Article 21(3)(a)?"

The question according to sheet 2 reads as follows:

"Can a request by a party to conduct oral proceedings at the European Patent Office in Munich instead of at the branch office in The Hague be denied?"

Reasons for the Decision

Preliminary procedural remarks

1. The legal and factual framework of the present appeal proceedings is determined by the appellant's notice of

appeal filed on 1 September 2003 against the decision of the Examining Division dated 9 July 2003.

2. The earlier appeal of 22 May 2003 against the communication of the Examining Division dated 12 May 2003 was dealt with separately in file J 08/05, before it was eventually withdrawn by the appellant.
3. As regards both the competence of the Technical Board to decide on the present case and the admissibility of the appeal it is important to clarify how the legal and factual framework of the present appeal is determined.
4. The appellant's notice of appeal dated 1 September 2003 was filed against the decision of the Examining Division dated 9 July 2003. This was the correct procedural way to submit the procedural question about the legally correct location of oral proceedings to the Boards of Appeal.
5. The appealed decision concerns the refusal of the present European patent application under Art. 97(1) EPC, as was stated in the order made on that decision.

According to the reasons for this decision, the refusal was based on the grounds that the request for holding oral proceedings in Munich was refused, the right to be heard being granted by the summons to oral proceedings (Art. 116(1) EPC) in The Hague and, furthermore, that the claimed subject matter did not involve an inventive step and thus did not comply with the requirements of Article 56 EPC. Each of these legal points was decisive for the final refusal of the application and the statement in the order.

6. There is no need to decide the question whether the Formalities Officer's communication dated 28 May 2003 was a non-appealable interlocutory decision or only a precautionary and reasoned indication to the applicant that the Examining Division intended not to accede to its request in the final decision. Either way, the request to hold oral proceedings in Munich was the subject of the final decision (see below).

7. The order made on the appealed decision posted on 9 July 2003 and its reasons form a unit which cannot be divided up to suit the procedural purpose chosen by the appellant. If the decision on the right to be heard or alternatively, on lack of inventive step, was incorrect, the order refusing the application would in each case no longer have had a correct legal basis and would have to be reviewed as a whole. Contrary to the submission of the appellant during the oral proceedings, the decision cannot be divided into two decisions. If the appeal could be (and was) limited to the procedural point of law relating to where oral proceedings are to be held, the refusal of the application on the ground of lack of inventive step would be final and could not be set aside by a separate decision on the legal point about where oral proceedings are to be held.

8. The appellant misinterprets Article 106(3) EPC, which states that "A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision unless the decision allows separate appeal". Article 106(3) EPC does not mean that an interlocutory non-appealable decision remains a formally separable part of the final

decision which can be separately appealed. Otherwise Article 106(3) would have the effect of extending the two month time limit according to Article 108 EPC. Such an interpretation would establish a contradiction in terms because the non-appealable decision would become appealable again.

9. The appellant's reference to case J 37/89 (OJ EPO 1993, p. 201) does not support its argument. This case concerned the request for reimbursement of an allegedly unjustified fee paid by the applicant in first instance proceedings, pursuant to Article 121(2) EPC. The published headnote to this decision reads as follows:
"If a request for extension of a time limit filed in good time has been rejected under Rule 84, second sentence, EPC, and the applicant considers this unjust, the ensuing loss of rights can only be overcome by a request for further processing under Article 121 EPC. At the same time, he may request reimbursement of the fee for further processing. This secondary request will have to be decided on in connection with the final decision. Under Article 106(3) EPC, the decision on the secondary request can be appealed together with the final decision. The appeal may also be confined to contesting the decision on the secondary request" (see also point 3.5 of the reasons).

In that particular case, it was possible to confine the appeal to the secondary request because the outcome of the decision on the question of whether or not the fee was to be reimbursed could not affect the uncontested parts of the decision or conflict with the reasoning in those parts of the reasons. Thus, the secondary request

concerning the said reimbursement was not decisive in reaching the final decision to grant a patent.

10. Therefore, the appellant's notice of appeal dated 1 September 2003 was correctly directed against the decision of the Examining Division dated 9 July 2003 as a whole even if the appellant's detailed requests and the grounds of appeal only concerned the procedural question of whether or not the refusal to hold oral proceedings in Munich was correct.

Thus, the subject matter of the appeal proceedings is, contrary to the appellant's contentions, not limited to the refusal of the request to hold oral proceedings in The Hague but concerns the refusal of the European patent application as such.

Main request

11. After these preliminary explanations the Board turns to deal with its competence to decide on this case in detail.

According to the Decision of the Enlarged Board of Appeal of 4 August 1991, G 2/90, reasons point 3.2 (OJ EPO 1992, 10), the so-called Technical Board of Appeal in the composition of two technically qualified and one legally qualified member is competent to decide on an appeal against the decision of an Examining Division if the following two requirements under Article 21(3)(a) EPC are fulfilled:

- a. the decision concerns the refusal of a European patent application or the grant of a European patent and
 - b. the decision was taken by an Examining Division consisting of less than four members.
12. The notice of appeal filed on 1 September 2003 is directed against the decision of the Examining Division dated 9 July 2003. The decision was taken by an Examining Division consisting of less than four members. Furthermore, in the present case the order of the impugned decision states that European Patent application no. 97 402 171.9 is refused. Therefore, both requirements which are decisive for the competence of the Technical Board in the composition of three members are fulfilled. Article 21(3)(a) EPC also applies in cases where the appeal is based on the ground that the refusal of the application was allegedly caused by a procedural violation, because the decision also concerns "the refusal of a European Patent application". If the decision at first instance invoked a procedural violation of the right to be heard, the Board would have to set aside the impugned decision as a whole (see preliminary remarks, points 4 to 10 above). This accords with the appellant's second auxiliary request.
13. On the other hand, if the Board came to the conclusion that the right to be heard was correctly granted, then the Board would have to decide *ex officio* whether or not the Examining Division correctly decided the legal point concerning inventive step because this was another decisive point of law on which the refusal of

the European patent application was based (Articles 110(1), 111(1) in conjunction with Article 97(1) or (2) EPC).

Both procedural alternatives require that a Technical Board of Appeal decides on the case, as is stipulated by Article 21(3)(a) EPC.

14. The appellant relied on decision J 42/92 in order to justify the competence of the Legal Board of Appeal to decide on the present case. In that decision the situation was however different from the present one.

According to decision J 42/92 the Legal Board of Appeal was competent to decide on an appeal concerning a refusal of a request for correction pursuant to Rule 88 EPC filed after the grant of a European patent. The Legal Board considered that the appeal raised the preliminary question of whether a request under Rule 88 EPC could be made after grant, which question was purely a question of law and did not concern the refusal of a European patent application or the grant of a European patent (see point 3 of the reasons).

On the contrary, in the present case the question about the legally correct location for holding oral proceedings may affect the decision of the Examining Division to refuse the patent application since it cannot be excluded that the Examining Division would have come to a different decision if the appellant had attended oral proceedings in Munich.

In decision J 42/92 it was not discussed whether the appellant's request for correction could be read as a request for correction of the grant decision under

Rule 89 EPC. According to decision G 8/95 of the Enlarged Board of Appeal (OJ EPO 1996, 481, reasons point 6), the subject matter of such a request would invoke the competence of the Technical Board of Appeal pursuant to Article 21(3)(a) EPC.

15. Therefore, the competence of the Technical Board of Appeal to decide on the present case can be directly and unambiguously deduced from the EPC and the Board is not aware of another decision of the Boards of Appeal which suggests that the Legal Board is competent. This conclusion is in agreement in particular with the statements in decisions G 2/90 (OJ EPO 1992, 10, reasons point 3.2, where an explicit reference is made to appeals against decisions of the Examining Division) and G 8/95 (supra).
16. Consequently, the appellant's main request to transfer the case to the Legal Board of Appeal is unfounded and, therefore, refused.

First auxiliary request

17. Furthermore, the appellant's first auxiliary request, namely to refer the case to the Enlarged Board of Appeal with regard to the question of which Board is competent to decide on the present case, is refused as well because the above reasons clearly establish that the requirements pursuant to Article 112(1)(a) EPC are not fulfilled.

Admissibility of the appeal

18. As regards the admissibility of the appeal, the Board has come to the conclusion that the appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC.

19. The appellant presented with his notice of appeal facts and legal arguments which, if they were correct, could constitute fundamental procedural deficiencies under Article 113(1) EPC and would justify the setting aside of the appealed decision and the remittal of the case to the Examining Division for further prosecution (Article 111(1) EPC, first sentence, Article 10 RPBA). The grounds of appeal are therefore sufficiently substantiated.

The requirement pursuant to Article 108, third sentence, EPC that a written statement setting out the grounds of appeal must be filed within four months after the date of notification of the decision is therefore fulfilled.

20. The possible remittal for further prosecution justifies the appellant's legitimate interest in the appeal (Article 107 EPC, first sentence).

21. The appellant asserted that his requests submitted with the notice of appeal dated 1 September 2003 restricted the legal framework of the appeal to the legal point, namely whether or not oral proceedings are to be held in Munich. If this were so, then the appeal would be inadmissible. An isolated point of law cannot be the only subject matter of appeal proceedings because

pursuant to Article 106(1) EPC an appeal shall lie from a decision of *inter alia* an Examining Division and not from a specific point of law in the reasons of the appealed decision. Only if the order of the appealed decision concerned a specified legal point of law which could be decided separately from a further point in the order (see preliminary remarks point 4 to 10 above), could the appeal proceedings be restricted to this point of law.

As the appellant in his notice of appeal explicitly appealed "against the decision of the Examining Division", the Board considers that the requirements pursuant to Article 106(1) EPC are fulfilled even if the requests submitted with the notice of appeal were only based on the allegation of a procedural violation and no argument concerning the requirements under Article 56 EPC was submitted. The Board cannot exclude the possibility that the Examining Division would have come to a different decision if the appellant had attended oral proceedings in Munich before the Examining Division.

The appeal is therefore admissible.

Second auxiliary request

22. Appellant's second auxiliary request concerns the request to have the appealed decision set aside and to have the case remitted to the Examining Division for further prosecution with an order to hold oral proceedings in Munich and to have the proceedings conducted on the basis of the set of claims and

description as already submitted before the Examining Division.

23. The Board points out that had the appellant not eventually identified a description and a set of claims already on file as a basis for examining the patentability of the invention, the Board would have confirmed the refusal of the patent application pursuant to Article 113(2) EPC without discussing the alleged procedural violation. The mere possibility that the appellant might file new documents after the requested remittal is no legal basis for referring the case back to the Examining Division under Article 111(1) EPC in conjunction with Article 10 RPBA. Should the Board come to the conclusion that the appeal is justified and the appealed decision has to be set aside the Board will still have to exercise its discretion under Article 111(1), second sentence EPC, on the basis of the facts and submissions actually presented.

Should the Board come to the conclusion that the appealed decision was not based on a substantial procedural violation, the Board will have to decide whether the refusal of the European patent application on the ground of lack of inventive step was correct.

24. Accordingly, in examining the appeal according to Article 111(1) EPC, first sentence, the Board will deal first with the procedural question of whether or not the appealed decision was defective because of the alleged violation of the right to be heard and then, if appropriate, with the patentability of the claimed invention according to Article 56 EPC.

25. The appellant's submission that under the European Patent Convention oral proceedings are to be held on request at the seat of the European Patent Office in Munich is the crucial argument in its case, but is mistaken.

In the Board's opinion the refusal of the appellant's request to hold oral proceedings in Munich concerns the right to be heard as well as the procedural question of whether or not oral proceedings can be conducted in The Hague. The right to oral proceedings according to Article 116 EPC is a specific and codified part of the procedural right to be heard according to Article 113(1) EPC. The Board agrees with the appellant's implicit statement that the right to be heard at oral proceedings must include, *inter alia*, the right to present its arguments at the correct location.

However, the Board holds that in the present case The Hague was the correct location. Therefore, in what follows, the Board examines not only whether the appellant had a right to be heard in Munich but also whether the summons to oral proceedings in The Hague met the requirements of Article 113(1) in conjunction with Article 116 EPC.

26. Article 6(1) EPC states that "The European Patent Organisation shall have its seat at Munich".

The appellant takes the view that the wording of the first sentence of Article 6(2) EPC ("*The European Patent Office shall be set up at Munich. It shall have a branch at The Hague*".) must be interpreted as meaning that the European Patent Office has its seat at Munich

and that, therefore, oral proceedings in each and every case have to be held exclusively in Munich. In the appellant's view, an exception to this principle would only be possible where an applicant agreed to the conduct of oral proceedings at The Hague.

27. It must be pointed out that although in Article 6(1) EPC it is stated that the Organisation shall have its seat at Munich, in Article 6(2) EPC the wording "seat" is not used. The different wording is deliberate. In strict legal language, the term "seat" (in its narrow sense) defines the seat of a corporation or organisation as a legal entity, indicating where the headquarters of this entity are located. It is clear that according to international and national procedural law, specific legal actions with legal effect for and against the legal entity can be performed at the seat of this entity.

However, the term "seat" is sometimes also used in a broad sense without a specific legal meaning. In this case the term "seat" only defines where an entity is located and does not mean that this location is a legal seat where specific juridical acts can be performed. According to Article 5(1) EPC only the European Patent Organisation has legal personality, whereas the European Patent Office, which is to be considered an organ of the European Patent Organisation (Article 4(2)(a) EPC), is not a legal entity in itself.

28. There is no general legal principle that, apart from the headquarters, specific executive bodies of a legal entity are to be located at the seat of this legal entity. Under the European Patent Convention the

question of where the organ "European Patent Office" is to be located is answered by Article 6(2) EPC, which stipulates that the European Patent Office shall be set up at Munich and has a branch at The Hague. The branch at The Hague is an inseparable part of the European Patent Office. It follows that the European Patent Office has two locations, i.e. one in Munich and one in The Hague, Munich being the main location. It is legally incorrect to conclude that the European Patent Office has a seat at Munich in the narrow legal sense set out in paragraph 27 above.

29. The Board is aware that it was only at the end of the negotiations about the European Patent Convention that the Contracting States decided that the European Patent Office as such should not be a legal entity. The legal entity was then constituted by the European Patent Organisation such that this refinement of the organisational structure was intended to leave unaffected the decision that the main location of the European Patent Office was to be in Munich.

30. Thus, when it is stated in D1 (margin no. 9, 10 and 13) and D3 (page 3, right-hand column, 3rd paragraph) that the European Patent Office has its seat in Munich, this only means that the main location of the Office is in Munich. The use of the word "seat" in these references cannot be taken as meaning "seat" in its narrow legal sense referred to in paragraph 27 above. In particular Article 6(2) EPC does not provide that the user of the European Patent system has an absolute right for specific procedural acts to be performed at this main location.

31. The appellant also cited D5 (margin no. 6.02) where it is stated that "Article 6(1) provides that the seat of the Organisation, i.e. the two limbs (already identified in Article 4(2) as being the EPO and the Administrative Council) shall have their seats in Munich. Article 6(2) goes further in that it specifies that the physical presence of the EPO, as distinct from its legal seat, shall be in Munich." This statement cannot alter the fact that Article 6(2) EPC can only mean that the European Patent Office is located in Munich and it ignores the fact that its branch, being a part of it, is stated to be located in The Hague. Article 6(2) EPC provides that the European Patent Office is physically present in Munich and The Hague. The use of the term "branch" in Article 6(2) means nothing more than that the main location of the European Patent Office is located in Munich. However, which tasks or transactions are to be performed by the European Patent Office in Munich and which in The Hague is not determined by the distinction between the main location and its branch and must be deducted from other provisions of the EPC.
32. The appellant referred to the "Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Europäischen Patentorganisation über den Sitz des Europäischen Patentamts vom 7. February 1978" as published in D4, in order to support its contention that the European Patent Office has its seat in Munich. (The English wording is: "Headquarters Agreement between the Government of the Federal Republic of Germany and the European Patent Organisation"; the French is: "Accord de siège entre le Gouvernement de la République fédérale d'Allemagne et l'Organisation

européenne des brevet", in the following cited as "Agreement") The different descriptions of the Agreement in the three official languages of the European Patent Organisation indicate that the German term "Sitz des Europäischen Patentamts" is not used in a strict legal sense.

In addition, the Board would point out that because the parties to the Agreement and to the Convention are different, the agreement cannot be used to interpret the European Patent Convention. As the Agreement refers to the European Patent Convention, the Agreement can only be interpreted in the light of the Convention and not *vice versa*.

33. Thus, Article 6(2) EPC is to be read in accordance with its plain wording, which is in contrast to that of Article 6(1) EPC. Adopting this approach, it follows that the European Patent Office (as an executive body within the European patent system) has a main location at Munich and a branch location at The Hague. However, Article 6(2) does not prescribe a legal seat where oral proceedings are to be held. Article 6(2) does not provide a legal basis for a request by an applicant to have oral proceedings held in Munich.

34. The appellant's misinterpretation of Article 6(2) EPC is based on the incorrect conclusion that the user of the European patent system communicates with the European Patent Office as a legal person or entity with a legal status comparable to that established for the European Patent Organisation under Article 5 EPC, namely as an entity recognised by international law.

The fact that the European Patent Organisation has the task of granting European patents (cf. Article 4(3) EPC) does not mean that the provisions of the European Patent Convention concerning the use of this patent granting system must be read in the light of the provision concerning the legal seat of the European Patent Organisation. The parties to the proceedings provided for by the European Patent system do not interact with the European Patent Organisation as a legal entity under international law but as users of this system according to the specific provisions of the EPC. Therefore, the appellant's conclusion that, according to Article 6(2) EPC, the interface for the user of the European Patent system has to be located at Munich, where the European Patent Office and/or the European Patent Organisation have their seats, is incorrect.

35. A similar misinterpretation of the European Patent Convention may be made if the dual role of the President of the European Patent Office according to the European Patent Convention is not correctly understood.

According to Article 5(3) EPC the President of the European Patent Office shall represent the Organisation. In this role the President is entitled to act for the European Patent Organisation as an entity under international law and must have his office at the seat of the European Patent Organisation (Article 6(1) EPC) as part of the headquarters of the Organisation.

The further role of the President as the head of the European Patent Office as an executive body granting European patents according to Article 4(3) EPC is defined by Article 10 EPC. This provision assigns specific duties and powers to the President. Measures based on this provision may affect applicants' procedural rights within the European patent granting system but does not address applicants as legal subjects *vis à vis* the European Patent Organisation on the level of international law.

Thus, the dual role of the President as representative of the European Patent Organisation and head of the European Patent Office does not provide a legal basis for the argument that the fact that the European Patent Organisation has its legal seat at the European Patent Office in Munich means that oral proceedings must be held in Munich.

36. In the decision under appeal, the Examining Division correctly decided that according to Article 18(2) EPC, third sentence, in conjunction with Article 116 EPC, oral proceedings before the Examining Division could be held at The Hague and that the appellant was not entitled to request oral proceedings in Munich.

37. Article 116 EPC, pertaining to chapter I of the "Common Provisions" in Part VII of the EPC, provides specific conditions as to when oral proceedings have to take place and before which department they can be requested but does not expressly stipulate the location where oral proceedings have to take place. Paragraph 1 of Article 116 EPC addresses the competence of the European Patent Office in general to schedule oral

proceedings at the instance of the European Patent Office. The various expressions used in paragraphs 1 to 4 of Article 116 EPC, namely "before the same department", "before the Receiving Section", "before the Receiving Section, the Examining Divisions and the Legal Division" and "the department before which the proceedings are taking place" can be read as a reference to the function of the department or Division as a deciding body. If the relevant department has to exercise its function in oral proceedings, it follows that the department has to be located at a specific place in order to conduct those oral proceedings. For this purpose the Divisions have to allocate hearing rooms and they have to be present themselves at the scheduled times.

Thus the word "before" in the above expressions also implies a location "where" the proceedings have to be carried out, namely at least at the place where the relevant department is located. This interpretation was never questioned when the Receiving Section was set up exclusively in The Hague. It was self-evident that the parties or their representatives would have to travel to The Hague if the Receiving Section summoned them to oral proceedings pursuant to Article 116(2) EPC. The same reasoning applies to the Examining Divisions when they have to implement an examining procedure which also entails conducting oral proceedings.

38. Therefore, the term "oral proceedings before the respective department" in Article 116 EPC not only concerns the function of the deciding Division but also the location where oral proceedings are to take place.

The further procedural question, namely whether Article 116 permits a specific Examining Division to summon parties to any place where the European Patent Office is located according to Article 6(2) EPC, or even to another location if necessary for the proceedings, is not relevant in the present case and, therefore, is not decided by the Board.

39. In any case, Article 116(1) EPC does not entitle the appellant to choose the location where oral proceedings are to be held. The Board must reiterate that the appellant's submissions are based on the further assumption that Article 6(2) EPC stipulates a legal seat for the European Patent Office which thereby entitles the appellant to request oral proceedings to be held in Munich. However, as already set out above (points 25 to 35), this argument is based on an inaccurate interpretation of the legal status of the applicants as users of the European Patent granting system and an incorrect interpretation of the legal terms "seat" (of the European Patent Organisation) and "main location" (of the European Patent Office) such that in effect they become synonyms.

40. The forgoing conclusion is not altered by the appellant's submissions that the wording "*oral proceedings shall be before the Examining Division*" in Article 18(2) EPC, third sentence, only concerns the distinction between "*one member of the Division*" and the *Examining Division* consisting of three members. Even if this were correct, Article 116 EPC cannot be interpreted in a manner other than indicated above.

41. It follows from the Board's foregoing comments that the appellant's request to have oral proceedings held in Munich has no legal basis in the European Patent Convention.

But it has still to be decided whether in the present case The Hague was the correct place for conducting oral proceedings according to Article 116 EPC. The Hague could only be a correct place if it was a location where an Examining Division could be set up in compliance with the provisions of the European Patent Convention.

42. In the present case it is not in dispute that the application no. 97402171.9 was allocated to an Examining Division in The Hague. Therefore, the question to be addressed is whether or not The Hague was a statutory location under the EPC where Examining Divisions could be set up.

43. The current establishment of Examining Divisions in the branch of the European Patent Office at The Hague is based on administrative measures of the President of the European Patent Office and not directly prescribed by the European Patent Convention itself. Thus, the Board has to examine whether the President has the power - according to the provisions of the Convention - to establish Examining Divisions in The Hague.

44. Article 10(1) EPC provides that the EPO shall be directed by the President, who shall be responsible for its activities to the Administrative Council, which is also an organ of the Organisation by virtue of Article 4(2)(b) EPC. Furthermore, Article 10(2) EPC

provides that for the purpose of directing the EPO, the President has, in particular, a number of functions and powers set out in sub-paragraphs 10(2)(a) to (i) EPC (Decision of the Enlarged Board of Appeal G 5/88, *supra*, reasons, point 1.2). Thus, in particular, he shall prescribe which transactions are to be carried out at the European Patent Office at Munich and which at its branch at The Hague (Article 10(2)(b) EPC).

45. As already stated above, the President's legal power to represent the European Patent Organisation as a supra-national organisation under international law according to Article 5(3) EPC does not impinge upon his capacity as head of the European Patent Office responsible for the grant of European patents.

The legal question as to whether or not a transaction allocated to the European Patent Office which concerns the grant of a European patent can be performed at the European Patent Office in Munich or at its branch in the Hague concerns neither the President's capacity to represent the European Patent Organisation nor his power to act for it under international law.

Therefore, contrary to the appellant's submissions, the statement in the decision of the Enlarged Board of Appeal of 16 November 1990 (G 5/88, EPO OJ 1991, p. 137, reasons point 2.2) that the President's "capacity to represent the Organisation by virtue of Article 5(3) EPC is one of his functions but is not one of his powers" is not an argument for a restriction of his administrative power as head of the European Patent Office, because the extent of this power is defined by Article 10 EPC.

46. Since Articles 10(1) and (2)(b) EPC formally assign to the President of the European Patent Office the competence to decide, unless the EPC already contains provisions in this respect, which transactions are to be carried out by the European Patent Office at Munich or at its branch at The Hague, it must be examined whether the EPC contains any provision which pre-empt the power of the President in this respect.
47. As already stated above (point 39), Article 6(2) EPC stipulates only that the European Patent Office shall be located in Munich and The Hague. This article does not restrict the competence of the President of the European Patent Office under Article 10 EPC with regard to the procedural rights of the users of the European patent system.
48. However, other provisions falling within the ambit of Article 10(2)(b) EPC would be Articles 16 and 17 and, in particular in the present case, Article 18 EPC if Article 10(2)(b) EPC were to be read as meaning that the Examining Division had to be located in Munich.
49. The Board does not share the appellant's interpretation of Article 10(2)(b) EPC that matters which have a direct influence on the user of the European system for the grant of patents do not fall under the scope of "transactions of the Office". According to Article 10(2)(a) EPC the President shall take all necessary steps, including the adoption of internal administrative instructions and the publication of guidance for the public, to ensure the functioning of the European Patent Office. This provision clearly

indicates that the President is not only fully responsible for the activities of the European Patent Office but also has the complementary power to take such measures as are necessary to accomplish the task of the European Patent Office stipulated in Article 4(3) EPC. The wording of Article 10(2)(a) EPC is not restricted to the adoption of internal administrative instructions but explicitly allows measures which affect the procedural rights of the public, including applicants. Article 10(2)(b) EPC specifies the President's power with respect to the geographical allocation of transactions between Munich and The Hague. This provision read in the context of paragraph (a) of Article 10(2) EPC indicates that the term "transactions" refers to the steps necessary for the functioning of the European Patent Office. Therefore, the term transactions concerns both the transactions of the European Patent Office and of parties. Even if one had doubts whether the wording in this provision relates both to the transactions of the European Patent Office and to those of parties, it would be indisputable that at the very least the term "transactions" concerns transactions of the parties in proceedings before the European Patent Office. Therefore, the appellant's argument that the term "transactions" in Article 10(2)(b) EPC only concerns internal administrative measures is neither supported by the wording of this provision nor by its obvious purpose nor by legal literature.

Moreover, with respect to the examining procedure, the Board is not able to see a distinction between the transaction of establishing a Search Report on the one hand and holding oral proceedings on the other hand.

Holding oral proceedings as well as the preparation and the issue of Search Reports or communications are transactions which are all to be performed by the Search or Examining Divisions. The appellant's contention that the right of the applicant to be present during oral proceedings establishes a legally important difference from other transactions of the European Patent Office is not convincing because this argument is based on the above erroneous assumption (points 26 to 35) that the applicant has a right to be heard at the "seat" of the European Patent Office. The applicant's right to be present during oral proceedings is independent of where the oral proceedings have to take place.

50. Articles 16 and 17 EPC in the version valid before 29 November 2000, which stated that the Receiving Section and the Search Divisions should be in the branch at The Hague, could be regarded as pre-empting provision of the kind referred to in Article 10(2)(b) EPC.

Article 18 EPC in the version valid before 29 November 2000 did not expressly stipulate that the Examining Division should be located in Munich. Even if the Board takes it for granted that all divisions of the Office which were not assigned to The Hague had to be located at Munich, it has to be born in mind that these articles were amended by the Act of 29 November 2000 revising the European Patent Convention (in the following referred to as the Revision Act). According to Article 6 of the Revision Act, Articles 16 and 17 EPC are provisionally applicable as of 29 November 2000 (cf. OJ EPO 2001, Special edition No. 4, Foreword,

page 2 and "explanatory remarks" point 2, last sentence, page 134). The amendments to Articles 16 and 17 EPC deleting the allocation of the Search Divisions and Receiving Section to the branch at The Hague clearly indicate that the Convention no longer restricts the competence of the President of the European Patent Office to decide which transactions shall be carried out at Munich and which at The Hague. It must be noted that, according to the preparatory documents, this was precisely the amendment's intended purpose, which was to establish a reorganisation of the EPO's examination procedure (BEST) (in detail cf. Decision of the Legal Board of 26 June 2003, J 13/02, reasons points 2.1 and 2.5, referring to the basic proposal for the revision of the European Patent Convention (MR/2/00)).

The inconvenience for certain applicants resulting from the reorganisation of the examination procedure by the European Patent Office is not a valid argument for restricting the President's competence as assigned to him by the Convention as in force from 29 November 2000. Therefore, the appellant's assertion that the "interface" for oral proceedings between himself as a user of the European Patent System and the European Patent Office has to be located at the so-called "seat" of the European Patent Office unless the user agrees to another location is not supported by the Convention.

Although it is correct that Articles 75 and 76 EPC provide various locations where a European Patent application or a European divisional application can be filed and that the applicant can always choose the option to file his application or his divisional

application in Munich, it cannot be concluded from these provisions that an applicant must also have at least the option to attend oral proceedings in Munich. Filing an application or a divisional application on the one hand and attending oral proceedings on the other have such a different legal character and function within the grant procedure that Article 75 EPC or Article 76 EPC cannot be applied in an analogous way to determine where oral proceedings have to take place.

51. The appellant (citing *inter alia* the explanatory remarks to the Revision Act on page 204 in Special Edition Nr. 1, OJ EPO 2003) contested that Articles 16 and 17 EPC as amended by the Revision Act would be applicable to the present case.

The appellant argued that the revised text of the European Patent Convention has not yet entered into force according to Article 8 of the Revision Act and that the transitional provisions according to Article 7 Revision Act in conjunction with the Decision of the Administrative Council of 28 June 2001 do not apply to purely organisational and institutional provisions, whose applicability, however, is governed by general principles of international treaty law, in particular that of "non-retroactivity". The purely organisational and institutional provisions apply provisionally as from 29 November 2000. According to the appellant, Articles 16 to 17 EPC in the former version specified the location of the Receiving Sections and Search Divisions and, therefore, the deletion of the reference to the specific locations by the Revision Act could not be regarded as being of a purely organisational or institutional nature because these provisions would

function as bridges between the European Patent Office as an organisation/institution and the user of the European patent system, be it the applicant, patent proprietor or opponent. The applicant stated furthermore that these articles were of an "outward ex-organisational" nature and thus beyond the reach of provisional applicability, as governed by general principles of international treaty law. The appellant finally concluded that holding oral proceedings before the Examining Division in The Hague would be a clear breach of the provisions set out by the Diplomatic Conference 2000 and would have no basis in the European Patent Convention.

52. The appellant's arguments based on the examination of the requirements under Article 7 of the Revision Act are misleading. Article 7 of the Revision Act cannot be used as a legal basis for deciding the present case because it concerns transitional provisions and is to be distinguished from Article 6 of the Revision Act, which concerns an immediate provisional application of some of the provisions of the revised EPC.

The Board points out that Article 7 of the Revision Act in conjunction with the Decision of the Administrative Council of 28 June 2001 only concerns the applicability of the amended provisions to already pending applications and granted patents at the future date when the (whole) revised text of the European patent Convention enters into force according to Article 8 of the Revision Act.

53. However, the immediate provisional application of specific provisions such as, *inter alia*, Articles 16 and 17 EPC in the version of the revised text of the Convention is exclusively governed by Article 6 of the Revision Act. According to this article the provisional application of the amended Articles 16 and 17 is neither dependent on a further decision of the Administrative Council nor on whether or not the amended provisions are of purely organisational and institutional nature.

54. The formal validity of Article 6 of the Revision Act and its ruling that *inter alia* the revised text of Articles 16 and 17 took effect from the date of the adoption of the Revision Act, i.e. 29 November 2000, is not contested and the Board does not question it either.

The Revision Act was unanimously adopted by the Contracting States (cf. Foreword in Special Edition No. 4 OJ EPO 2001, page 1, Revision of the European Patent Convention) and the formal validity of Article 6 of the Revision Act has already been acknowledged by the decision of the Legal Board of 26 June 2003 (J 13/02, reasons, point 2.1) and was not contested by the appellant.

55. Furthermore, the fact that Article 6 of the Revision Act does not provide any transitional provisions for pending applications cannot be used as an argument that the general legal principle of "non-retroactivity" has been violated. The present application was filed on 18 September 1997 and therefore before the date when Article 6 of the Revision Act entered into force. However, the principle of "non-retroactivity", as a

form of "good faith" protection, does not guarantee that procedural provisions cannot be amended during the pendency of an application. First of all, procedural provisions do not become personal assets or legal entitlements of an applicant after filing an application and, therefore, do not establish vested rights. Secondly, it must be noted that Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which forms the general basis for the "principle of non-retroactivity", only concerns the protection of individuals from prosecution. Thirdly, the principle of "non-retroactivity" only guarantees that a new law is not applied to facts which were already completed when the new law entered into force. In cases where the facts are not completed and the individual concerned can still react in response to a new law the principle of "non-reactivity" cannot be invoked.

56. In the present case, the summons to oral proceedings in The Hague was posted on 17 December 2002, at a date when Article 6 of the Revision Act was already in force. Thus, at that time the appellant was given the proper opportunity to attend oral proceedings at The Hague and as Article 6 of the Revision Act was already in force he could not be taken by surprise by the legal situation.

57. In conclusion, Articles 16 and 17 EPC as revised by the Revision Act applied to the present European application provisionally as from 29 November 2000 and form the legal basis for the present decision on the question of whether or not the appellant's right to be heard was violated. Articles 16 and 17 EPC in the

version currently in force do not contain an exclusive allocation of the Receiving Section and Search Divisions to the branch at The Hague. Any former legal restriction of the President's power under Article 10(2)(b) EPC to prescribe which transactions are to be carried out at the European Patent Office in Munich and which at its branch in The Hague is not relevant for the present case.

58. In this context the appellant also referred to D1, D2 D3 and D5 in order to support its argument to the contrary. These references concern legal literature edited before the above-mentioned amendments to Articles 16 and 17 EPC and none of the cited references answer the question of whether, at any particular procedural stage, oral proceedings have to take place in Munich. However, the Board's view that the current version of the Convention does not stipulate which transactions of the European Patent Office have to be carried out in Munich and which ones in The Hague is shared, for example, by D6 (Schäfers in Benkard, Europäisches Patentübereinkommen, München 2002, Article 6, point 4).

59. The Board therefore decides that the appellant's contention that in the present case oral proceedings should have taken place in Munich has no legal basis in the European Patent Convention. In the present case the justification for conducting oral proceedings in The Hague can be deduced from Article 116 in conjunction with Article 10(1)(2)(a)(b) EPC.

As the appellant was summoned in proper form, in sufficient time before the oral proceedings and to the correct place in the branch at The Hague, the right to be heard in oral proceedings (Articles 113(1) and 116(1) EPC) was granted, even if the appellant did not attend the oral proceedings.

Article 56 EPC

60. Since the present appeal is from the decision of the Examining Division to refuse the application, the Board also has to examine whether or not the appealed decision should be set aside on the ground that the Examining Division misjudged the issue of inventive step.

In the reasons of the appealed decision, the Examining Division has set out in detail why, starting from EP-A-648 528 as closest prior art and considering also the teaching of DE-A-36 42 139, the claimed invention was not based on an inventive step. The appellant did not challenge the reasoning of the Examining Division, and the board sees no reason for deviating from the finding of the Examining Division.

The appellant's second auxiliary request is thus also refused.

Third auxiliary request

61. As regards the appellant's third auxiliary request, namely to refer the case to the Enlarged Board of Appeal with the legal question of whether or not a request to have oral proceedings in Munich instead of

in The Hague can be refused, the Board does not share the appellant's view that the answer to this question cannot clearly be deduced from the provisions of the European Patent Convention.

It must be stressed that all of the appellant's arguments were based mainly on the contention that it had a right to be heard at the so-called "seat" of the European Patent Office. This contention was the basis of each of its lines of reasoning, including its interpretation of a restriction of the power of the President of the European Patent Office under Article 10 EPC. As it is stated above, the Board is quite clear that this assumption has no legal basis in any provision of the European Patent Convention. Furthermore, the appellant's misinterpretation of the cited decisions cannot justify a referral to the Enlarged Board of Appeal.

In this context, the appellant cited page 87, point 6, last paragraph of D6, where it is stated that a systematic transfer of meetings of the Administrative Council to a place outside Munich would be a violation of Article 6 EPC and could be objected to by the Federal Republic of Germany as the party mainly interested under this article. From this citation the appellant drew the conclusion that a systematic transfer of oral proceedings before Examining Divisions as well as Opposition Divisions from Munich to The Hague would have a much more drastic effect for the Office and in particular for its users than a transfer of meetings of the Administrative Council outside Munich and that, therefore, the systematic transfer of

oral proceedings to The Hague would be a very important point of law.

62. However, it is obvious that D6 only refers to the rights of the Federal Republic of Germany as a subject of international law and party to the European Patent Convention. D6 does not in any way suggest that the rights of the Federal Republic of Germany as a party to the Convention could be claimed by the user of the European patent system during the proceedings before the European Patent Office.

63. The Appellant referred to the current administrative practice of the European Patent Office whereby the competent Examining Division for a patent application is only determined after the filing of the application. It was argued that this practice leads to legal uncertainty because the applicant does not know in advance where the Examining Division will hold oral proceedings.

First of all, it must be stated that procedures before the Examining Division have more the character of an administrative than a court procedure. However, the decisive point against this argument is that no legal, but only a factual uncertainty exists. When filing an application the applicant knows that he could be summoned to oral proceedings in Munich or The Hague, depending on where the relevant Examining Division is located. The question of whether or not a specific procedural event will happen is often uncertain, not least whether or not the requested patent will be granted or subsequently attacked in opposition proceedings.

64. The Board accepts that the question of where oral proceedings are to be held can be of the greatest economic importance for some applicants or law firms but these individual economic interests do not amount to an important point of law under Article 112 EPC.
65. If only for the sake of completeness, the Board should state that it is not aware of any decision contrary to that of the Board in this case. There is thus no case for a ruling by the Enlarged Board of Appeal with a view to ensuring uniform application of the law.
66. Therefore the Board decides that the answer to the Appellant's question raised in its third auxiliary request for referral to the Enlarged Board of Appeal (Article 112(1)(a) EPC) can be deduced directly and unequivocally (as explained above) from the EPC. Nor does it know of any contrary decisions which would justify a ruling by the Enlarged Board of Appeal with a view to ensuring uniform application of the law (Article 112(1)(a) EPC). Accordingly, no such ruling is needed and the request is therefore rejected.
67. In summary, the Board arrives at the conclusion that (a) the appellant's arguments do not justify setting aside the appealed decision and (b) the decision was based on the correct application of the provisions of the European Patent Convention.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

C. Vodz

M. Eberhard