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**Datasheet for the interlocutory decision
of 28 November 2008**

Case Number: T 1020/06 - 3.x.xx

Application Number: 96xxxxxxx.x

Publication Number: xxxxxxxx

IPC: xxxx x/xx

Language of the proceedings: EN

Title of invention:

xx

Patentee:

N.N.

Opponent:

N.N.

N.N.

Headword:

-

Relevant legal provisions:

RPBA Art. 1(2), 13(1)

BDS Art. 2(1), 3(1)(2)(3), 7

ECHR Art. 6(1)

Relevant legal provisions (EPC 1973):

EPC Art. 24

Keyword:

"Partiality of all board members (no)"

Decisions cited:

G 0005/91, G 0001/05, J 0015/04, T 0843/91, T 1028/96

Catchword:

-



Case Number: T 1020/06 - xxxxxx

I N T E R L O C U T O R Y D E C I S I O N
of the Technical Board of Appeal x.x.xx
of 28 November 2008

Appellant: N.N.
(Patent Proprietor)

Representative: N.N.

Respondent I: N.N.
(Opponent 01)

Representative: N.N.

Respondent II: N.N.
(Opponent 02)

Representative: N.N.

Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 20 April 2006 revoking European patent No..... pursuant to Article 102(1) EPC 1973.

Composition of the Board:

Chairman: Y. Lemblé
Members: T. Karamanli
C. Narcisi

Summary of facts and submissions

- I. The appellant (patentee) filed an appeal against the decision of the opposition division revoking European patent No. xxxxxxxx. The respondents (opponent 01 and opponent 02) requested that the appeal be dismissed.

- II. On 14 September 2007 the board issued a summons to attend oral proceedings on 10 January 2008. In a communication attached to the summons and signed by the technically qualified member and rapporteur, the board indicated that the only matter at issue was that of inventive step and expressed its preliminary and non-binding opinion.

- III. In a letter of 4 October 2007, received by the EPO on the same day, the appellant raised an objection of partiality (under Article 24(3), 1st sentence, EPC 1973) to the chairman, the technically qualified member and the legally qualified member of the board designated to hear its appeal (hereafter: original board) and requested their replacement.

The reasons the appellant gave for doing so can be summarised as follows.

In decision T 10XX/05 of 22 May 2007, a board in the same composition as the original board in the present case dismissed the appellant's appeal against the decision of the opposition division revoking European patent No. xxxxxxxx. In both cases the parties were the same. Both cases were also extremely closely linked technically, since they both related to constant velocity (CV) universal joints and followed the same

structural approach, namely transition from a conventional six-ball fixed-type CV joint to a superior eight-ball type CV joint aimed at setting new standards in that area of technology. From the summons to oral proceedings of 14 September 2007, it had become clear that the present case related to the same questions which had been discussed and decided in case T 10XX/05 and that some of the same prior art had been cited in both cases. When comparing the independent claims so far on file with the claims in case T 10XX/05 it was apparent that, to a quite considerable extent, the present case would involve the same questions as those decided upon in case T 10XX/05 and on which the original three members had already made up their mind. The widely overlapping matter under discussion raised the serious suspicion that the members of the original board would not take a fresh, neutral and unbiased view on these questions.

In support of its objections, the appellant referred to decisions G 5/91 (OJ EPO 1992, 617), G 1/05 of 7 December 2006 (OJ EPO 2007, 362) and J 15/04 of 30 May 2006.

- IV. By order of 22 October 2007 under Article 24(4) EPC 1973, all three board members were replaced by their alternates for the purpose of the present proceedings.

- V. All three original members were invited, pursuant to Article 3(2) of the Rules of Procedure of the Boards of Appeal (RPBA) of 1 May 2003 (OJ EPO 2003, 89), to present their comments on the partiality objection raised by the appellant under Article 24(3), 1st sentence, EPC 1973.

VI. In his comments of 31 October 2007 the original legally qualified member answered that he considered himself impartial and that in his opinion the factual and legal requirements of Article 24(1) and (2) EPC 1973 were not fulfilled. In his view, the fact that the technical and legal aspects in case T 10XX/05 and the present appeal case were closely related did not prevent him from deciding in the present case with an open mind and without prejudice.

The comments of the original chairman dated 5 November 2007 read: "I know of no reason which should prevent me giving a fair and impartial treatment of the facts of the present case and of the parties involved."

The original technically qualified member stated in his reply of 5 November 2007 that he did not wish to comment.

VII. By communication of 7 November 2007, to which a copy of the comments provided by all original members was attached, the parties were informed about the appellant's partiality objection under Article 24(3), 1st sentence, EPC 1973, the replacements made for the purpose of the decision to be taken under Article 24(4) EPC 1973 and the invitation pursuant to Article 3(2) RPBA of 1 May 2003 to the three original members to comment on the objection raised. The parties were invited to comment.

VIII. In its reply of 12 November 2007, opponent 01 stated that it did not wish to make any contribution on the partiality issue.

IX. In its reply of 17 January 2008, the appellant said that the original board members' comments on its partiality objection had not assuaged its fears. The original chairman gave no comments on the close connection between case T 10XX/05 and the present case. The original legally qualified member referred in his comments to Article 24(1) and (2) EPC 1973, but not to Article 24(3) EPC 1973 on which the appellant's objection was based. The refusal of the original technically qualified member and rapporteur to comment on the appellant's objection could mean either that he felt influenced by the preceding decision T 10XX/05 and, therefore, had difficulty changing his mind when called upon to decide on the same fundamental aspects or parameters of the joints in the present case, or that he did not feel prejudiced despite having already decided on the same or closely related questions in the preceding case.

The appellant repeated that it had reasonable doubts about the impartiality of the original board members since, in case T 10XX/05, the original board had decided in the same composition on an inventive-step matter which was also at issue in the present case. In decision T 10XX/05 the board had held that it would be an obvious act for the skilled person starting from a power transmission mechanism of an automobile incorporating a CV joint with six balls to modify it in such a way as to provide eight balls and to arrive at the claimed dimensional parameters r_1 and r_2 . It could be inferred from everyday experience that the assessment already made in a preceding decision with respect to the fundamental change from six- to eight-ball joints, including the selection of certain parameter ranges for r_1 and r_2 , was likely to influence the decision of the original board in the present case

on the same type of joint, somewhat modified but with the same fundamental characterising parameters. This fear of a degree of preconception on the part of the original board in evaluating the same or very similar characterising features of such a joint in the present proceedings was hardly unreasonable. This could also be seen from the preliminary view expressed in the communication of the original technically qualified member and rapporteur (Annex to the summons to oral proceedings) where it was stated in point 1.4: "It appears from the patent specification that the claimed ranges of the parameters r1 and r2 are merely the result of optimization following the adoption of eight balls."

The appellant referred to decision T 1028/96, OJ EPO 2000, 475, Reasons 6.1, where reference was made to G 5/91, loc. cit., Reasons 6, and the following was stated: "According to this decision, the issue of suspected partiality can only be decided upon 'in the light of the particular circumstances of each individual case...such considerations involve factual questions of degree rather than points of law'...". The appellant argued that in view of that, the close relationship between the present case and case T 10XX/05 raised doubts about the ability of the members of the original board to deal with the present case without prejudgement.

- X. On 7 March 2008 the appellant filed a letter with the heading "This is in response to the Summons to Oral Proceedings of September 14, 2007", together with a new main request and fifteen new auxiliary requests. The last sentence of the first page of this letter reads: "Said new requests submitted herewith replace all previous requests." On 31 March 2008 the registrar of

the board phoned the appellant's representative and asked him whether this sentence meant that he also wished to withdraw his request dated 4 October 2007 for replacement of all members of the original board due to suspected partiality. In its reply of 1 April 2008 to this phone call, the appellant stated that the submissions dated 7 March 2008 were completely independent of its objections to the original board members and should, therefore, be ignored in the proceedings under Article 24(4) EPC 1973.

XI. On 8 May 2008 the substitute board issued a communication expressing its provisional opinion. In its view, the appellant's letter filed on 7 March 2008 had no bearing on the admissibility of the objection of suspected partiality. However, in the board's provisional opinion, the circumstances of the case and the conduct of the original board members did not give rise to a justified fear of partiality and, on an objective basis, there was nothing to justify any suspicion that any of the original members had any kind of preconceived attitude towards the questions at issue in the present case. The substitute board also saw no reasonable grounds for believing that any of the original members might have preconceived attitudes such that there could reasonably be any suspicion that he would not give full weight to all arguments raised. Accordingly, the appellant's objections under Article 24(3) EPC 1973 to all the original board members were likely to be rejected. The parties were invited to present their comments in writing within a period of 2 months and were informed that after expiry of that period the board intended to take a decision in

written proceedings, since there was no request for oral proceedings on the partiality issue.

- XII. In its reply of 8 July 2008, the appellant argued that it was difficult to imagine that, when considering the parameter ranges characterising the new joint, the board in the same composition as in case T 10XX/05, and in particular with the same rapporteur, would be able to disregard its earlier deliberations, for example when assessing the joint parameters r_1 and r_2 in its previous decision. Thus it was doubtful whether an original board member would have a fresh, neutral and unbiased view on these questions which had been of importance in decision T 10XX/05 and were relevant again in the present case.

With regard to the communication annexed to the summons of 14 September 2007, the appellant said that the approach of the original board to "consider" the specification of the contested patent as "witness" to the effect that the parameter ranges for r_1 and R_1 lacked inventive step tended to reinforce its suspicion of partiality since, in its previous decision T 10XX/05, Reasons 2.2.3, the board had also referred to the specification in holding that the choice of said parameter ranges did not involve inventive step.

Contrary to the assumption in the present board's communication of 8 May 2008, the appellant's objection of suspected partiality was not based solely on the fact that the same board in the same composition had participated in two closely related appeal cases with the same opponent and patentee. In addition, the annex to the summons to oral proceedings showed that, with

respect to essential criteria and features, the original board or at least its rapporteur was applying in the present case the same approach as in decision T 10XX/05 for evaluating the obviousness of essential features of the new teaching, by stating again that it appeared from the patent specification that the claimed ranges of parameters r1 and R1 were mainly the result of optimisation following the adoption of eight balls. This presumption of the original board and in particular of its rapporteur disregarded the inventor's efforts to move away from routine design steps and, therefore, together with the close connections between both cases and the board's identical composition, justified its fear that all the original board members were partial, however unintentionally. Of course the appellant's "suspicion" had to be justified on an objective basis and "purely subjective impressions" were not enough. However, in view of a "pattern" of argumentation in point 1.4 of the communication accompanying the summons to oral proceedings in the present case, and which was strikingly similar to the line of argument used regarding the lack of inventive merit of feature r2 in decision T 10XX/05, it was at least doubtful whether the original board could hear all arguments in the present case with an unbiased, fresh and neutral mind, i.e. without any preconceived ideas deriving from its decision in the "sister case", and reconsider conclusions it had reached in the previous case.

XIII. Opponent 02 made no submissions.

Reasons for the decision

1. The present decision is being taken after the entry into force of the revised European Patent Convention (EPC) on 13 December 2007. At that time, the European patent in suit had already been granted. The board has therefore applied the transitional provisions in accordance with Article 7(1), second sentence, of the Revision Act of 29 November 2000 and the decisions of the Administrative Council of 28 June 2001 (Special edition No. 1, OJ EPO 2007, 197) and 7 December 2006 (Special edition No. 1, OJ EPO 2007, 89). Articles and rules of the revised and former texts of the EPC are cited in accordance with the practice described on page 4 of the 13th edition of the Convention.

2. *Substitute composition of the board*

The board in its original composition considered the objection of suspected partiality to be admissible pursuant to Article 24(3) EPC 1973. Therefore, according to Article 24(4) EPC 1973, the board in a substitute composition had to decide on the action to be taken (T 1028/96, loc. cit.).

Article 24(4), second sentence, EPC 1973 stipulates that for the purposes of taking the decision on the allegation of partiality, the member objected must be replaced by his alternate. In the present case, the entire original board was objected to. Article 24(3) EPC 1973 states that "members" of a board may be objected to by any party. This implies that objections may be made against each or all of its members (T 843/91, OJ EPO 1994, 818). Therefore, all the

members of the original board were replaced pursuant to Article 24(4), second sentence, EPC 1973 by applying the "Business distribution scheme of the Technical Boards of Appeal for the year 2007" (Supplement to OJ EPO No. 1/2007) and Article 2(3) RPBA of 1 May 2003.

The board in the substitute composition (as notified to the parties by communication of 7 November 2007) is hence competent to decide on the appellant's partiality objection under Article 24(3), first sentence, EPC 1973 to the original chairman, the original technically qualified member and the original legally qualified member.

3. *Admissibility of the partiality objection in view of the appellant's new requests filed by letter of 7 March 2008*

According to Article 24(3), second sentence, EPC 1973, an objection on the ground of suspected partiality is not admissible if, while being aware of a reason for objection, the party has taken a procedural step. The appellant raised the objection of suspected partiality immediately after it became aware of the possible reason of objection (i.e. after receiving the summons to oral proceedings informing it for the first time of the composition of the original board), without having taken a procedural step while being aware of a reason for objection. The fact that the appellant filed new requests **after** proceedings under Article 24(4) EPC 1973 had been started does not render the objection inadmissible.

However, at present it will not be decided whether the new requests are admitted into the proceedings in accordance with Article 13(1) RPBA of 13 December 2007 (OJ EPO 2007, 536)), because until a decision is taken on the exclusion of the original members there can be no further proceedings in this case (Article 3(3) RPBA of 13 December 2007).

4. *Allowability of the objection under Article 24(3), first sentence, EPC 1973*
- 4.1 Article 24(3), first sentence, EPC 1973 stipulates that members of a board may be objected to by any party for one of the reasons mentioned in paragraph 1 of Article 24 EPC 1973, or if suspected of partiality.
- 4.2 In the board's view there is no ground for exclusion under Article 24(1) EPC 1973 in the present case since decision T 10XX/05 is not a decision under appeal within the meaning of said provision (see also T 1028/96, loc. cit., Reasons 5). This has also not been contested by the appellant.
- 4.3 The question which arises in the present case is whether there is a ground which could justify a suspicion of partiality within the meaning of Article 24(3), first sentence, EPC 1973 if all members of a technical board of appeal participated in a previous decision taken by a board in the same composition and involving similar legal or factual questions.
- 4.4 The board agrees with the appellant that the Enlarged Board of Appeal has held that a very strict observance

of the requirement of impartiality is particularly important in proceedings before the boards and the Enlarged Board of Appeal in view of their judicial functions at supreme level within the European system of patent law (G 5/91, loc. cit., Reasons 3).

In its later decision G 1/05 (loc. cit.), the Enlarged Board of Appeal set forth in some detail the considerations to be applied to proceedings of the Enlarged Board or the boards of appeal where a board member's suspected partiality must be assessed because he or she took part in a prior decision of a board of appeal adopting a position on a similar matter (see Reasons 19 to 25). It held that for an objection under Article 24(3), first sentence, EPC 1973 to be justified it is not necessary that there is an actual partiality of the board member concerned and that it suffices that there is a suspicion i.e. an appearance of partiality (see Reasons 19). It also stressed that "it is, however, also commonly recognised in the jurisprudence of the Boards of Appeal and elsewhere that the 'suspicion' by the party must be justified on an objective basis" and that "purely subjective impressions or vague suspicions are not enough" (see Reasons 20). The question in such cases is "whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case" (Reasons 20). The Enlarged Board of Appeal considered it "thus necessary that a reasonable onlooker considering the circumstances of the case would conclude that the party might have good reasons to doubt the impartiality of the member objected to" (Reasons 20). However, "that conclusion

cannot be arrived at based on the fact alone that the board member concerned has expressed a view on the legal issue to be decided on a prior occasion be it in a prior decision or in literature" and "it is in principle also not relevant whether or not the view expressed is correct" (Reasons 20).

The Enlarged Board of Appeal further held that, taking into account the principle of equal treatment and the right of parties to a fair trial as enshrined e.g. in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the boards of appeal are obliged "to decide the individual cases pending before them according to uniformly applied criteria and not in an arbitrary manner" (G 1/05, loc. cit., Reasons 22). In the same paragraph, it also stated that "the establishment of a uniform jurisprudence which is consistently applied to the individual cases under consideration appears, thus, as a means to safeguard that justice is done to the parties, on condition that the principles developed in the jurisprudence are applied to the individual cases under consideration in a manner which takes due account of their particulars, if any".

As regards suspected partiality, the Enlarged Board of Appeal took the view that "a suspicion of partiality might arise where there are circumstances possibly justifying a suspicion of a tendency to favour one or more of the parties or to discriminate against one of them" (Reasons 23). It was emphasised that "any such suspicion must be based on the specific facts of the case" and that "it cannot be justified merely by the

submission that a legal question was already decided in a certain way in a prior decision" (Reasons 23).

4.5 The considerations set out in decision G 1/05 must also apply to the present appeal proceedings and no different interpretation can be given to Article 24(3) EPC 1973 in that context (see G 1/05, loc. cit., Reasons 25).

4.6 The present board notes that the participation of the original members in appeal T 10XX/05 and the present appeal is not excluded by the provisions of the RPBA and the business distribution scheme (BDS) of the technical boards of appeal, even if both cases are closely linked by involving similar legal or factual questions.

The RPBA and BDS define how the composition of the technical board of appeal for each particular case is determined. Pursuant to Article 2(1) BDS, board members are allocated to individual technical boards. In proceedings for which the technical boards are competent in accordance with Article 21 EPC 1973, the individual appeals are assigned to specific boards according to the classification attributed to the application or the patent concerned (Article 1 BDS). On receipt of an appeal by the registry, the chairman determines the composition of the board responsible for deciding it from amongst the board members (Article 1(2) RPBA of 13 December 2007 and Article 3(1) BDS). There is no provision in the RPBA or BDS for a member to be excluded from participation in an appeal case pending before a technical board if that member has already dealt with a similar legal or factual question in another case pending before the same or

another technical board. On the contrary, Article 7 BDS stipulates that where appeals pending before the board are closely linked, in particular by involving similar legal or factual questions, the chairman may order that the board decides in the same composition.

- 4.7 It follows that, to the extent that participation in appeal cases which are closely linked by involving similar legal or factual questions is not excluded by the RPBA and BDS, an objection of partiality cannot be based on that fact alone. Unless there are specific circumstances casting doubt on the board member's ability to approach the parties' submissions with an open mind there cannot be any reasonable i.e. objectively justified suspicion of partiality within the meaning of Article 24(3), first sentence, EPC 1973 on the grounds that the member took part in a prior board of appeal decision which adopted a position on a similar matter.

This conclusion is in line with judicial efficiency and the smooth functioning of the boards, and also with decisions G 1/05 (loc. cit., Reasons 27), T 1028/96 (loc. cit., Reasons 6) and J 15/04 (loc. cit., Reasons 7 and 8).

The appellant explicitly referred to decision J 15/04 (loc. cit.) in support of his objection of suspected partiality, because in case J 15/04 the originally appointed chairman of the Legal Board of Appeal had participated as legally qualified member in appeal proceedings before a technical board which issued a decision refusing the parent application of the application at issue in appeal proceedings before the Legal Board of Appeal. Firstly, the present board notes

that the substitute Legal Board of Appeal had to decide on a self-recusation within the meaning of Article 24(2) EPC 1973. Secondly, the Legal Board of Appeal held in said decision (Reasons 8) that "any broader interpretation of the wording 'participated in the decision under appeal' pursuant to Article 24(1) EPC must be based on the occurrence of specific facts of the case to be decided, which are sufficient to raise specific concrete doubts on the ability of the member of the Board to hear the appeal with an objective judicial mind and cannot be concluded from the mere procedural fact that a member of the Board was already involved in former proceedings with the same party or the same legal question to be decided in the current case." Thus the present board's view as expressed in point 4.7 above is also in line with this finding.

- 4.8 The board concurs with the appellant that in decision T 10XX/05 and the present case similar characterising features of a CV joint are present in the claims. However, the claims in the two cases differ with regard to other technical features. Thus their subject-matter cannot be considered as being the same. The present case is thus different from T 1028/96 (loc. cit.) where, in the particular circumstances of that case, a chairman of a board in opposition appeal proceedings was "suspected of partiality" because he had also been the chairman in the previous grant appeal proceedings concerning the very same European patent application on which the opposed European patent was based, and where substantially the same crucial facts for the assessment of sufficiency of disclosure were at issue in both appeal proceedings. In fact, case T 10XX/05 concerns a

European patent based on a European patent application both of which are different and fully independent from the present European patent and the European patent application on which it is based. The parties to the proceedings in case T 10XX/05 are also not exactly the same as those involved in the present case.

4.9 The fact that some of the same prior art is relevant in both cases does not mean that the relevance of this prior art will be assessed in the same way in both cases, since - as explained above - the subject-matter of the two patents is different.

4.10 Nor does the present board see any specific circumstances which might cast doubt on the original board members' ability to approach the parties' submissions with an open mind in the present case.

None of the original members has expressed himself on the matter at issue, be it during or outside the proceedings, in outspoken, extreme or unbalanced terms such as to cast doubt on his ability to consider the parties' arguments with an open mind and without preconceived ideas, and to bring an objective judgment to bear on the issues raised (see also G 1/05, loc. cit., Reasons 24 with further references).

The preliminary view of the original board, as expressed in its communication annexed to the summons to oral proceedings, does not contain any extraneous considerations, prejudices, predilections or other deficiencies indicative of a preconceived attitude (see also G 1/05, loc. cit., Reasons 23 with further references).

The appellant argued that it was obvious from said communication that, with respect to essential criteria and features, the original board or at least its rapporteur was applying in the present case the same approach as in decision T 10XX/05 for evaluating the obviousness of essential features of the new teaching, by stating again that it appeared from the patent specification that the claimed ranges of parameters r_1 and R_1 were mainly the result of optimisation following the adoption of eight balls. According to the appellant, this presumption of the original board and in particular of its rapporteur disregarded the inventor's efforts to move away from routine design steps and, therefore, together with the close connections between both cases and the board's identical composition, justified its fear that all the original board members were partial, however unintentionally.

The present board does not find this reasoning convincing. Even if in both cases the original board referred to the respective patent specification and reached a similar conclusion, that does not mean it was not possible for its members to hear all arguments in the present case with an unbiased, fresh and neutral mind, i.e. without any preconceived ideas deriving from the previous decision. Nor does it justify the presumption that it was impossible for them to reconsider conclusions they may have reached in the previous case. The Enlarged Board of Appeal held that a suspicion of partiality "cannot be justified merely by the submission that a legal question was already decided in a certain way in a prior decision" (G 1/05, loc. cit., Reasons 23). The present board is convinced

that the same applies in the present case where the appellant objected that the original board was approaching the evaluation of the obviousness of identical or at least similar features of the claimed subject-matter in the same way as in decision T 10XX/05. Rather, this approach indicates that the members of the original board aim to decide the individual cases pending before them according to uniformly applied criteria and not in an arbitrary manner. There is also no indication in the original board's communication that its members were not prepared to take due account of the particulars of the individual case at issue. The present board cannot conclude from the appellant's submissions or the facts of the present case that the original board members have not brought and will not bring an impartial mind to bear on the adjudication of the case.

Lastly, the board notes that the communication expressing the original board's preliminary view makes no reference to decision T 10XX/05.

- 4.11 Nor does any suspicion of partiality arise from the reactions of the original members to the invitation of 30 October 2007 to comment on the objection of partiality. Article 3(2) RPBA of 13 December 2007 is a specific embodiment, for board members who are objected to, of the general principle of the right to be heard. Thus, in the substitute board's view, no conclusion can be drawn from the mere fact that the original technically qualified member and rapporteur replied that he did not wish to comment. All this means is that he chose not to avail himself of his right to be heard.

It is true that the comments of the original legally qualified member do not refer specifically to Article 24(3) EPC 1973. He did however explicitly state that the fact that the technical and legal aspects in case T 10XX/05 and the present appeal case were closely related would not prevent him from deciding in the present case with an open mind and without prejudice. This statement is to be seen in the context of an objection of suspected partiality within the meaning of said provision.

Although the original chairman did not comment on the close connection between T 10XX/05 and the present case, he explicitly stated that he knew of no reason preventing him from giving a fair and impartial treatment of the facts of the present case and of the parties involved. The present board is of the opinion that a reasonable, objective and informed person reading this clearly worded statement would not infer from the fact that it does not mention the close connection between both cases that the original chairman would not bring an impartial mind to bear on the adjudication of the present case.

5. The substitute board concludes from the above that the circumstances of the case and the conduct of the original board members do not give rise to a justified fear of partiality. In its view, on an objective basis there is nothing to justify any suspicion that any of the original members might have any kind of preconceived attitude towards the questions at issue in the present case. It also sees no reasonable grounds for believing that any of the original members might have preconceived attitudes giving rise to any

reasonable suspicion that he would not give full weight to all arguments raised in the matter. Accordingly, the appellant's objections under Article 24(3) EPC 1973 to all the original board members must be rejected.

Order

For these reasons it is decided that:

The objections of partiality under Article 24(3) EPC against the original board members are rejected.

The Registrar:

The Chairman:

A. Vottner

Y. Lemblé