

**ANLAGE 4****VORLAGEN AN DIE GROSSE  
BESCHWERDEKAMMER\*****Vorlagen der Beschwerdekammern****ANNEX 4****REFERRALS TO THE ENLARGED  
BOARD OF APPEAL\*****Referrals by boards of appeal****ANNEXE 4****QUESTIONS SOUMISES A LA  
GRANDE CHAMBRE DE RECOURS\*****Questions soumises par les  
chambres de recours**

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.04 has referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 22 May 07 in case **T 83/05**:

1. Does a non-microbiological process for the production of plants, which contains the steps of crossing and selecting plants, escape the exclusion of Article 53(b) EPC merely because it contains, as a further step or as part of any of the steps of crossing and selection, an additional feature of a technical nature?
2. If question 1 is answered in the negative, what are the relevant criteria for distinguishing non-microbiological plant production processes excluded from patent protection under Article 53(b) EPC from non-excluded ones? In particular, is it relevant where the essence of the claimed invention lies and/or whether the additional feature of a technical nature contributes something to the claimed invention beyond a trivial level?

The case is pending under Ref. No. **G 2/07**.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.04 has referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 4 April 2008 in case **T 1242/06**:

1. Does a non-microbiological process for the production of plants, consisting of steps of crossing and selecting plants, fall under the exclusion of Article 53(b) EPC only if these steps reflect and correspond to phenomena which could occur in nature without human intervention?
2. If question 1 is answered in the negative, does a non-microbiological process for the production of plants, consisting of steps of crossing and selecting plants, escape the exclusion of Article 53(b) EPC merely because it contains, as part of any of the steps of crossing and selection, an additional feature of a technical nature?
3. If question 2 is answered in the negative, what are the relevant criteria for distinguishing non-microbiological plant production processes excluded from patent protection under Article 53(b) EPC from non-excluded ones? In particular, is it relevant where the essence of the claimed invention lies and/or whether the additional feature of a technical nature contributes something to the claimed invention beyond a trivial level?

The case is pending under Ref. No. **G 1/08**.

**G 2/07** and **G 1/08** will be considered in consolidated proceedings.

In accordance with Article 112(1)(a) EPC, Legal Board of Appeal 3.1.01 referred the following point of law to the Enlarged Board of Appeal with interlocutory decision of 27 May 2009 in case **J 2/08**:

Is an application which has been refused by a decision of the examining division thereafter still pending within the meaning of Rule 25 EPC 1973 (Rule 36(1) EPC) until the expiry of the time limit for filing a notice of appeal, when no appeal has been filed?

The case is pending under Ref. No. **G 1/09**.

\* Die Vorlagen an die Große Beschwerdekammer erscheinen in der Anlage 4 nur in der Verfahrenssprache.

\* The referrals to the Enlarged Board of Appeal are published in Annex 4 in the language of the proceedings only.

\* Les questions soumises à la Grande Chambre de recours ne sont publiées dans l'Annexe 4 que dans la langue de la procédure.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.5.03 referred the following points of law to the Enlarged Board of Appeal by its interlocutory decision of 17 June 2010 in case **T 1145/09**:

1. Is a patent proprietor's request for correction of the grant decision under Rule 140 EPC, which was filed after initiation of opposition proceedings, admissible? In particular, should the absence of a time limit in Rule 140 EPC be interpreted such that a correction under Rule 140 EPC of errors in decisions can be made at any time?
2. If such a request is considered to be admissible, does the examining division have to decide on this request in ex parte proceedings in a binding manner so that the opposition division is precluded from examining whether the correction decision amounts to an unallowable amendment of the granted patent?

The case is pending under Ref. No. **G 1/10**.

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.08 referred the following point of law to the Enlarged Board of Appeal by its interlocutory decision of 25 June 2010 in case **T 1068/07**:

"Does a disclaimer infringe Article 123(2) EPC if its subject-matter was disclosed as an embodiment of the invention in the application as filed?"

The case is pending under Ref. No. **G 2/10**.