

**Avis de la Grande Chambre de recours, en date du 29 octobre 1993**  
**G 4/92**

Composition de la Chambre :

Président : P. Gori  
Membres : C. Payraudeau  
F. Antony  
W. Moser  
G.D. Paterson  
E. Persson  
P. van den Berg

**Référence : Fondement des décisions**

**Article : 113(1), 114(1), 114(2) CBE**

**Règle : 71(2) CBE**

**Mot-clé : "Principe du contradictoire" - "Partie absente à une procédure orale"**

*Sommaire*

*I. Une décision prononcée à l'encontre d'une partie absente à une procédure orale à laquelle elle a été régulièrement citée ne peut être fondée sur des faits invoqués pour la première fois au cours de cette procédure orale;*

*II. Dans les mêmes circonstances, des moyens de preuve nouveaux ne peuvent être pris en considération que s'ils ont été préalablement annoncés et ne font que confirmer les allégations de la partie qui les invoque tandis que les arguments nouveaux peuvent être, en principe, retenus dans la motivation de la décision.*

**Decision of Technical Board of Appeal 3.5.2 dated 16 February 1993**  
**T 261/88 - 3.5.2**

Composition of the Board:

Chairman: J.A. van Voorthuizen  
Members: W.B. Oettinger  
E.M.C. Holtz

**Patent proprietor/Appellant: Discovision Associates**

**Opponent/Respondent: N.V. Philips' Gloeilampenfabrieken**

**Headword: Signal information/DISCOVISION**

**Article: 24, 56 and 111(1) EPC**

**Rule: 67 EPC**

**Keyword: "Member of Opposition Division disqualified by partiality (no)" - "Reimbursement of appeal fee (no) - no substantial procedural violation" - "Inventive step (yes) - formulation of the problem contributing to inventive step"**

*Headnote*

*I. Disqualifying partiality presumes a preconceived attitude on the part of a deciding person (in this case the first examiner) towards a party (in this case the patentee) to the case. The fact that the views held on the issues of the case by the examiner differ from those held by the party is in itself not disqualifying. The remedy to be used in such a situation is the appeal.*

*II. When considering an allegation of partiality (in this case mainly based on the fact that the examiner was a former employee of the opponent in the case), regard must be had to the particular facts of the case (cf. G 5/91). The content of the file must therefore be examined to find out whether there are major deficiencies in the reasoning underlying the decision to such an extent that there is reason to believe that they were the result of a preconceived attitude.*

*III. When the content of the file does not go beyond a normal discussion between the EPO and a party and there is nothing manifestly unreasonable to be found in the reasoning, disqualifying partiality cannot be concluded.*

*IV. The length of time between the examiner's last action for his former employer and his first action as examiner in a particular case to which this employer is a party may be important, since any residual bias which may be caused by this employment would gradually fade away with time.*

**Entscheidung der Technischen  
Beschwerdekammer vom 6. Mai 1992  
W 16/92 - 3.2.4**

Zusammensetzung der Kammer:

Vorsitzender: C. Andries  
Mitglieder: H. Berger  
M. Lewenton

**Stichwort: Drapieren von Vorhängen**  
**Regel: 40.2 c) PCT**  
**Schlagwort: "Widerspruch ohne Begründung"**

*Leitsätze*

*I. Gemäß Regel 40.2 c) PCT ist dem Widerspruch gegen die Aufforderung zur Zahlung zusätzlicher Recherchengebühren eine Begründung beizufügen. Ein Widerspruch, der nicht hinreichend begründet ist, wird als unzulässig verworfen.*

*II. Die Begründung muß nachvollziehbare Gründe enthalten, die erkennen lassen, weshalb der Anmelder die Einheitlichkeit der Erfindung für gegeben erachtet. Die bloße Behauptung, daß die internationale Anmeldung das Erfordernis der Einheitlichkeit erfülle, stellt keine Begründung im Sinne der Regel 40.2 c) PCT dar.*

Verzeichnis der veröffentlichten Entscheidungen der Beschwerde-kammern und der Großen Beschwerdekammer (Stand 31.12.93)

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