

Proceedings started at 9am this morning, when the room once again filled up with the parties involved as well as interested members of the public.

First, all opponents were offered the opportunity to respond to the Patentees' comments that extended beyond the linguistic arguments yesterday. Then, the Board invited all parties to comment, in turn, on the interpretation of "any person" when considering its *context* in accordance with Article 31 of the Vienna Convention on the Law of Treaties of 1969.

Article 31(1) states (emphasis added):

A treaty shall be interpreted in good faith in accordance with the *ordinary meaning* to be given to the terms of the treaty in their *context* and in the light of its *object and purpose*."

As is custom, the Patentees were given the opportunity to present their arguments first. They started by stating that since Article 31(1) (above) doesn't separate the aspects of "ordinary meaning", "context" and "object and purpose", their arguments would naturally stray across these three areas. Their arguments included:

- the assertion that weight should not be given to public policy factors (such as providing a deterrent to those who would otherwise not name all co-inventors) in preference to the legal factors (such as what the law actually says), particularly when the public policy factors are not actually referenced in the law and criminal law is instead the correct mechanism with which to tackle bad behaviour;
- the argument that Article 4(1) of the Paris Convention provides minimal standards for Applicants, not minimal requirements that Patent Offices are allowed to supplement with additional requirements (as they are not so allowed), such as the requirement for "legal unity" of applicants;
- the assertion that the U.S., China, and Brazil all use a broader interpretation of "any person" in Article 4 of the Paris Convention, and that there are other pending EPO proceedings where the same question about "any person" has been raised, so that if the Board has any doubts then they should refer questions to the Enlarged Board as the same question will keep appearing; and
- the argument that [T788/05](#) does not settle the law as much as has been presented, because the priority section of that decision is actually quite brief, and doesn't actually provide precedent for *stopping* a sub-group of applicants from exercising their priority rights on their own, and subsequent Boards did not assess the decision in this respect because they were never asked to do so by the parties in front of them.

Once the Patentees finished their arguments, the Opponents were invited to speak. On prompting from an opponent, the Board agreed that since the Patentees did not stick to just the "context" of "any person", the opponents should not feel obliged to do so either.

The Opponents' arguments were also varied, including:

- the assertion that "celui qui" is the correct term to consider, and is always used in the singular in the Paris Convention, never the plural, implying "legal unity" of applicants;
- the suggestion that "any person" in the English was to emphasise that it could be "any *natural* or *legal* person", so that it should not detract from the interpretation that there is "legal unity";

- the argument that the law regarding “legal unity” of “any person” is settled and accepted by Boards as such in the case law, and also accepted in the Guidelines for Examination at the EPO, so there is no ambiguity, and that this interpretation of the Paris Convention has actually been more generally accepted for 100 years;
- the suggestion that if the Patentees think the accepted legal practise should change, then the onus is on them to provide good reasons for changing it; and
- the argument that the Patentees could have avoided the problem as they should have known the rules and followed them; and
- the assertion that a change now would mean not only that some Patents such as the one at issue would become valid, but also that some granted Patents would become invalid, because prior art has been discounted that was judged to not have a valid priority claim due to a lack of “legal unity” (as shown in T788/05).

Additional cases were also cited by all parties, and references were made to the declarations that have been filed, in support of their arguments.

Another “round” of arguments were then presented, with the Patentees and then Opponents given the opportunity to respond to the arguments made in the last “round”, including those above.

The Board took a 5 minute break after a final, short, third “round”, before announcing that the oral proceedings were adjourned until tomorrow at 10am, when the Board will want to hear arguments regarding the Patentees’ priority “Argument I”; this is the arguments that the EPO should not be assessing whether applicants are *entitled* to priority rights, but instead should leave this to national courts as they do with other aspects of entitlement to applications and patents.