

T844/18 Oral Proceedings 15th January 2020 - Day 3: BREAKING NEWS

Proceedings started at 10am this morning, and immediately everyone woke up as the Chair began to speak.

This is because the Chair immediately announced that it is the current intention of the Board to send questions regarding priority to the Enlarged Board of Appeal.

They said that they envisage sending three questions (at least) regarding:

- 1) Whether the EPO should be deciding questions of entitlement to priority (i.e. along the lines of the Patentee's "Argument I")
- 2) What the meaning is of "Any Person" in Article 87(1) EPC (i.e. along the lines of the Patentee's "Argument II")
- 3) What the appropriate law is to be applied in such situations (i.e. along the lines of the Patentee's "Argument III"; the Patentees are arguing it is US law in this case).

Not surprisingly, there were some emphatic objections from Opponents to the Chair's announcement.

The Legal member clarified that they will decide the actual questions themselves, in private, and reminded the parties that referring questions would mean that these proceedings would be adjourned, there would be a chance for submissions in front of the Enlarged Board, and then we would return to these proceedings once the answers had been given (but not this week).

The Chair said that the questions would be referred because this is a questions of a point of law of fundamental importance, in accordance with [Article 122 EPC](#). They will hear submissions on this point from the parties, though after the break that we are currently on.