

T844/18 Oral Proceedings 16th January 2020 - Day 4: BREAKING NEWS

The Board of Appeal for T0844/18, i.e. the appeal against the revocation of EP2771468, have reconsidered the need to send questions to the Enlarged Board, and announced that the Patent does not have a valid claim to the priority to the earliest priority claims, as decided by the Opposition Division. This also means that the claims currently on file lack novelty over the cited art.

The Patentees are therefore currently deciding how they wish to proceed.

As promised when the Board adjourned the proceedings yesterday evening, this morning we have been hearing more arguments about priority, but this time specifically concerning the Patentees' "Argument III", i.e. their assertion that "any person who has duly filed" should be interpreted according to the national law where the priority application was filed. For this case, that means looking to US law regarding US provisional applications, because the earliest priority applications are US provisional applications.

After over 3 hours of arguments, the Board said they had heard enough of this matter and would adjourn until 3pm so that they could decide how to proceed.

The Board have now returned to the proceedings and announced that they have reconsidered the need to refer questions to the Enlarged Board. They can answer all the questions, they say, and find that the EPO is able to decide the priority entitlement, that the Opposition Division were correct in interpreting the meaning of "Any person", and that national law should NOT be applied when interpreting "any person who has duly filed".

The Board also stated this means that the Opposition Division were correct in deciding that the Patent lacks novelty, and so the claims currently on file also lack novelty. The Patentees have therefore been given 15 minutes to decide what they want to do next.