

T844/18 Oral Proceedings 16th January 2020 - Day 4: PATENT REVOKED

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 main claim request lacks novelty over the cited art.

In response the Patentees tried to argue that they should have an opportunity to convince the Board that referred questions *are* necessary. When that failed, they withdrew all auxiliary claim requests on file.

Therefore, the Board announced their decision that the Opposition Division's decision is upheld, and the patent is revoked.

This was something of a surprise, since the Board indicated yesterday that they were inclined to refer questions to the Enlarged Board. 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 would mean 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. When they returned they announced that they had 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".

This meant that the Board were able to decide that the Opposition Division were correct in their decision.