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Abridged EPO appeal decisions

Harriet Crawford (GJE Intellectual Property) · Wednesday, January 22nd, 2020

T1687/17 is an early example of what an abridged decision under the new [Rules of Procedure of the Boards of Appeal \(RPBA\)](#) looks like: very short and published only a week after the oral proceedings, thereby also being timely in accordance with Art. 15(9) RPBA.

The current RPBA contain new provisions allowing the Boards to issue written decisions in abridged form, either with consent of the parties for decisions given at oral proceedings or – if agreeing with the first instance decision – without needing consent of the parties. New Art 15(9) RPBA also introduces the somewhat vague requirement for decisions to be issued “in a timely manner”. Readers will recall that appeal decisions can sometimes take months to be issued in writing following oral proceedings, so it is good to have an early example of just how quickly decisions might be issued with the abridged format.

The decision notes that the parties confirmed at the hearing that no new arguments were raised during the appeal proceedings – providing a clear reasoning for the abridged form of the decision. The reasoning of the Board merely refers to passages from the first instance decision and even the minutes of the decision are rather short, referring again to the facts put forward in the appealed decision.

Parties to appeal, especially appellants, should take note that the Boards are ready to use the new RPBA to provide speedy decisions on appeals and will not hesitate to call out repetitive argumentation by representatives. In this case, the Board made use of Art. 15(8) RPBA, thereby not needing explicit consent of the parties to abridge the decision. Nevertheless, in case the Board seeks consent of parties (Art. 15(7) RPBA) to make an abridged decision then a legitimate reason to have an unabridged decision should ideally be at the ready. Also for third parties who may be watching in the wings, a legitimate reason can be indicated to try and force an unabridged decision on an appeal case, although it is not apparent at what stage such indication should be filed to avoid an abridged version.

The subtext of this decision may also be noted: the purpose of an EPO appeal is not to have a second go at arguing the same case. Appellants must show why the first instance decision was wrong, which is not the same as why the patent is still valid or invalid according to the appellant. Even after hearing arguments at oral proceedings, the Board in **T1687/17** still found there to be no new position taken by the parties compared to the first instance procedure and therefore dismissed the appeal.

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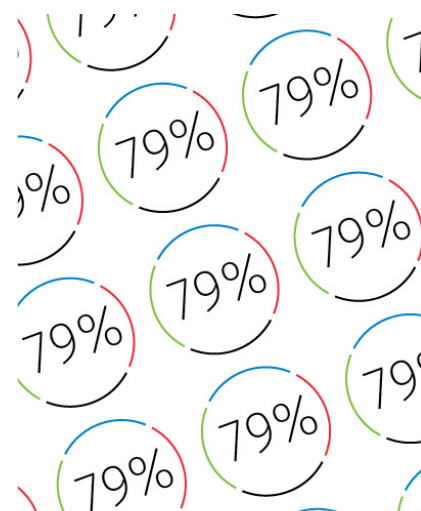
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This entry was posted on Wednesday, January 22nd, 2020 at 8:41 am and is filed under [Case Law](#), [EPO](#)

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