

parties to the proceedings should be notified in writing of this fact as early as possible before the appointed day. Except in special circumstances, telephone communications concerning such matters were inappropriate, especially in inter partes proceedings. See also T. 692/00.

In T. 692/00 the board held that for the appellant (patent proprietor) to announce shortly before the appointed date for oral proceedings that it might or might not attend while maintaining its request for oral proceedings could only be an abuse of procedure.

In T. 69/07 the respondent had requested oral proceedings but did not appear at the oral proceedings at the appointed time. The board noted that, in accordance with Art. 6 of the Code of Conduct of Members of the EPO, of which the representative is obligatorily a member, the members are required to act courteously in their dealings with the EPO. The representative of the respondent had had sufficient time to inform the board of its intended non-appearance at the oral proceedings. This would have avoided keeping the other party and the board first of all courteously waiting for the representative in case he had unintentionally been delayed, and then obliging the registrar of the board to carry out enquiries to establish if the representative intended to attend the oral proceedings. See also T. 954/93, T. 1760/09, T. 1939/10.

In T. 930/92 (OJ 1996, 191) the board also pointed out that there was an equitable obligation on every party summoned to oral proceedings to inform the EPO as soon as it knew that it would not attend as summoned. This was the case whether or not that party had itself requested oral proceedings, and whether or not a communication had accompanied the summons to oral proceedings. See also T. 556/96, T. 258/13. In these inter partes cases, the boards held that an apportionment of costs in favour of the attending party was justified.

In T. 533/15 the board stated that the number of oral proceedings that could be held each day was severely limited, due to COVID-19 measures, and this meant that many proceedings had been cancelled or postponed. By informing the board only two days before the oral proceedings, the appellant made it impossible to use the hearing room for a different case. This was unfortunate and was something that parties should try to avoid.

In T. 13/19 the board stated that a party communicating as early as possible its intention not to attend the oral proceedings, or any impediment to attending, amounted to the usual degree of courtesy owed to a board of appeal as a court of final appellate jurisdiction.

See also ex parte cases T. 1485/06, T. 1930/07, T. 218/11, in which the boards noted that a professional representative has a duty to inform the EPO, as soon as possible, of a party's intention not to be represented at oral proceedings.