

f) Newly appointed representative

In T 37/97 a new representative had been appointed after the summons to oral proceedings had been duly issued. The board rejected the request for postponement and held that the new representative, before taking on the mandate, could be expected to have made sure he was available on the appointed date or to arrange for alternative representation. Furthermore, a professional representative could be expected to be able to prepare for oral proceedings with all due care within a month unless the case was exceptionally difficult, which it was not. See also J 4/03.

In T 2018/17 the board stated that the examining division gave no reasons why the appointment of a new representative was not regarded as being a serious reason for changing the date for oral proceedings. However, such a reasoning needs to be given if a division relies on it.

In T 693/95 the board had waited for two years to give the appellants time to find a legal representative of their choice. This they had failed to do. After such a long delay there was no valid reason for postponing oral proceedings.

g) Obligation to give reasons as to why a representative cannot be substituted

According to Art. 15(2)(c)(v) RPBA 2020 the appointment of a new professional representative, as a rule, does not justify a change of date. The obligation mentioned in the 2007 Notice to state in the request why another representative cannot stand in for the one prevented from attending has been dispensed with. For further decisions on this topic, see "Case Law of the Boards of Appeal of the EPO", 9th ed. 2019, III.C.6.1.5.

The 2000 and 2007 notices (points 2.5 and 2.3 respectively) stated that any request to set another date for oral proceedings should indicate why another representative could not stand in for the one unable to attend. This meant that if and when the board was satisfied that the representative was prevented from attending, it must therefore be considered whether another representative, who did not have to be from the same firm, could substitute the prevented representative (T 699/06, T 861/12). If the appellant has signed a general authorisation to a law firm, the representative had to provide convincing reasons as to why no other representative of this firm could substitute the representative (T 518/10).

h) Absence of duly represented party or of inventor

In T 275/89 (OJ 1992, 126) the board considered that the illness of a duly represented party was not a sufficient reason for postponing appointed oral proceedings unless the party who was ill needed to be present. A request to change an appointment could only be allowed if unforeseen, exceptional circumstances had arisen, which either made oral proceedings impossible (such as a representative's or unrepresented party's sudden illness) or could have a decisive impact on the course of the proceedings (such as unforeseen unavailability of an important witness or expert). See also T 1923/06.