

6. Preparation of oral proceedings

6.1. Fixing or changing the date for oral proceedings

6.1.1 Legal provisions and notices

The practice for fixing the date of oral proceedings before the departments of first instance and the boards of appeal was published in a notice in OJ 2000, 456 ("the 2000 Notice"). The EPO's notice of 18 December 2008 (OJ 2009, 68) ("the 2008 Notice") adjusted the procedure for changing the date before the departments of first instance.

For proceedings before the boards of appeal, Art. 15(2) RPBA 2020 deals with the possibility of changing the date. It replaces Art. 15(2) RPBA 2007 and supersedes the notice of the Vice-President dated 16 July 2007 of the EPO ("the 2007 Notice"), OJ SE 3/2007, 115. Art. 15 RPBA 2020 entered into force on 1 January 2020.

6.1.2 Request for changing the date of oral proceedings

It is within the board's discretion to change the date at the request of a party (Art. 15(2) RPBA 2020). A request of a party for a change of the date fixed for oral proceedings may be allowed if the party has put forward serious reasons which justify the fixing of a new date. According to Art. 15(2)(a) RPBA 2020 the request shall be filed in writing, reasoned and, where appropriate, supported by documentary evidence. The request shall be filed as soon as possible after the summons to oral proceedings has been notified and the serious reasons in question have arisen.

For the departments of first instance, see point 2.2 of the 2008 Notice (OJ EPO 2009, 68). The wording of the notice makes it clear that the decision of the department of first instance is of a discretionary nature. The request must be filed as soon as possible after the grounds preventing the party concerned from attending the oral proceedings have arisen, and shall be accompanied by a sufficiently substantiated written statement indicating these reasons. A change in the date of oral proceedings can only be requested in case of "serious reasons" that justify the fixing of a new date.

For as long as a request for postponement of oral proceedings has not been granted, the requesting party cannot simply assume that it will be. The party has to consider the possibility of a refusal of the request and has to prepare the case accordingly to minimise the risk of time pressure (T 1102/03, T 2526/11).

Where a request for postponement of oral proceedings is refused on the ground that the request was not sufficiently substantiated, the decision of the examining division should state in clear terms what should have been submitted or explained (T 447/13).

The decision to change the date for oral proceedings is a discretionary one (concerning the departments of first instance see T 1505/06, T 2526/11, T 447/13; concerning the boards of appeal, see Art. 15(2) RPBA 2020). It is inherent from the discretionary nature of the decision whether to change (or not) a date for oral proceedings that a request will not