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D E C I S I O N
of 19 February 1996

Case Number: G 0004/95

Application Number: 85304219.0

Publication Number: 0169649

IPC: G07G 1/06

Language of the proceedings: EN

Title of invention:

Apparatus and method for reducing theft from a store

Patentee:

Bogasky, John J.

Opponent:

Sensormatic Electronics Corp.

Headword:

Representation/BOGASKY

Relevant legal provisions:

EPC Art. 116, 117, 133, 134

Keyword:

"Oral submissions by an accompanying person in opposition or opposition appeal proceedings"

Decisions cited:

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Headnote:

- I. During oral proceedings under Article 116 EPC in the context of opposition or opposition appeal proceedings, a person accompanying the professional representative of a party may be allowed to make oral submissions on specific legal or technical issues on behalf of that party, otherwise than under Article 117 EPC, in addition to the complete presentation of the party's case by the professional representative.

- II.
 - (a) Such oral submissions cannot be made as a matter of right, but only with the permission of and under the discretion of the EPO.

 - (b) The following main criteria should be considered by the EPO when exercising its discretion to allow the making of oral submissions by an accompanying person in opposition or opposition appeal proceedings:
 - (i) The professional representative should request permission for such oral submissions to be made. The request should state the name and qualifications of the accompanying person, and should specify the subject-matter of the proposed oral submissions.
 - (ii) The request should be made sufficiently in advance of the oral proceedings so that all opposing parties are able properly to prepare themselves in relation to the proposed oral submissions.
 - (iii) A request which is made shortly before or at the oral proceedings should in the absence of exceptional circumstances be refused, unless each opposing party agrees to the making of the oral submissions requested.
 - (iv) The EPO should be satisfied that oral submissions by an accompanying person are made under the continuing responsibility and control of the professional representative.

 - (c) No special criteria apply to the making of oral submissions by qualified patent lawyers of countries which are not Contracting States to the EPC.



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Enlarged
Boards of Appeal

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Case Number: G 0004/95

DECISION
of the Enlarged Board of Appeal
of 19 February 1996

Appellant:
(Proprietor of the patent) Bogasky, John J.
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Referring decision: Interlocutory decision of the Technical Board of
Appeal 3.4.1 dated 19 July 1995 in case T 0803/93.

Composition of the Board:

Chairman: P. Gori
Members: G. D. Paterson
C. Andries
G. Gall
W. Moser
R. Schulte
P. van den Berg

Summary of Facts and Submissions

I. In its Decision T 803/93 (to be published in OJ EPO) which was issued on 19 July 1995, Technical Board of Appeal 3.4.1 has referred the following questions to the Enlarged Board of Appeal pursuant to Article 112(1)(a) EPC.

- "(1). During oral proceedings before the EPO under Article 116 EPC, and in the context of opposition or opposition appeal proceedings, having regard to the provisions of Article 133 EPC, may a person who is not qualified in accordance with Article 134 EPC to represent parties to proceedings before the EPO, but who is accompanied by a person who is both qualified and authorised to represent a party to the proceedings, make oral submissions on behalf of that party on legal issues which arise in the case?
- (2). During oral proceedings before the EPO under Article 116 EPC, and in the context of opposition or opposition appeal proceedings, having regard to the provisions of Articles 117 and 133 EPC, may a person who is not qualified in accordance with Article 134 EPC to represent parties to proceedings before the EPO, but who is accompanied by a person who is both qualified and authorised to represent a party to the proceedings, make oral submissions on behalf of that party on technical issues which arise in the case otherwise than by giving evidence orally in accordance with the provisions of Article 117(3) EPC?

(3). In relation to each of questions (1) and (2) above taken separately:

- (a) If the answer is "yes", can such oral submissions be made on behalf of the party as a matter of right, or can they be made with the permission of and under the discretion of the EPO?
- (b) If such oral submissions can only be made under the discretion of the EPC, what criteria should be considered when exercising such discretion?
- (c) Do special criteria apply to qualified patent lawyers of countries which are not Contracting States to the EPC?"

In this Decision, a person who accompanies a professional representative and who is not entitled either under Article 134(1) EPC or under Article 134(7) EPC to represent parties to proceedings before the EPO, is referred to as an "accompanying person".

These questions are related to the procedure which occurred during oral proceedings before an Opposition Division in the course of the opposition proceedings which are the subject of the appeal in case T 803/93. The relevant facts are summarised in the above identified Decision of referral, T 803/93.

The Decision of referral also explains in paragraph 1 of its Reasons that in Decision J 11/94 (OJ EPO 1995, 596) the Legal Board of Appeal had previously referred somewhat similar questions to the Enlarged Board of Appeal. However, the circumstances in case J 11/94 are different from those in case T 803/93. In particular,

case J 11/94 is concerned with whether an accompanying person may make oral submissions on purely legal matters in "ex parte" proceedings; whereas case T 803/93 is concerned with whether an accompanying person may make oral submissions on mixed legal and technical issues (such as novelty and inventive step) in "inter partes", opposition proceedings.

II. The patent proprietor in case T 803/93 filed observations in relation to the above mentioned questions on 21 September 1995. These may be summarised with reference to the numbered questions essentially as follows:

- (1). The answer to this question should be "no". Oral submissions on legal issues should be strictly confined to persons who are both qualified and authorised to represent a party to the proceedings. This follows from the provisions of Articles 133 and 134 EPC.

Attention was also drawn to problems that might arise if a person who had been removed from the list of professional representatives for disciplinary reasons wished to make oral submissions on behalf of a party to proceedings before the EPO.

- (2). The answer to this question should also be "no". Oral submissions on technical issues otherwise than in accordance with the provisions of Article 117(3) EPC should be the responsibility of the authorised representative.
- (3). In view of the above observations in relation to questions (1) and (2), question (3) should not arise. However, if question (1) is answered by the

Enlarged Board of Appeal in the affirmative, question (3) should be answered as follows:

- (a) Oral submissions, other than by an authorised representative, cannot be made as a matter of right but can be made with the permission of and under the discretion of the EPO.
- (b) In exercising such discretion, the EPO should be satisfied that, in reality, a person other than an authorised representative who makes submissions during oral proceedings is acting under the direct control, guidance and responsibility of the authorised representative of the party to the proceedings.
- (c) No special criteria should apply to qualified patent lawyers of countries which are not Contracting States to the EPC; it being noted that it is unlikely that such a qualified patent lawyer would meet the criteria set out under (b) above.

III. The opponent in case T 803/93 filed observations in relation to the above questions on 4 October 1995. These may be summarised with reference to the numbered questions essentially as follows:

- (1). This question should be answered "yes". To adopt a rule which prohibited accompanying persons from making oral submissions on any issue in the case would be too restrictive, against the interests of justice, and unfair, and would deprive the EPO of possibly relevant and useful information. Articles 133 and 134 EPC are directed to who may represent a party, not to who may speak at oral

proceedings. This distinction was recognised in Decision T 598/91 (OJ EPO 1994, 912), and the reasoning in this Decision should be adopted by the Enlarged Board in preference to the reasoning in Decision T 80/84 (OJ EPO 1985, 269).

- (2). This question should also be answered "yes", for the same reasons as have been given in relation to question 1.

Under Article 117 EPC, the hearing of witnesses, experts, etc is a matter of right for a party, rather than a matter within the discretion of the EPO. Question (2) therefore appears to relate to oral submissions and argument on technical issues, as distinguished from the presentation of evidence under Article 117 EPC. No distinction should be drawn between the presentation of oral arguments by an accompanying person on legal and technical issues. In practice such a distinction would often be difficult to draw.

- (3). (a) Oral submissions by an unauthorized person should always be a matter for the discretion of the EPO.
- (b) Permission for such oral submissions should always be requested before they are made. A number of appropriate criteria were suggested.
- (c) No special criteria should apply to qualified patent lawyers of countries outside the EPC.

IV. Oral proceedings were requested by both parties, and were held on 11 December 1995. The proprietor was represented by Mr Skone-James and Mr Laird, and the opponent was represented by Mr Hafner.

- (a) The arguments which were submitted on behalf of the proprietor in support of the contentions which are set out in paragraph II above were essentially as follows:

Proceedings before the EPO are a very serious matter because decisions of the EPO may override the highest courts of the Contracting States, and such proceedings should therefore be carefully controlled procedurally.

The relevant provisions of Article 133 EPC can be derived from drafts of the EPC dating back to 1962, and remained virtually unchanged throughout the preparation of the EPC. During such preparations the words "and act through him" were added to Article 133(2) EPC. The meaning of these provisions is clear and does not provide for any discretion to allow a person other than the appointed professional representative to make either written or oral submissions. This is based upon the practice in national legal systems to require a representative with proven knowledge of an individual system to present the case of a party in proceedings within that system.

The practice within the Boards of Appeal has not been uniform. Some decisions have recognized the important distinction between representation under Article 133 and 134 EPC and taking evidence under Article 117 EPC, but Article 117 EPC has been wrongly used to justify oral technical submissions. The distinction between factual submissions, which constitute evidence, and legal submissions, which are a matter for representation, is important and should be maintained.

- (b) The arguments which were submitted on behalf of the opponent in support of the contentions which are set out in paragraph III above were essentially as follows:

Article 133 EPC is directed to representation, which should be distinguished from "presentation" of a party's case. Article 133 EPC is not exclusive as to who may make oral submissions, and additional submissions, on novelty or inventive step for example, may be valuable and should be allowed, provided that they are made under the control of the appointed professional representative.

The procedural laws of a number of Contracting States allow such additional submissions as a matter of discretion, and in Denmark, as of right.

The EPO should exercise its discretion to allow additional oral submissions, provided that permission is requested for the accompanying person to make such submissions, on the basis of his qualification, his credibility, and their usefulness, and provided also that there is no prejudice to opposing parties.

At the conclusion of the oral proceedings, the decision of the Enlarged Board was reserved.

Reasons for the Decision

Introduction and background

1. The referred questions are concerned with a situation where a party to opposition proceedings has appointed a professional representative under Article 133 EPC. They raise the issue whether, and if so in what circumstances, a person other than the professional representative (that is, an accompanying person) may make oral submissions on behalf of that party concerning either legal or technical issues, during oral proceedings under Article 116 EPC before an Opposition Division or a Board of Appeal.

Referred questions (1) and (2) draw a distinction between oral submissions on legal and technical issues, and implicitly raise the possibility that the answers to questions (1) and (2) may be different because of this distinction.

Oral submissions concerning both legal or technical issues may involve either the presentation of facts, or the presentation of evidence to establish facts; or such oral submissions may simply involve the presentation of arguments, which may be either legal or technical in nature, or a mixture of the two. Thus the distinction which has been drawn in questions (1) and (2) between oral submissions on legal and technical issues is in fact unimportant in this context.

In contrast, however, the distinction between the presentation of facts and evidence, on the one hand, and the presentation of argument, on the other hand, is of

basic importance under the EPC (see for example Article 114 EPC): each requires separate consideration. Thus the issues underlying questions (1) and (2) may be re-phrased as follows:

- (a) May an accompanying person make oral submissions during oral proceedings which involve the presentation of facts or evidence?
- (b) May such an accompanying person make oral submissions during oral proceedings by way of argument?

2. The previous practice within the Opposition Divisions and the Boards of Appeal of the EPO in connection with admitting oral submissions by accompanying persons during oral proceedings under Article 116 EPC may be summarised as follows:

Within the Opposition Divisions, it appears that oral submissions by so-called technical "experts" accompanying a party's representative are frequently admitted on a relatively informal basis whether or not objection is made by an opposing party (see for example paragraph III of the Decision of referral T 803/93). The evidential weight which is given to such oral submissions is left to the discretion of the Opposition Division, having regard also to their own technical knowledge. Sometimes also, oral submissions by accompanying persons are freely admitted in connection with legal issues, and are similarly assessed for their value on an ad hoc basis.

Within the Boards of Appeal, an early decision in the context of opposition proceedings by a Technical Board of Appeal (Decision T 80/84, supra) expressed what may be regarded as the "strict view" of the provisions of

Articles 133 and 134 EPC, and held that such provisions create an exclusive right of representation, and accordingly an accompanying person (in that particular case an unqualified assistant training to become a patent attorney) could not present even a part of the case on behalf of a party during oral proceedings, even under the direct supervision of the professional representative of the party.

This strict interpretation of Articles 133 and 134 EPC was not generally followed by other Boards of Appeal, however. In fact, as discussed in Decision T 843/91, (OJ EPO 1994, 818) a practice developed in the Boards of Appeal "to allow contributions by experts under the control of the authorised representative when it considers it would be useful for the good understanding of the case", thus mirroring the practice within the Opposition Division outlined above. In Decision T 843/91 it was suggested that the legal basis for admitting such oral submissions by "experts" was Article 117 EPC. Similarly in Decision T 598/91 (supra) reference was made to "the general practice of the Boards of Appeal for several years" to allow representatives to be "assisted at oral hearings by assistants or experts who were explaining matters and pleading in lieu of the representative in certain areas of the discussions". In Decision T 598/91 the Board of Appeal agreed with what was stated in Decision T 80/84 to the effect that Articles 133 and 134 EPC created exclusive rights of **representation**, but justified such additional oral submissions by assistants and experts on the basis that they fell under the concept of "**pleading**" rather than representation. Such additional "pleading" was therefore said not to be excluded by Articles 133 and 134 EPC.

3. As summarised in paragraphs II and III above, the proprietor has taken the "strict view" when interpreting Articles 117, 133 and 134 EPC, corresponding generally to what was decided in Decision T 80/84; whereas the opponent has suggested a more liberal interpretation of Articles 133 and 134 EPC, based upon drawing a distinction between "representation", which is governed exclusively by Articles 133 and 134, and "presentation" of useful contributions by oral submissions. The opponent has suggested that such presentation of oral submissions should be within the discretion of the Opposition Divisions and Boards of Appeal (thus corresponding generally to what was decided in Decision T 598/91).
4. Before considering the referred questions in detail, it is relevant to refer to the general scheme of opposition and opposition appeal procedures under the EPC, including the presentation of facts, evidence and argument in the context of such procedures, and the position of oral proceedings within such procedures.

(a) **Facts and evidence**

Rule 55(c) EPC requires that a notice of opposition shall contain an **indication** of the facts and evidence (as well as of arguments) presented in support of the grounds of opposition alleged. Beyond this, the prescribed procedure does not contain any detailed regulation as to how and when facts and evidence should be filed by the parties to an opposition. The filing of facts and evidence is left to the discretionary control of the EPO.

According to the practice of the Opposition Divisions as set out in the note "Opposition procedure in the EPO" (OJ EPO 1989, 417), facts and

evidence should be adduced at an early stage in proceedings before the Opposition Division - see in particular paragraphs 8 to 13. An opponent should normally file evidence in support of his opposition within the nine months opposition period or within a short period (two months) thereafter; and the proprietor must file his evidence in reply within a fixed period after that.

Appeal proceedings are normally examined and decided on the basis of facts and evidence filed during the proceedings before the Opposition Division.

While the filing of facts and evidence by parties to opposition and opposition appeal proceedings is not precluded at any stage of such proceedings, the admissibility of facts and evidence filed at a late stage in such proceedings is always a matter of discretion for the EPO (see Article 114(2) EPC).

(b) **Arguments**

In general, arguments on the basis of previously submitted facts and evidence are allowed at any stage of opposition or opposition appeal proceedings, under the discretion of the EPO.

(c) **Oral proceedings**

Article 116 EPC provides that oral proceedings shall take place either at the instance of the EPO, or at the request of any party to proceedings. Thus

oral proceedings are an optional extra. Both opposition and opposition appeal procedures are primarily written procedures. Nevertheless, oral proceedings are of critical importance to the decision-making process.

In principle, oral proceedings are appointed at a point in time within an opposition or opposition appeal procedure when the written submissions of all parties, including the written presentation of facts and evidence by all parties, are complete. The decision of the Opposition Division or Board of Appeal can consequently usually be announced orally at the conclusion of the oral proceedings (see, for procedure before the Opposition Divisions, the note entitled "Opposition Procedure in the EPO" (OJ EPO 1989, 417) at paragraph 15; and for procedure before the Boards of Appeal, Article 11(3) of the Rules of Procedure of the Boards of Appeal (OJ EPO 1983, 7)).

The representation of parties to proceedings under the EPC

5. Article 133 EPC establishes a general scheme of representation for parties to proceedings established by the EPC.

Article 133 (1) EPC provides that (subject to the provisions of Article 133(2) EPC) "no person shall be compelled to be represented by a professional representative". In its application to opposition and opposition appeal proceedings, Article 133(2) EPC provides that a person not having either a residence or his principal place of business within a Contracting State to the EPC (hereafter referred to as a "non-European party") "must be represented by a professional representative and act through him" in such proceedings.

Article 133(3) EPC provides that a person having his residence or principal place of business within a Contracting State (hereafter referred to as a "European party") may act through an employee, "who need not be a professional representative".

In other words, under Article 133 EPC, in opposition and opposition appeal proceedings a non-European party must be represented by a professional representative, and a European party may choose to be represented by a professional representative, or may act on his own or through one of his employees.

6. The requirements which must be fulfilled before a person may act as a professional representative under Article 133 EPC are set out in Article 134 EPC. Under Article 134(1) EPC a person may act as a professional representative if, being duly qualified, his name appears on a list of such professional representatives maintained by the EPO. Under Article 134(7) EPC a "legal practitioner" as there defined may also act as a professional representative.

Article 134(8) EPC provides for the adoption of regulations by the Administrative Council governing inter alia the European qualifying examination and the establishment of an institute of professional representatives. Regulations pursuant to Article 134(8) EPC were adopted by the Administrative Council on 21 October 1977 (OJ EPO 1978, 85 and 101) concerning respectively the establishment of such an institute (the EPI), and the European qualifying examination.

The purpose underlying such regulations is ^{5825 to} ~~in order~~ to ensure that proceedings before the EPO are conducted efficiently and effectively by properly qualified professional representatives, who are therefore fully

knowledgable in the law and practice under the EPC, and who are thus professionally competent to represent parties to such proceedings. The efficient and effective conduct of proceedings before the EPO is to the overall benefit of the European patent system.

7. The function of a professional representative is explained in Article 133(2) EPC, which as stated above requires that a non-European party "must be represented by a professional representative and **act through him** in all proceedings established by" the EPC. In other words, the appointment of a professional representative by a party involves the authorization and identification of the professionally qualified person who is responsible for the presentation to the EPO of all submissions made by that party. Such presentation of a party's case is the essential core of the function of a professional representative under Article 133 EPC. During oral proceedings, a professional representative is expected to present the entire case of the party that he represents.

Questions (1) and (2) - are oral submissions by an accompanying person excluded under the EPC?

8. As explained in paragraph 1 above, oral submissions may involve either the presentation of facts or evidence, or argument: these two categories of oral submissions need separate consideration.

- (a) May an accompanying person make oral submissions during oral proceedings which involve the presentation of **facts or evidence**?

It follows from paragraph 4(a) above that the making of oral submissions which involve the presentation of facts and evidence comes under the

general discretionary power of the EPO to control the presentation of facts and evidence in the course of proceedings before it.

Thus oral submissions by an accompanying person during oral proceedings, which involve the presentation of facts or evidence on behalf of a party, in addition to the complete presentation of the party's case by the professional representative, are not excluded under the EPC. They may be allowed during opposition or opposition appeal proceedings, under the control of the party's professional representative and under the overall discretionary control of the EPO.

In this connection, the Enlarged Board does not accept that Article 117 EPC provides a legal basis for hearing oral submissions by an accompanying person involving the presentation of facts and evidence, as was suggested in Decision T 843/91 for example. Article 117 EPC and its Implementing Rules 72 to 76 EPC are solely concerned with setting out the procedure relevant to formal "taking of evidence". Such procedure necessarily involves as a precondition for its use the making of a decision to take evidence in the sense of Article 117 EPC, and such decision must set out all the matters prescribed in Rule 72(1) EPC, as the first stage in the procedure.

- (b) May an accompanying person make oral submissions during oral proceedings by way of **argument**?

It follows from the paragraph 7 above that the Enlarged Board does not accept the consequence of the distinction between representation and "presentation" or "pleading", as suggested by the

opponent and as also set out in Decision T 598/91. Such a consequence, if taken to the extreme position, would lead to the situation where a professional representative could attend oral proceedings merely in order to state a party's formal requests, and an accompanying person could present the entire case on behalf of such party. In the Enlarged Board's view, such a procedure is clearly contrary to what is intended under Article 133 EPC.

However, the Enlarged Board also does not accept the strict view of Article 133 EPC as put forward by the proprietor and as set out in Decision T 80/84, according to which only the professional representative is entitled to present a party's case, and oral submissions involving argument by an accompanying person are entirely excluded.

Article 133 EPC makes no distinction between written and oral proceedings in connection with the requirements for representation. Thus a professional representative is responsible for all written and oral submissions made on behalf of the party who has appointed him.

In the context of the written procedure provided under the EPC for oppositions and opposition appeals (as to which, see paragraph 4 above), an appointed professional representative must sign all correspondence in such proceedings (see Rule 36(3) EPC). Nevertheless, under cover of such correspondence, the professional representative may submit additional documents signed by a third person (for example a professor of law or science). In the Enlarged Board's view, provided that

such documents are submitted under the responsibility and control of the professional representative, they do not have to be excluded from consideration in the proceedings in which they are filed.

Similarly, during oral proceedings in an opposition or an opposition appeal, an accompanying person is not excluded from making oral submissions in relation to either legal or technical issues on behalf of a party to the proceedings, under the control of the professional representative, and in addition to the complete presentation of the party's case by the professional representative.

Question (3) (a) - may oral submissions be made by an accompanying person as of right, or only under the discretion of the EPO?

9. As stated in paragraph 8 above, oral submissions either (a) involving the presentation of facts or evidence, or (b) by way of argument, may be made by an accompanying person during oral proceedings before the EPO, not as a matter of right, but under the discretionary control of the EPO.

Question (3) (b) - what criteria should be considered by the EPO when exercising its discretion?

10. In the context of inter partes proceedings it is a generally recognised principle of procedural law that each party to such proceedings should have a proper opportunity to reply to the case which is presented by an opposing party. This principle is reflected in Article 113(1) EPC, which emphasises that a party should not be taken by surprise by grounds or evidence which are used as the basis of an adverse decision.

Applying this principle to the conduct of opposition and opposition appeal proceedings, it is important to ensure that during oral proceedings, one party does not present oral submissions which take an opposing party by surprise and for which such opposing party is not prepared. Accordingly, if during oral proceedings before either an Opposition Division or a Board of Appeal a party wishes that, in addition to the complete presentation of its case by its professional representative, oral submissions should be made on its behalf by an accompanying person, the professional representative should request permission for such oral submissions to be made, well in advance of the oral proceedings. When making such a request, the professional representative should state the name and qualifications of the person for whom permission to make additional oral submissions is requested, and should specify the subject-matter on which such person wishes to speak.

Such a request should be made as soon as the party has decided that he wishes such oral submissions to be presented at oral proceedings. The timing of the request should in any event be sufficiently in advance of the day appointed (or to be appointed) for oral proceedings, so that all opposing parties are able properly to prepare themselves in relation to the proposed oral submissions.

As stated in paragraph 4(a) above in connection with the presentation of facts and evidence, the normal principle is that all facts and evidence in support of a party's case should be filed at an early stage during the proceedings before the Opposition Division. Consequently, if for example a party requests permission through its professional representative for an accompanying person to make oral submissions before an

Opposition Division involving the presentation for the first time of complex oral evidence, the Opposition Division should not grant permission unless it is completely satisfied that each opposing party has an adequate and proper opportunity to present facts, evidence and arguments in reply to such oral submissions.

If a similar request is made to a Board of Appeal in opposition appeal proceedings, it would normally be appropriate to refuse the request.

If a request for an accompanying person to present oral submissions is made either shortly before the date appointed for oral proceedings, or at the oral proceedings, such a request should in the absence of exceptional circumstances be refused by the EPO unless each opposing party agrees to the making of the oral submissions requested.

11. It follows from paragraphs 7 and 8 above that the EPO should always be satisfied that oral submissions by an accompanying person are made under the continuing responsibility and control of the professional representative.
12. In each individual case, the admissibility of additional oral submissions is a matter for the discretion of the EPO, bearing in mind in particular the nature and timing of each individual request for the making of such additional oral submissions, and the intended subject-matter of such oral submissions.

Question (3)(c) - do special criteria apply to patent lawyers from non-Contracting States?

13. It will be apparent from what is set out in paragraph 10 above that no special criteria apply to the making of oral submissions by qualified patent lawyers of countries which are not Contracting States to the EPC. The criteria set out in paragraph 10 are equally applicable to such patent lawyers.

For the above reasons, the referred questions are answered as follows:

- (1) and (2) During oral proceedings under Article 116 EPC in the context of opposition or opposition appeal proceedings, a person accompanying the professional representative of a party may be allowed to make oral submissions on specific legal or technical issues on behalf of that party, otherwise than under Article 117 EPC, in addition to the complete presentation of the party's case by the professional representative.
- (3) (a) Such oral submissions cannot be made as a matter of right, but only with the permission of and under the discretion of the EPO.
- (b) The following main criteria should be considered by the EPO when exercising its discretion to allow the making of oral submissions by an accompanying person in opposition or opposition appeal proceedings:

- (i) The professional representative should request permission for such oral submissions to be made. The request should state the name and qualifications of the accompanying person, and should specify the subject-matter of the proposed oral submissions.
 - (ii) The request should be made sufficiently in advance of the oral proceedings so that all opposing parties are able properly to prepare themselves in relation to the proposed oral submissions.
 - (iii) A request which is made shortly before or at the oral proceedings should in the absence of exceptional circumstances be refused, unless each opposing party agrees to the making of the oral submissions requested.
 - (iv) The EPO should be satisfied that oral submissions by an accompanying person are made under the continuing responsibility and control of the professional representative.
- (c) No special criteria apply to the making of oral submissions by qualified patent lawyers of countries which are not Contracting States to the EPC.

The Registrar:


M. Beer

The Chairman:


P. Gori