

RPBA 2020

EPLIT Annual Meeting 27 May 2021

Article 12

Filing the Grounds of Appeal (and Reply)

- An appeal proceedings is based on the decision under appeal and the minutes of any oral proceedings connected with the decision; A12(1)
- An appeal case is directed to the requests, facts, objections, arguments and evidence on which the decision was based; A12(2)
- Statement of grounds /reply contain a party's complete case, setting out expressly all requests, evidence, arguments etc; A12(3)

Article 12 (cont.)

- Anything that was not part of the decision A12(2), or admissibly raised and maintained at first instance is an amendment, and can only be admitted at the discretion of the Board; A12(4)
- Party has to provide reasons for submitting the amendment in appeal proceedings and reason why it overcomes the objection.
- In exercising its discretion, the Board considers
 - Complexity of the amendment
 - Its suitability in addressing the issues
 - Procedural economy

Article 13(1) Amending a Case (I)

- After filing the grounds / reply, but before the summons to oral proceedings has been notified
- Party must provide reasons for the late submission
(Requirements under 12(2)-(6) also apply)
- Board's discretion now considers
 - Suitability of amendment to resolve issues
 - That it does not give rise to new objections
 - Effect on procedural economy

Article 13(2) Amending a Case (II)

- Amendment after Summons/Communication has been issued
- Not taken into account, unless exceptional circumstances
 - eg they address an objection raised for the first time in the communication

Article 11 – Remittal for Further Prosecution

- Special Reasons
- For issues regarding patentability that have not been decided at first instance, remittal is likely
- Adaption of description is not “further prosecution”, thus no need for special reasons

Administrative Aspects

- Art 1(2)
 - The chair of a board draws up a list of cases that the board intends to treat the following year; the list is published.
- Art 1(3)
 - Designation of a chair in a particular appeal.
- Art 15 (1)
 - Summons for OP issued at least 2M after receipt of the reply, and the provisional opinion is issued at least 4M in advance of the OP.

Administrative Aspects – Article 15 (cont.)

- Art 15(2) There have to be serious reasons for requesting a change in date of the OP, which must relate to the representative.
- Art 15 (7)&(8) Decisions in abridged form (with consent of parties).
- Art 15(9) Written decisions issued within 3M of the oral proceedings.
- Art 15a): Oral Proceedings by videoconference (23 March '21)
 - Now at the instigation of the Board, and the agreement of the parties is not required
 - Referred to the Enlarged Board as G 1/21 (OP on 28 May by ViCo)