

EPO Enlarged Board Allow Their First Petition For Review

Before December 2007, no party could directly challenge a decision of a Board of Appeal in the EPO. Although there is a higher body – the Enlarged Board of Appeal (EBA) – it would only consider questions of law referred by a Board of Appeal or the President.

This restriction was relaxed by the updated European Patent Convention 2000, which became law in December 2007. Under the new convention, a party to an appeal could try and refer an appeal decision to the EBA, if they could convince the EBA that the decision involved a “serious procedural defect”.

Unsurprisingly, a number of parties who had lost on appeal tried such a reference to the EBA, but, until now, none had been successful.

In a recent landmark ruling, the EBA upheld such a reference. It decided that a fundamental violation of a party's right to be heard took place during an opposition appeal proceedings. This decision, R 7/09, is the first ever case in which the EBA has allowed a petition for review, and re-opened proceedings after issuance of a final appeal decision.

In this case, it could not be proved that the EPO provided a copy of the opponent's grounds of appeal to the patentee. The EBA found that this was a fundamental violation of the proprietor's right to be heard. The patentee was deprived of the opportunity to present their arguments before the case was decided in the opponent's favor.

This judgment goes a small distance in showing that the EBA are taking petitions for review seriously, and filing a review after appeal might just be worthwhile, but only in exceptional circumstances.

Read the full decision [here](#).