

Oral proceedings before the Boards of Appeal by videoconference

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New Article 15a of the Rules of Procedure of the Boards of Appeal (RPBA) on oral proceedings by videoconference enters into force on 1 April 2021

The COVID-19 pandemic and the associated travel restrictions have prevented - and continue to prevent - many parties and representatives from attending oral proceedings in person. To ensure timely access to justice under these circumstances, the Boards of Appeal introduced the possibility of conducting oral proceedings by videoconference in May 2020.

The practice of holding oral proceedings before the Boards of Appeal by videoconference is now also expressed in new Article 15a RPBA:

Article 15a

Oral proceedings by videoconference

(1) The Board may decide to hold oral proceedings pursuant to Article 116 EPC by videoconference if the Board considers it appropriate to do so, either upon request of a party or of its own motion.

(2) Where oral proceedings are scheduled to be held on the premises of the European Patent Office, a party, representative or accompanying person may, upon request, be allowed to attend by videoconference.

(3) The Chair in the particular appeal and, with the agreement of that Chair, any other member of the Board in the particular appeal may participate in the oral proceedings by videoconference.

Article 15a RPBA was approved by the Administrative Council of the European Patent Organisation at its 166th meeting on 23 March 2021. It had previously been adopted by the Boards of Appeal Committee (BOAC) on 11 December 2020. The BOAC, which is composed of three members of the delegations of the contracting states and three serving or former judges of national courts of the contracting states (see Article 2(1) CAD 7/16), consulted users before adopting the new provision, and plans to consult them again in due course to assess their experience with it.

Between May 2020 and February 2021, oral proceedings were held by videoconference in over 380 appeal cases. Initially, oral proceedings were held by videoconference only if all parties agreed. Since 1 January 2021, they have also been conducted without the consent of the parties in appropriate cases. The BOAC and the Administrative Council have confirmed this practice in new Article 15a RPBA (see CA/5/21, points 5 and 7).

Whether oral proceedings may be held by videoconference without the consent of the parties is the subject of a referral to the Enlarged Board of Appeal. In its interlocutory decision of 12 March 2021 in case T 1807/15, Technical Board 3.5.02 referred the following question under Article 112(1)(a) EPC:

Is the conduct of oral proceedings in the form of a videoconference compatible with the right to oral proceedings as enshrined in Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference?

The referral is pending before the Enlarged Board of Appeal under G 1/21. The Enlarged Board summoned to oral proceedings by videoconference on 28 May 2021.

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