

Overview of the case

Over the past few years the EPO has made concerted efforts to reduce the pendency of Oppositions and Appeals. For Oppositions the EPO has adopted its 'early certainty' program to bring more clarity to the timing of procedures during an Opposition. For Appeals the Boards of Appeal have been reorganised and new Rules of Procedure have been adopted.

Unfortunately the global pandemic led to a substantial number of oral proceedings, originally scheduled to take place in 2020, to be cancelled. Although videoconference was available under a pilot program, oral proceedings could only take place with the agreement of all parties, meaning that most oral proceedings did not take place.

In response, the EPO has extended its pilot program for oral proceedings by videoconference to mandate that parties to Oppositions undertake oral proceedings by videoconference.

The Presidium of the Boards of Appeal has introduced a new rule (r.15A) into the Rules of Procedure which provide similar powers to the Boards of Appeal. Although the new rule was to take effect in April 2021, the President of the Board of Appeal announced that Boards could compel parties to attend oral proceedings by videoconference before that date.

In Board of Appeal case **T1807/15**, one of the parties objected to being compelled to attend oral proceedings by videoconference and the Board of Appeal decided to refer the following question to the Enlarged Board of Appeal:

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 question, which will have significant ramifications to the conduct of parties in Appeal (and potentially Opposition) proceedings, is due to be debated by the Enlarged Board of Appeal on 28 May 2021. Ironically, the hearing is to be held by videoconference.

The Enlarged Board of Appeal has already dealt with a first controversy, namely the partiality (or not) of the President of the Boards of Appeal.

In his role, the President would typically chair the Enlarged Board of Appeal. However, because of his role in the drafting and adoption of new Rule of Procedure r.15A it has been decided (interlocutory decision of 17 May 2021) that he cannot be, or would not be seen as, impartial and has been replaced. Similarly, another member of the Enlarged Board has been replaced because he too worked on the development of the new Rules of Procedure. A complaint about the partiality of two further members has been dismissed.

It remains to be seen if the objections to the two further members will be maintained.