

Summary of the case

The second round of oral proceedings in case G1/21 have been concluded, but EPO users and interested parties around the world will have to wait for the decision in writing to find out the result.

The Chair of the EBoA announced in the early afternoon that they had heard enough from both the appellant and the representatives for the President of the EPO to deliberate the matter and take a decision in due course. This is not unusual for the EBoA, but certainly frustrating for the many who tuned in to watch the live stream of the hearing.

The hearing began with the appellant making similar arguments to the last hearing; objecting that they had not had enough time to respond to the interlocutory decision issued only a few days prior and that the minutes were not forwarded. They also made substantial further arguments that although the Board had dealt with the issues of partiality by changing the members of the Board, they had not done so in the proper manner in accordance with A.24 EPC. The appellant requested that the EBoA declare themselves not competent to decide on the matter referred, indicating that any decision from the present Board may be rendered invalid, and further that the oral proceedings once again be postponed in order for a 'lawful' Board to be composed.

These requests were not met with much sympathy from the Board who stated that the present hearing is to deal with the referred question regarding oral proceedings held by videoconference, the issues regarding partiality having been dealt with already. These initial requests were dismissed.

The submissions from the parties with regard to the referred question seemed to frequently stray from dealing with the question of holding oral proceedings by videoconference without consent, into whether the use of videoconference is appropriate at all. The representative for the President of the EPO focussed on explaining how A.116 does not state a form of oral proceedings, therefore any form can be used, and that it is a matter for the relevant EPO department to choose which form is used. Essentially arguing that oral proceedings by videoconference is acceptable, and typically, therefore consent is not an issue. The appellant made the argument that the issue is wholly in consent, not with the use of videoconferencing *per se*. In addition to explaining practically why videoconference is not equivalent to an in person hearing, they argued that to allow oral proceedings by videoconference without consent deprives parties of a right to oral proceedings in person that they have had for 40 years of the EPC and which is customary. This argument did seem to receive some traction with the Enlarged Board.

Ironically, throughout the entire hearing, the EPO experienced technical issue with connection making for some poignant demonstrations of the appellant's arguments.