



Institut der beim Europäischen Patentamt zugelassenen Vertreter
Institute of Professional Representatives before the European Patent Office
Institut des mandataires agréés près l'Office européen des brevets

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European Patent Office
80298 Munich
Germany

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Third party observations relating to EP04758381.0 (T1807/15-3.5.02)

Dear Sirs,

The Institute of Professional Representatives before the EPO, hereafter referred to as **epi**, is the representative body for the over 12,000 representatives able to represent clients before Examining and Opposition Divisions and the various Boards of Appeal of the European Patent Organisation, in particular at oral proceedings before those instances. **epi**'s members are in both private practice and industrial practice and represent all types of applicant, from individual inventors to multinational corporations.

We understand that the Board in this case has decided to refer to the Enlarged Board of Appeal a question concerning the validity of proceedings by videoconference.

As the Board in this case may know, **epi** at its Council meeting in November 2020 passed a resolution concerning oral proceedings. The resolution reads as follows:

Council considers that, after the Covid-19 pandemic is over, oral proceedings should as a rule be held face-to-face but any party should be free to attend oral proceedings by videoconference, even if the other parties are attending in person.

From the debate on this resolution, it emerged that **epi** considers that, during the pandemic, parties should be allowed to attend proceedings by videoconference if they so desire. **epi** is also aware that, for examination and opposition matters before DG1, proceedings by videoconference have been made compulsory, however, **epi** is not in agreement with this compulsory move to videoconference proceedings. **epi** also contributed to the consultation on new Article 15a RPBA.

It can thus be seen that **epi** has been following closely the developments in oral proceedings caused by the pandemic.

President • Francis Leyder

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epi considers that the question of the validity of proceedings by videoconference is important and should be settled as soon as possible. **epi** therefore urges the Board in this case to make the referral to the Enlarged Board as soon as possible.

It is suggested that the Enlarged Board should be able to look at the validity of videoconference proceedings for all possible circumstances and so it is suggested that the first question that should be asked is:

1. Are proceedings held by videoconference oral proceedings within the meaning of Article 116 EPC?

epi also considers that subsidiary questions should be asked, which are:

2. In case question no. 1 is answered "No", does the EPC provide a basis for conducting proceedings by means other than in written or oral form while extraordinary circumstances apply, for example, in a pandemic situation?
3. In case question no. 1 is answered "Yes", are there any circumstances in which the Office or the Boards of Appeal can direct a party to attend proceedings by videoconference despite the party's request to attend the proceedings in person?

The subsidiary questions arise from the fact that the application of Article 15a RPBA has been put under no constraints, for example, its application being limited to extraordinary circumstances and it only being applicable for a certain period of time, and the possibility that the Office or a Board might allow or order a party to attend proceedings by videoconference while the other parties may be allowed to present face-to-face.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Francis Leyder', written over a faint circular stamp or watermark.

Francis Leyder

President