



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

European Patent Institute · Bayerstrasse 83 · 80335 Munich · Germany

The Chairman of the Enlarged Board of Appeal
European Patent Office
80298 Munich
Germany

By email only to: cjosefsson@epo.org

15th March 2021

Proposed Referral to the Enlarged Board of Appeal

Dear Mr Josefsson,

It is now well known that a Board of Appeal (3.5.02) will be referring one or more questions to the Enlarged Board of Appeal regarding videoconference proceedings. As you know from previous correspondence from **epi**, we are very concerned about this topic and so have been monitoring the situation. We also assume that you will be, as far as possible, preparing for the new referral.

This is a matter of great importance not only for the Boards of Appeal but also for the Directorate General Patent Granting Process. It has already attracted a lot of interest with all users of the Office and the Boards. This can be seen, for instance, from the number of submissions the BOAC received regarding a proposed new Article 15a of the RPBA.

In such circumstances, it appears to **epi** that it is necessary for the Enlarged Board not only to be unbiased but also to appear to be unbiased. It is therefore suggested that the panel of the Enlarged Board of Appeal should not include anyone who was involved in the drafting and approval of the proposed Article 15a as it could be perceived that such people could be biased towards a finding consistent with Article 15a. We further suggest that the panel should not include those involved in the drafting and approval of the Notice dated 15 December 2020 which concluded that the Boards were already entitled to conduct oral proceedings by videoconference even without the agreement of the parties concerned, based on the premise that the proposed Article 15a merely clarifies an existing possibility.

President · Francis Leyder

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epi trusts that you will take these points into account when deciding on the panel to deal with the referred questions.

Once the questions have been referred, **epi** will attempt to assist the Enlarged Board of Appeal in the usual way, by filing an *amicus curiae* brief.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Francis Leyder', written in a cursive style.

Francis Leyder
President