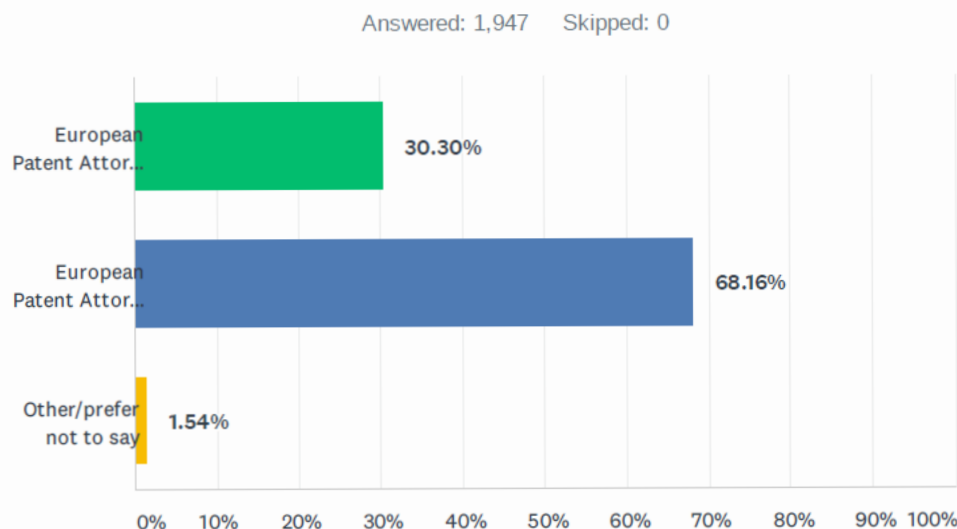


During November-December 2020, **epi** surveyed its members to find out what they like/dislike about the current and evolving rules and proposals. Vice-President Heike Vogelsang-Wenke, EPPC Chair Chris Mercer and OCC Chair John Gray developed the survey with the assistance of other contributors and the Secretariat. Nearly 2000 people responded to some or all of the 25 questions, including thousands of written comments. After digesting these responses with the help of a team of volunteers, we present the [full data and comment summaries in this report](#). A more concise report of the main findings has been published in [epi Information](#) online.

Survey – Your opinion on Oral Proceedings by videoconference

The year 2020 has seen rapid developments in the EPO's attitude to conducting Oral Proceedings by videoconference. Please tell us what you like / dislike about the current and evolving rules and proposals, so that we can voice your opinions to the EPO.

Q1 It would help us to know a little about you. What is your current role?:

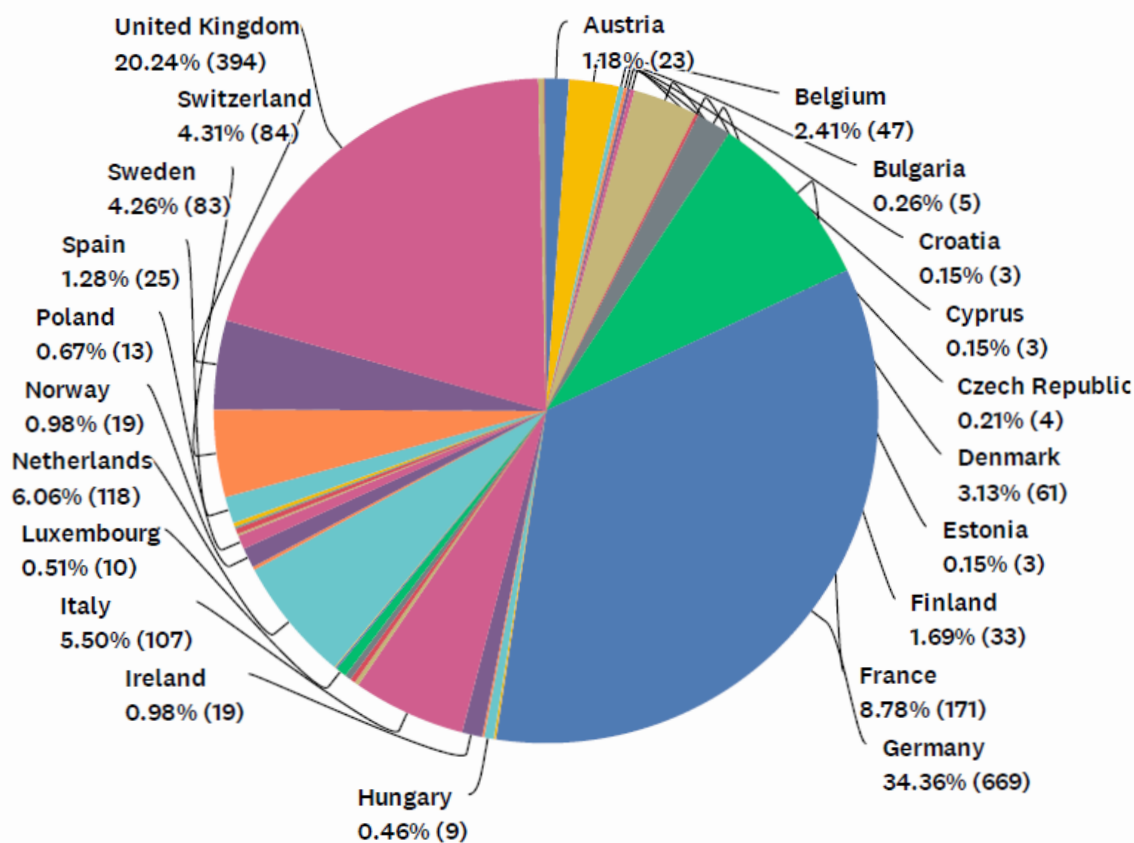


ANSWER CHOICES	RESPONSES	
European Patent Attorney - in-house/industry	30.30%	590
European Patent Attorney - private practice	68.16%	1,327
Other/prefer not to say	1.54%	30
TOTAL		1,947

Q1 - no comments possible

Q2 Where are you based for your work?

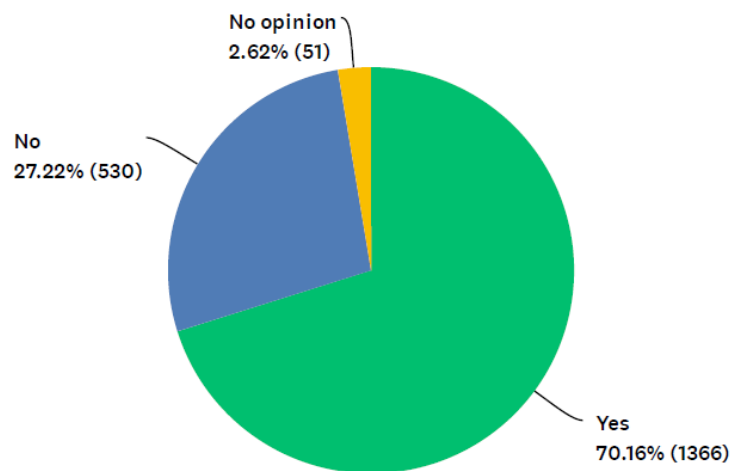
Answered: 1,947 Skipped: 0



Q2 - no comments possible

Q3 At its 89th Council Meeting on 13th and 14th November, 2020, Council passed the following Resolution: "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." Do you agree with this Resolution?

Answered: 1,947 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes (1)	70.16%	1,366
No (2)	27.22%	530
No opinion (3)	2.62%	51
TOTAL		1,947

Q3 – 608 comments; evaluation of results by Heike Vogelsang-Wenke:

The comments on this question (more than 600!) reflect the entire spectrum of opinions of colleagues of different nationality/residence, experience with oral proceedings (f2f¹ or by ViCo), and client structure.

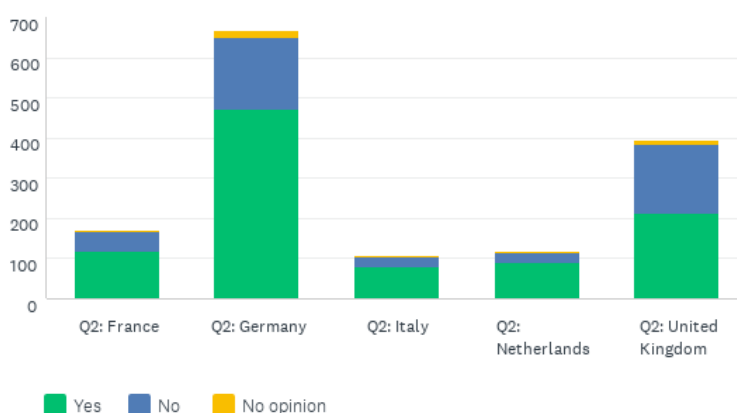
- Not surprisingly, as 70 % of the participants agreed to the resolution, a vast majority thinks that f2f should be the default, some even want f2f to be mandatory at least in *inter partes* proceedings.
- A party may choose to attend by ViCo, but it must be that party's own decision.
- Most participants believe a party present in person to have an advantage over a party attending by ViCo, very few see an advantage on the part of the ViCo attendants (availability of additional support staff, difficult for the other parties to read their faces, possibly many persons, but one camera).

¹ Face-to-face – also referred to as "in person"

- Therefore, many participants expressed their concerns about hybrid proceedings (one or more parties f2f, one or more parties ViCo). In their opinion, either all parties should attend in person, or all parties should attend via ViCo, unless all parties agree to conduct the proceedings in a hybrid mode.
- A minority explicitly appreciated the option of hybrid proceedings.
- Some participants agreeing to the resolution commented that whoever is deciding to go for ViCo is free to do so but should not complain about any perceived disadvantage compared to f2f.
- ViCo seems to be mostly accepted for 1st instance *ex parte* proceedings. However, for 1st instance *inter partes* proceedings, many participants require agreement of all parties, otherwise the proceedings should be conducted f2f or in hybrid mode.
- As far as appeal proceedings were explicitly addressed, most participants insist on f2f.
- A considerable number of participants would have preferred the resolution to be the other way round, i.e.: ViCo as a rule, but a party is free to attend in person.
- The major advantages of ViCo over f2f are considered to be the following:
 - Reduced costs, in particular for SMEs or applicants with limited resources;
 - Reduced travel time;
 - Reduced carbon footprint due to less flights to Munich or The Hague; and
 - Reduced competitive advantage for German and Dutch representatives.
- The major concerns with respect to ViCo (in addition to those addressed in question 8) are the following:
 - Lack of a legal basis and lack of power of the President to implement ViCo as default; and
 - Clients may exert pressure on a representative to attend by ViCo due to cost considerations although the representative prefers f2f.

Comparing the answers to Q3 by the answers given in Q2 (country), EPAs from the United Kingdom had a significantly greater percentage of “No” answers (43% compared with the average 27%). (Analysis by John Gray)

Q3 At its 89th Council Meeting on 13th and 14th November, 2020, Council passed the following Resolution: "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." Do you agree with this Resolution?

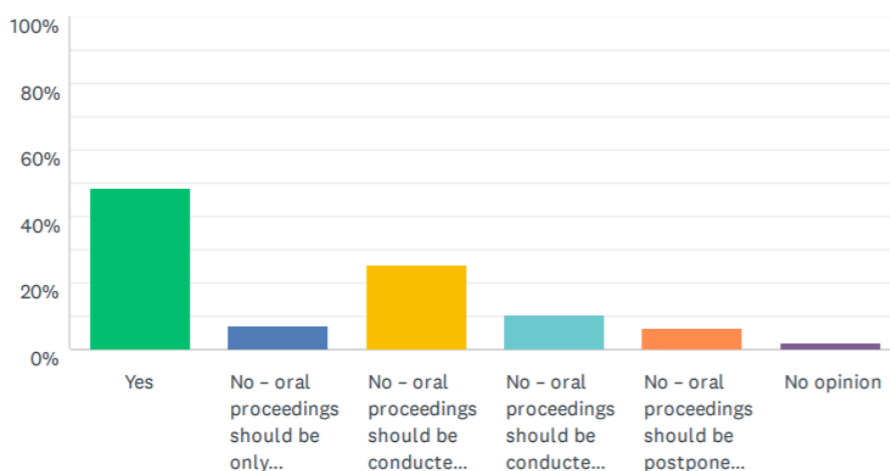


Q3 by Country (top 5)

	Yes		No		No opinion		Total	
Q2: France	69.59%	119	29.24%	50	1.17%	2	11.72%	171
Q2: Germany	70.70%	473	26.46%	177	2.84%	19	45.85%	669
Q2: Italy	74.77%	80	22.43%	24	2.80%	3	7.33%	107
Q2: Netherlands	77.12%	91	20.34%	24	2.54%	3	8.09%	118
Q2: United Kingdom	54.31%	214	43.40%	171	2.28%	9	27.00%	394
Total	66.96%	977	30.57%	446	2.47%	36	100.00%	1459
Comment							32.28%	471
							Answered	1459
							Skipped	0

Q4 Council recognised that, during the Covid-19 pandemic, emergency measures are necessary in particular to keep backlogs in opposition and appeal proceedings manageable and that therefore oral proceedings by videoconference will take place. For all cases before an Examining Division or an Opposition Division, all oral proceedings until 15th September, 2021 will be by videoconference only. Do you agree with this practice?

Answered: 1,947 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	48.74%	949
No – oral proceedings should be only conducted in person (with Covid safety measures)	6.88%	134
No – oral proceedings should be conducted in person (with Covid safety measures) unless a party requests to attend by videoconference	25.68%	500
No – oral proceedings should be conducted in person if a party provides reasons why	10.37%	202
No – oral proceedings should be postponed until the restrictions are lifted	6.52%	127
No opinion	1.80%	35
TOTAL		1,947

Q4 – 521 comments; evaluation of results by Konstantinos Vavekis:

Many comments differentiated the situation for *ex parte* and *inter partes* oral proceedings. They commented that ViCo is suitable for oral proceedings with the Examining Division but for opposition proceedings face to face should take place.

Comments against the obligatory ViCo oral proceedings were:

- ViCo reduces the value of the oral procedures and violates the right to be heard;
- ViCo is not suitable for interrogation of witnesses, presentation of evidence, participation of many parties in the proceedings;

- ViCo has significant technological costs for small firms;
- ViCo allows less interaction among the parties and parts of the communication get lost;
- ViCo creates psychological pressure and uncertainty concerning the transfer of the messages;
- There are limited number of technical tools in EPO to support VC;
- ViCo is not suitable when translations are required;
- There is no assurance through ViCo that one was heard and that one had the chance to respond to all the questions raised by the opponents;
- A connection disruption means no attendance;
- Some companies have a policy to not allow the use of ViCo software from their infrastructure;
- There might be time differences at the locations of the parties which influence their jobs during ViCo oral proceedings (e.g. if in one place it is late night due to time differences);
- It will increase appeal proceedings;
- It creates extra difficulties for non-native speakers;
- It creates difficulties for small firms if they have to participate in many different oral proceedings at the same time; and
- In many areas, the quality of network access is not sufficient, suitable or stable for ViCo.

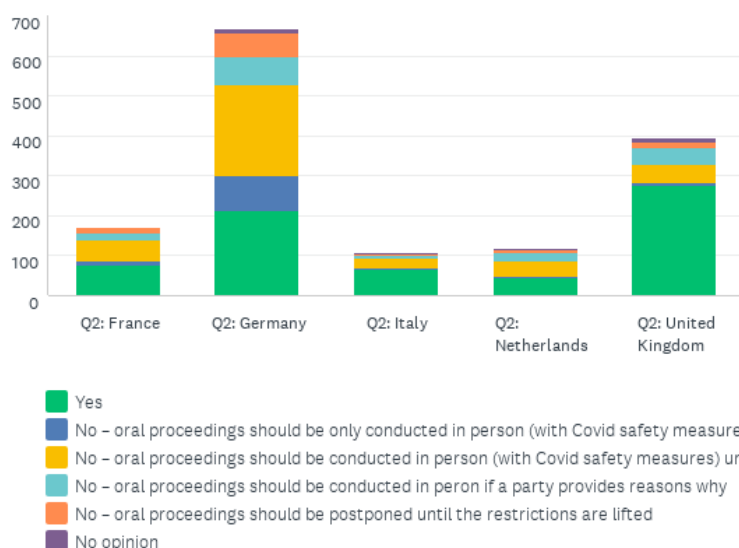
Comments for the obligatory use of ViCo during the COVID period are:

- It will reduce the backlog of many divisions and will produce faster decisions. Otherwise, postponement of the proceedings will increase the backlog and will allow a longer unjustified monopoly for a patentee. This is crucial in some sectors like in pharma;
- It will reduce the travel costs which is important for firms away from the proceedings' location;
- EPO can take all required measures to ensure safety i.e. Plexiglas room dividers, air cleaning systems, free space among the participants;
- EPO should provide support staff to help resolve technical issues during ViCo s;
- It is fair that both parties have the same method of participation;
- It is only for the period of the pandemic;
- No party should be unitarily allowed to postpone the proceedings;
- What will happen if network problems arise;
- It is the only way due to the travel restrictions among many countries; and
- It could work as exception for accelerated proceedings.

In general, many comments stressed that the adoption of ViCo during oral proceedings should be up to the parties to decide.

Comparing the answers to Q4 depending on the answers to Q2 (country), respondents from the United Kingdom and Italy were much more likely to agree with the interim practice of the EPO (GB 70%, IT 63%). (analysis by John Gray)

Q4 Council recognised that, during the Covid-19 pandemic, emergency measures are necessary in particular to keep backlogs in opposition and appeal proceedings manageable and that therefore oral proceedings by videoconference will take place. For all cases before an Examining Division or an Opposition Division, all oral proceedings until 15th September, 2021 will be by videoconference only. Do you agree with this practice?

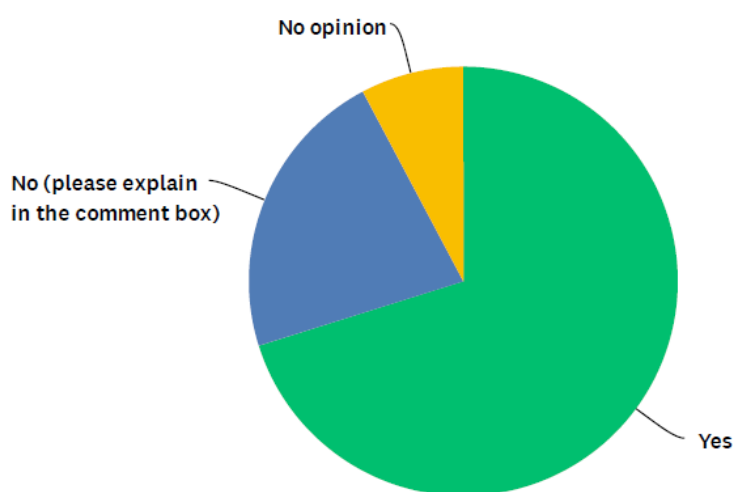


Q4 by Country (top 5)

		Yes		No – oral proceedings should be only conducted in person (with Covid safety measures)		No – oral proceedings should be conducted in person (with Covid safety measures) unless a party requests to attend by videoconference		No – oral proceedings should be conducted in peron if a party provides reasons why		No – oral proceedings should be postponed until the restrictions are lifted		No opinion		Total		
Q1 by Country (top 6)	Q2: France	45.03%	77	6.43%	11	30.41%	52	10.53%	18	7.02%	12	0.58%	1	11.72%	171	
	Q2: Germany	31.99%	214	12.86%	86	33.93%	227	10.46%	70	9.12%	61	1.64%	11	45.85%	669	
	Q2: Italy	63.55%	68	1.87%	2	24.30%	26	3.74%	4	5.61%	6	0.93%	1	7.33%	107	
	Q2: Netherlands	38.14%	45	4.24%	5	33.05%	39	16.10%	19	6.78%	8	1.69%	2	8.09%	118	
	Q2: United Kingdom	70.30%	277	1.52%	6	11.93%	47	10.66%	42	3.55%	14	2.03%	8	27.00%	394	
	Total	46.68%	681	7.54%	110	26.80%	391	10.49%	153	6.92%	101	1.58%	23	100.00%	1459	
Comment															27.83%	406
															Answered	1459
															Skipped	0

Q5 It is not clear whether the Boards of Appeal will institute the same measures as have been adopted by the Examining and Opposition Divisions. Do you consider that, for oral proceedings before the Boards of Appeal during the pandemic, the measures should be the same as for Examining and Opposition Divisions?

Answered: 1,947 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	70.16%	1,366
No (please explain in the comment box)	22.09%	430
No opinion	7.76%	151
TOTAL		1,947

Q5 – 561 comments; evaluation of results by Manolis Samuelides:

The majority (70%) responded “Yes” while 22% responded “no” and 8% responded that they have “No opinion”.

11% of those who responded Yes (151/1366) and the vast majority of those who responded No (402/430) added comments. It should be noted that with the comments a considerable amount of respondents with “Yes” did not agree with ViCo as default in all instances.

With the comments, both those who answered “Yes” and “No” highlighted their preference for f2f oral proceedings during appeal and noted that i) appeal is the last instance, ii) f2f should be the default, in particular for *inter partes* proceedings and iii) ViCo should be an option upon agreement of the parties. The need for ViCo as an emergency measure during the pandemic has been recognized.

Other issues raised in the comments, in favour of f2f, are:

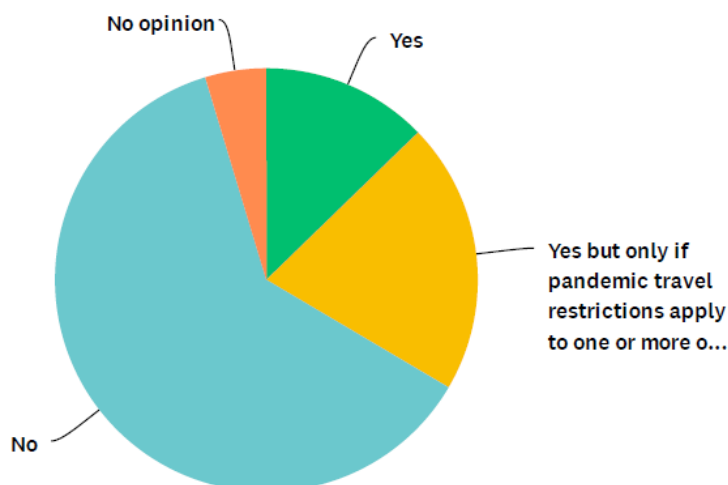
- questionable whether legal in view of Article 116 EPC;
 - the practice in Germany (BGH) during covid (2 persons per party in person and others remotely);
- technical (hardware, acoustic, long time in front of a screen, system not yet mature); and
- independence of the Board of Appeal.

Mixed opinion was on the backlog - some noted that it will increase, others that the backlog already exists, and the postponement will not have a large impact - and on the hybrid proceedings, which for some do not provide equal opportunities.

The comments in favour of ViCo mainly stressed i) the time saved, ii) the opportunity to have assistants and candidates and iii) the non-postponement of decisions important for the market.

Q6 Should the Examining Divisions, Opposition Divisions or Boards of Appeal have the power to require a party to attend oral proceedings either in person or by videoconference against the wishes of that party?

Answered: 1,947 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	12.74%	248
Yes but only for the duration of the pandemic	0.00%	0
Yes but only if pandemic travel restrictions apply to one or more of the parties	20.75%	404
No	61.84%	1,204
No opinion	4.67%	91
TOTAL		1,947

Q6 – 505 comments; evaluation of results by Nada Herak:

The lion's share of *No* and *No opinion* responses accentuates that the EPO should only be allowed to mandate the attendance of a party to the oral proceedings by ViCo if the entire proceedings are held by ViCo. Other options are held to be discriminating.

Also, the majority was of the view that "hybrid" oral proceedings, where one or more parties is present in person and one more party is compelled to attend by means of ViCo, should not be allowed (unless the party attending by ViCo consents). Participants showed concern about the role and the authority of the EPO and the possibility of exceeding its jurisdiction.

The inclination is given to mutual consent of the party, representative or accompanying person attending by ViCo in attending the oral proceedings.

As for the "Yes" and "Yes, but ..." class of responses, the bulk of respondents agreed on giving the EPO power to compel attendance of parties involved by ViCo, and not in person, at least until the end of the pandemic travel confinements.

In the absence of ViCo, the consequences of impediments and backlogs are likely to become significant; also, there is a possibility of procedural violation by delays, for no good reason whatsoever.

Comparing the opinions in Q6 by the answers given in Q2 (country), respondents from Germany and United Kingdom were most strongly in favour of free choice for the party (68% 'No') (Analysis by John Gray)

Q6 Should the Examining Divisions, Opposition Divisions or Boards of Appeal have the power to require a party to attend oral proceedings either in person or by videoconference against the wishes of that party?

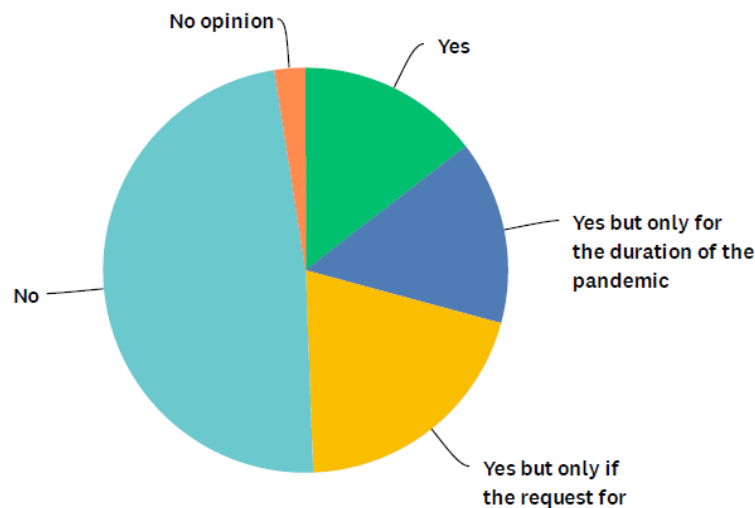


Q6 by country (top 5)

[illegible]

Q7 In cases with two or more parties, should the Opposition Divisions or Boards of Appeal have the power to require ALL parties to attend oral proceedings by videoconference, if one party requests to attend by videoconference?

Answered: 1,947 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	14.54%	283
Yes but only for the duration of the pandemic	14.69%	286
Yes but only if the request for videoconference is based on serious reasons (such as travel restrictions or quarantine)	20.18%	393
No	48.13%	937
No opinion	2.47%	48
TOTAL	1,947	

Q7 – 337 comments; evaluation of results by Nada Herak and Konstantinos Vavekis:

The majority of the responses recognized that it is not the same as the ViCo with the physical presentation. If ViCo is used, there might be several disadvantages, like low acoustic quality, difficulty to recognize nonverbal reactions and difficulty for negotiations. A number of participants preferred oral proceedings in person vs ViCo, required that the “*end of the pandemic*” should be defined and questioned compliance of ViCo with the right to be heard.

Four different opinions were expressed:

- The oral proceedings should be postponed;
- Both parties should use the same method for fairness;
- Each party should use the method that it prefers (the majority of the comments); and
- Both parties should use ViCo.

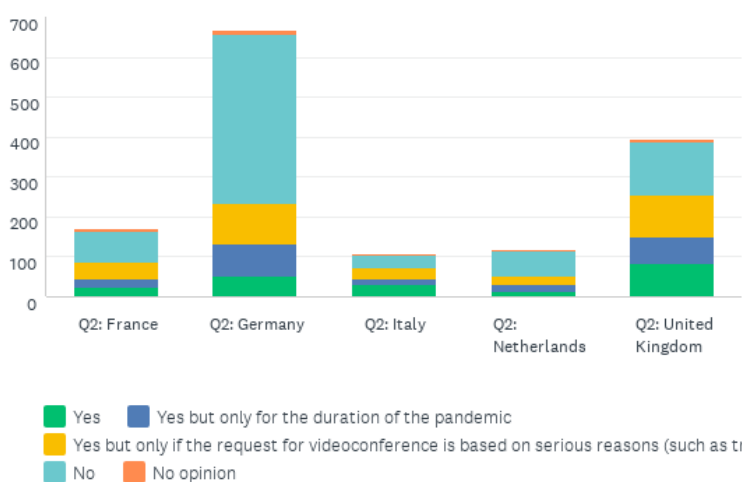
Problems identified were:

- Technical problems, slow internet;
- Unauthorized recordings;
- Difficulty in simultaneous translation;
- Prototypes are difficult to exhibit; and
- Ability to abuse the procedure by delays.

Those who replied “yes” prefer ViCo because of environmental reasons, lower traveling costs and fairness for representatives located away from Munich.

Comparing answers in Q7 by the answers given in Q2 (country), respondents from Germany and Netherlands were most strongly against this power (64% ‘No’, 54% ‘No’). (Analysis by John Gray)

Q7 In cases with two or more parties, should the Opposition Divisions or Boards of Appeal have the power to require ALL parties to attend oral proceedings by videoconference, if one party requests to attend by videoconference?

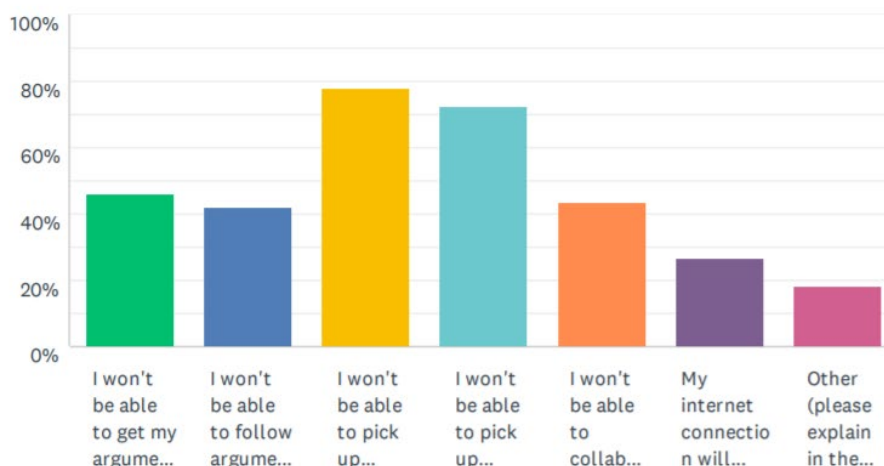


Q7 by country (top 5)

	Yes		Yes but only for the duration of the pandemic		Yes but only if the request for videoconference is based on serious reasons (...)		No		No opinion		Total	
Q2: France	14.04%	24	11.70%	20	25.73%	44	45.61%	78	2.92%	5	11.72%	171
Q2: Germany	7.77%	52	12.11%	81	14.95%	100	63.68%	426	1.49%	10	45.85%	669
Q2: Italy	29.91%	32	12.15%	13	25.23%	27	31.78%	34	0.93%	1	7.33%	107
Q2: Netherlands	11.02%	13	14.41%	17	20.34%	24	53.39%	63	0.85%	1	8.09%	118
Q2: United Kingdom	21.32%	84	16.50%	65	27.41%	108	33.25%	131	1.52%	6	27.00%	394
Total	14.05%	205	13.43%	196	20.77%	303	50.17%	732	1.58%	23	100.00%	1459
Comment											18.64%	272
											Answered	1459
											Skipped	0

Q8 If you were required to attend oral proceedings by videoconference against your wishes, what would be your main concern(s)? You can explain/give examples in the comment box.

Answered: 1,800 Skipped: 147



ANSWER CHOICES	RESPONSES	
I won't be able to get my arguments across (1)	45.94%	827
I won't be able to follow arguments of the division/board/other party (2)	41.83%	753
I won't be able to pick up nonverbal communication from the division/board (3)	78.06%	1,405
I won't be able to pick up nonverbal signals from the other parties (4)	72.56%	1,306
I won't be able to collaborate effectively with my accompanying persons (5)	43.39%	781
My internet connection will be low quality/unreliable (6)	26.67%	480
Other (please explain in the comment box) (7)	18.17%	327
Total Respondents: 1,800		

Q8 – 572 comments; evaluation of results by Chris Mercer:

There were a large number of comments. However, the comments were a little skewed by multiple (40+) occurrences of two comments².

There were a large number of comments that the question pre-supposed that oral proceedings by videoconference (ViCo OPs) were unsatisfactory. Many comments said that ViCo OPs were the preferred format for oral proceedings and a few even said that ViCo OPs should be the default.

² "Obliging a party to attend remotely while allowing others to attend in person necessarily results in parties not being treated equally. Such a practice would clearly discriminate against representatives from EPC states other than Germany (and in particular Munich), and would be contrary to intentions and spirit of a pan-European patent regime."

"Reliability and robustness of technical means such that a person, including of the EPO, may be unintentionally absent for a part or the whole of the oral proceedings due to technical reasons beyond the control of the person and the EPC prejudices against absence, even if unintentional."

There were significantly less, but still a large number of, comments which were entirely against videoconference OPs. There were many comments that ViCo OPs are unsatisfactory because of the lack on nonverbal signals.

Most of the comments about ViCo OPs did not relate to the principle of holding OPs by ViCo but were related to “technical” difficulties – see below.

There were a small number of comments which questioned whether there was proper legal basis for holding ViCo OPs and Articles 113 and 116 EPC were mentioned.

There were a reasonable number of comments against “mixed” oral proceedings unless a party specifically agreed to this type of OPs. Most of these said that such cases should only be held face-to-face. However, a number said that the default should be ViCo OPs.

The largest number of comments against ViCo OPs concerned multi-party proceedings where it was generally felt that ViCo OPs are unsatisfactory, especially where there are large numbers of people in each party.

There were significant comments on the technical aspects.

One of the major themes in the technical issues was visibility of the panel³. It was thought that each member of the panel should have his or her own camera and microphone so that the party or parties could at all times see the face of each panel member. There was a feeling that ViCo OPs could mean that the panel takes the proceedings less seriously or that they allow the panel members to become distracted or less interested. It was a common theme that it is not possible to determine whether all members are engaged if the panel all appear in one image at some distance from the camera. In a few cases, it was suggested that the panel members should all be in the same building, even if they were in separate rooms.

There were also comments about the way in which the panel deliberated during breaks. There was concern that there is no way to guarantee that all members of the panel took part in the deliberations.

A recurring theme concerned the conduct of ViCo OPs in general. It was suggested that there should be a clearer protocol for ViCo OPs to take account of the differences between face-to-face OPs and ViCo OPs. There was a general feeling that ViCo OPs are more tiring and so there should be more breaks and clearer indications as to when to re-join the proceedings. There should also be a clearer agenda for each ViCo OP. There was also a feeling that there was not a clear enough protocol to be adopted when there is a technical failure.

A further theme was whether there is more opportunity for abuse. Deliberately disconnecting from the ViCo and alleging that this was a technical issue was mentioned and it was suggested that there should be a way for the panel to determine whether it really was a technical issue. There were also comments about opposing parties taking over the ViCo in an attempt to prevent the other party from speaking.

There were many comments on the use of whiteboards, the showing of samples, the use of experts and the submission of documents during ViCo OPs. These reflect many of the concerns which have already been pointed out.

There were a number of comments on simultaneous translation. Many of these seemed to be from people who have not attended ViCo OPs using simultaneous translation and a number of the comments applied to face-to-face OPs as well as ViCo OPs. However, it was a significant theme and so work would need to be done to ensure that simultaneous translation in ViCo OPs is the same as in face-to-face OPs. This topic

³ By “panel”, Examination Divisions, Opposition Divisions and Boards of Appeal are covered.

occurred most often in connection with multi-party proceedings, which seemed to lead to the idea that multi-party proceedings should end with face-to-face OPs.

There were many comments on the inability of the EPO to prevent recording of ViCo OPs. There were concerns that a recording could be made and used in proceedings in another jurisdiction. There were also concerns about image rights and GDPR.

There were also comments about consultation between the members of a party, either during the active sessions or during the breaks, and between the parties. One theme was the ability for all the opponents to talk to each other during the breaks. It was also mentioned that it is sometimes useful for the opponent(s) to be able to talk to the Patentee in case settlement may be reached. This led to suggestions that the system used by the EPO should allow secure breakout rooms which enable all the above possibilities.

There were also some comments on discrimination. One concerned parties including a person with a sight or hearing problem, where ViCo OPs are a disadvantage and thus discriminate against them. The other concerned big vs small firms. There were views that big firms have IT personnel who can deal with all the technical issues during ViCo OPs, and so the representative can concentrate only on presenting his case, whereas small firms do not have such personnel so that the representative has to deal with both the technical issues and the presentation of the case. In such cases, it was argued that there is a lack of IT parity.

There were comments about the system(s) used by the EPO being banned by certain firms.

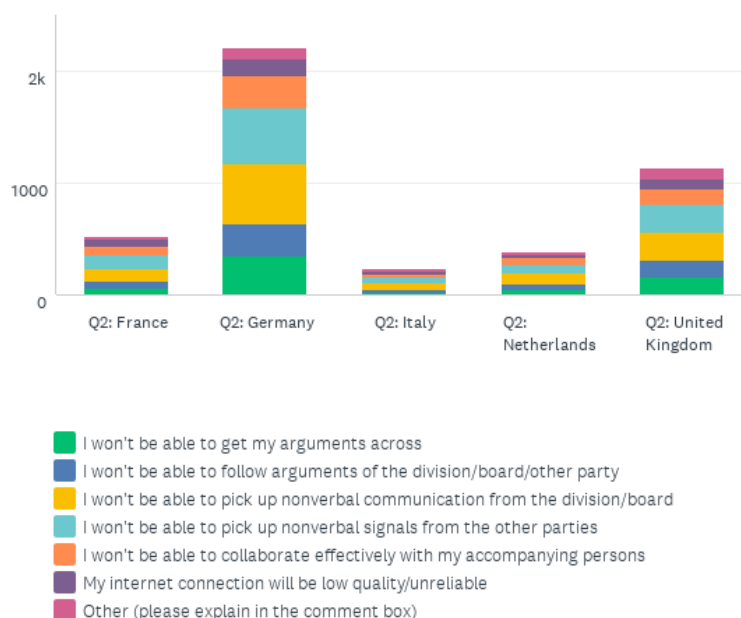
The overall impression is that the majority of the people commenting would be prepared to accept ViCo OPs as the norm for “simple” cases, provided that the system provided by the EPO was technically acceptable.

However, there is a significant minority of the people commenting who consider that the norm should be face-to-face OPs and that participation by ViCo should only be used if the party or one of the parties requests it.

Answers for Q8 were compared according to the answers given in Q2 (country) (analysis by John Gray)

- Respondents from Italy were least likely to worry about getting their point across (20%) and Germans were most likely to worry (56%).
- Respondents from France were most likely to worry about their internet connection (39%), while respondents from Italy and United Kingdom were least worried (22%).
- In the other aspects, the concerns were roughly the same across all countries.

Q8 If you were required to attend oral proceedings by videoconference against your wishes, what would be your main concern(s)? You can explain/give examples in the comment box.

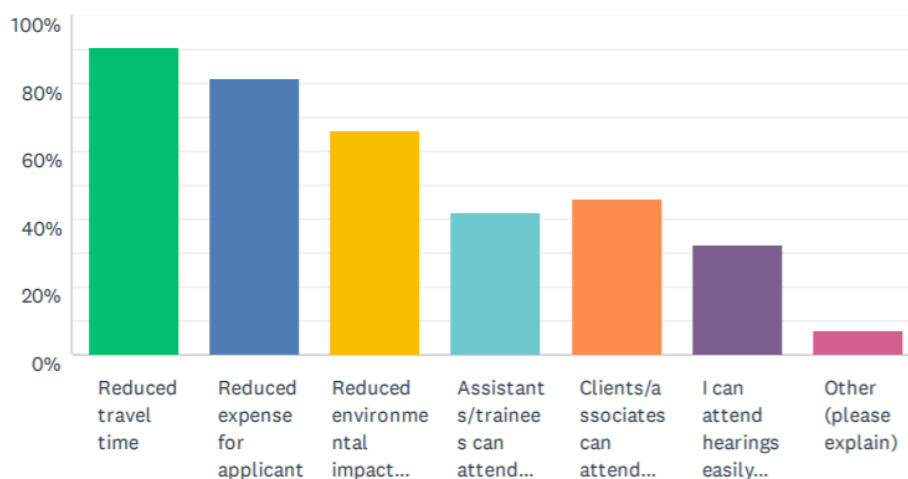


Q8 by country (top 5)

	I won't be able to get my arguments across		I won't be able to follow arguments of the division/board/other party		I won't be able to pick up nonverbal communication from the division/board		I won't be able to pick up nonverbal signals from the other parties		I won't be able to collaborate effectively with my accompanying persons		My internet connection will be low quality/unreliable		Other (please explain in the comment box)		Total		
Q2: France	36.88%	59	37.50%	60	77.50%	124	75.63%	121	46.25%	74	39.38%	63	13.75%	22	11.82%	160	
Q2: Germany	55.68%	353	44.16%	280	85.96%	545	79.18%	502	44.79%	284	24.13%	153	14.83%	94	46.82%	634	
Q2: Italy	20.83%	20	32.29%	31	61.46%	59	51.04%	49	35.42%	34	22.92%	22	20.83%	20	7.09%	96	
Q2: Netherlands	49.56%	56	42.48%	48	83.19%	94	71.68%	81	46.90%	53	31.86%	36	20.35%	23	8.35%	113	
Q2: United Kingdom	45.01%	158	42.45%	149	74.07%	260	70.94%	249	39.32%	138	22.79%	80	30.48%	107	25.92%	351	
Total	47.71%	646	41.95%	568	79.91%	1082	74.00%	1002	43.06%	583	26.14%	354	19.65%	266	100.00%	1354	
Comment																33.09%	448
																Answered	1354
																Skipped	105

Q9 What (if any) do you think are the main benefits of oral proceedings being possible by video conference? (please tick all that apply)

Answered: 1,876 Skipped: 71



ANSWER CHOICES	RESPONSES	
Reduced travel time (1)	90.57%	1,699
Reduced expense for applicant (2)	81.40%	1,527
Reduced environmental impact (carbon footprint etc.) (3)	65.99%	1,238
Assistants/trainees can attend more easily (4)	42.22%	792
Clients/associates can attend more easily (5)	46.22%	867
I can attend hearings easily as a member of the public (6)	32.68%	613
Other (please explain) (7)	6.93%	130
Total Respondents: 1,876		

Q9 – 272 comments; evaluation of results by Manolis Samuelides:

272 participants, i.e. 14%, entered their opinion in the open field, either by presenting other reasons in favour of ViCo, such as:

- working at office is more convenient;
- the normal pace of the Boards is maintained;
- not favouring representatives in EPO locations;
- those that have difficulties to travel (for example new parents) may work from their location;

or providing other comments:

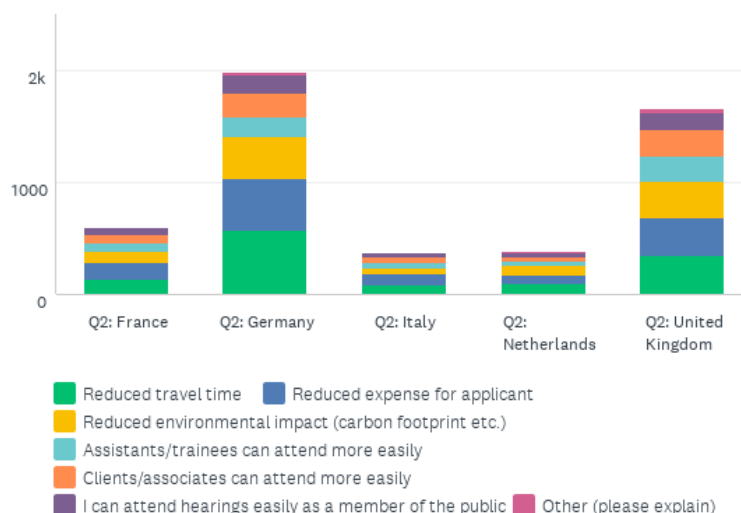
- the remote accessibility may be misused;
- with software, it is possible to analyse a person while videoconferencing;
- the panel may replay selected moments; and
- more complicated cases should be heard f2f.

Answers for Q9 were compared according to the answers given in Q2 (country) (analysis by John Gray)

Comparing by country, the vast majority of respondents recognised reduced cost and reduced travel time as main benefits.

- Reduced environmental impact was cited by 84% of respondents from the United Kingdom, 68% from Netherlands, but only 52% from Italy.
- Respondents from the United Kingdom were also more likely to see benefit in attendance by trainees (56%) and attendance by clients (64%).

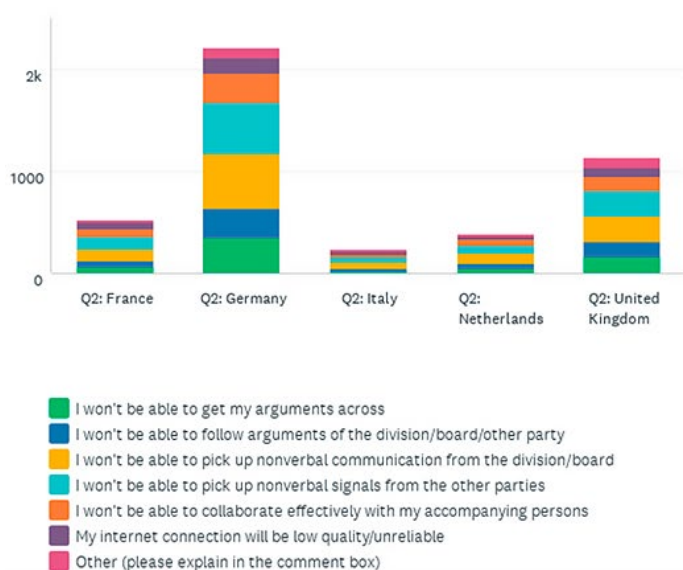
Q9 What (if any) do you think are the main benefits of oral proceedings being possible by video conference? (please tick all that apply)



Q9 - Compare by Q2

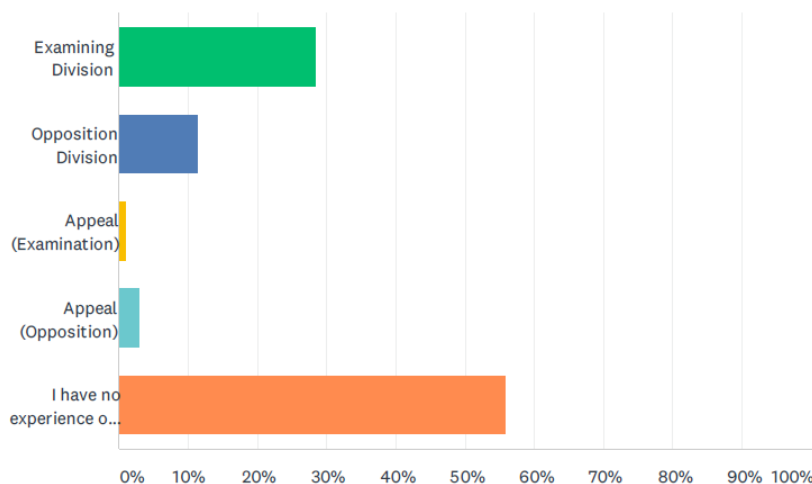
	Reduced travel time		Reduced expense for applicant		Reduced environmental impact (carbon footprint etc.)		Assistants/trainees can attend more easily		Clients/associates can attend more easily		I can attend hearings easily as a member of the public		Other (please explain)		Total
Q2: France	85.03%	142	88.02%	147	62.28%	104	41.32%	69	45.51%	76	35.93%	60	4.19%	7	11.95% 167
Q2: Germany	92.15%	575	73.56%	459	60.10%	375	29.01%	181	33.65%	210	25.16%	157	4.81%	30	44.67% 624
Q2: Italy	84.11%	90	87.85%	94	52.34%	56	46.73%	50	48.60%	52	25.23%	27	8.41%	9	7.66% 107
Q2: Netherlands	84.07%	95	76.11%	86	68.14%	77	40.71%	46	34.51%	39	29.20%	33	10.62%	12	8.09% 113
Q2: United Kingdom	92.23%	356	87.05%	336	83.68%	323	56.48%	218	63.73%	246	38.34%	148	9.59%	37	27.63% 386
Total	90.05%	1258	80.31%	1122	66.93%	935	40.37%	564	44.60%	623	30.42%	425	6.80%	95	100.00% 1397
Comment															14.32% 200
															Answered 1397
															Skipped 62

Comparing the graphs across Q8 and Q9, as well as by country, we see that respondents from United Kingdom definitely had concerns about having to attend oral proceedings by ViCo against their wishes but were much more likely to see benefits of ViCo in general.



Q10 If you have experience of EPO oral proceedings by videoconference, please tell us about your most recent experience: What type of hearing was it?

Answered: 1,947 Skipped: 0

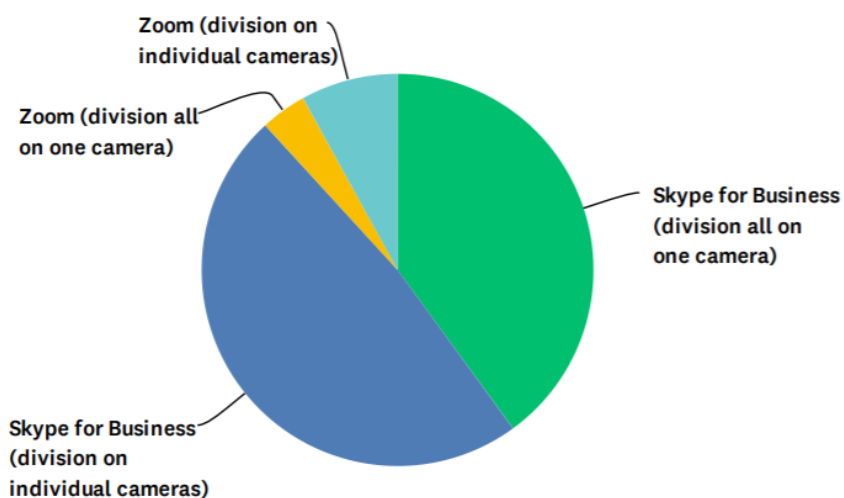


ANSWER CHOICES	RESPONSES	
Examining Division	28.51%	555
Opposition Division	11.61%	226
Appeal (Examination)	1.13%	22
Appeal (Opposition)	2.93%	57
I have no experience of EPO oral proceedings by videoconference	55.83%	1,087
TOTAL		1,947

Q10 - no comments possible

Q11 What software was used for the hearing?

Answered: 848 Skipped: 1,099

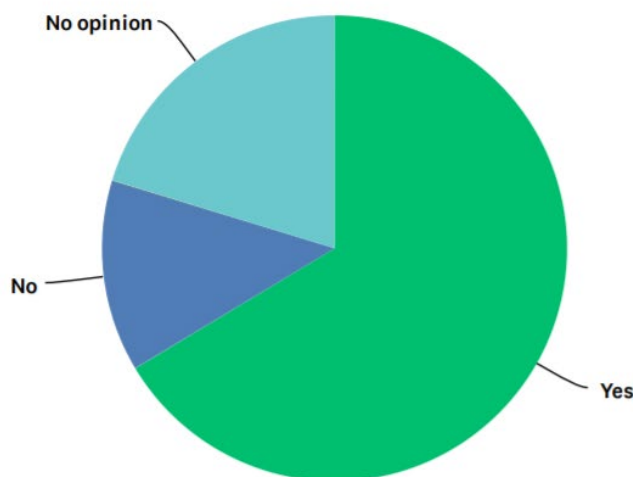


ANSWER CHOICES	RESPONSES	
Skype for Business (division all on one camera)	39.98%	339
Skype for Business (division on individual cameras)	48.23%	409
Zoom (division all on one camera)	3.77%	32
Zoom (division on individual cameras)	8.02%	68
TOTAL		848

Q11 - no comments possible

Q12 Would it be desirable if the videoconference application included the functionality of online document filing?

Answered: 848 Skipped: 1,099



ANSWER CHOICES	RESPONSES	
Yes	66.39%	563
No	13.33%	113
Interpreters	0.00%	0
No opinion	20.28%	172
TOTAL		848

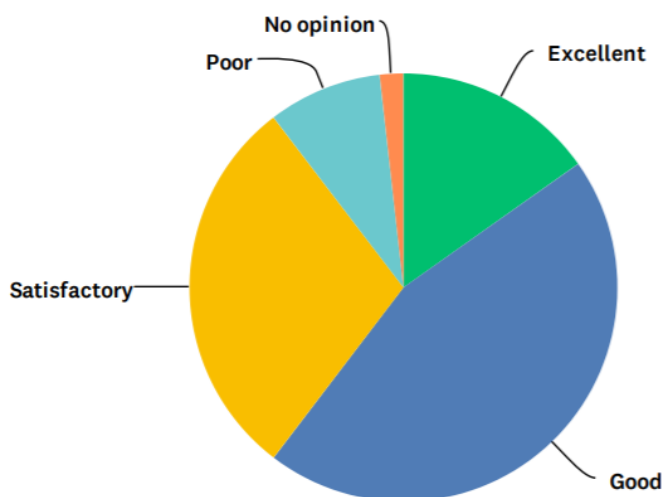
Q12 - 189 comments; evaluation of results by Gian Giuseppe Masciopinto:

- By Mail is preferred in almost all cases with receipt of delivery; some additional functionality would be desirable as for instance a solution of delay problems (large majority-129/189).
- A proper document filing mechanism communicated in advance to all parties, and including digital signatures, would be beneficial but it is not a priority. The tool needs to be very easy to use, to avoid the requirement to sign and date each page, and to comprise the possibility to work collaboratively on documents, as for instance on claims (minority).
- EPO online filing is more complicated and can be used at the end (very few).

Mail seems to be the preferred tool.

Q13 Please rate the software used for the videoconference for ease of use, and audio/video quality.

Answered: 848 Skipped: 1,099



ANSWER CHOICES	RESPONSES	
Excellent	15.21%	129
Good	45.17%	383
Satisfactory	29.25%	248
Poor	8.61%	73
No opinion	1.77%	15
TOTAL		848

Q13 – 145 comments; evaluation of results by Gian Giuseppe Masciopinto:

- Bad experience (different type of problems: disconnections, participants were "invisible", EPO bad internet connection) (majority-50/145).
- Good experience (minority).

However, in general, it was suggested that each member of the panel should be on an individual camera instead of one central camera.

- Better ZOOM (more space within the window) than Skype for Business (phase out?), but Skype is more secure than ZOOM.
Skype, in general, is not satisfactory for multi-party hearings, but many companies ban the loading of Zoom onto company laptops for security reasons.

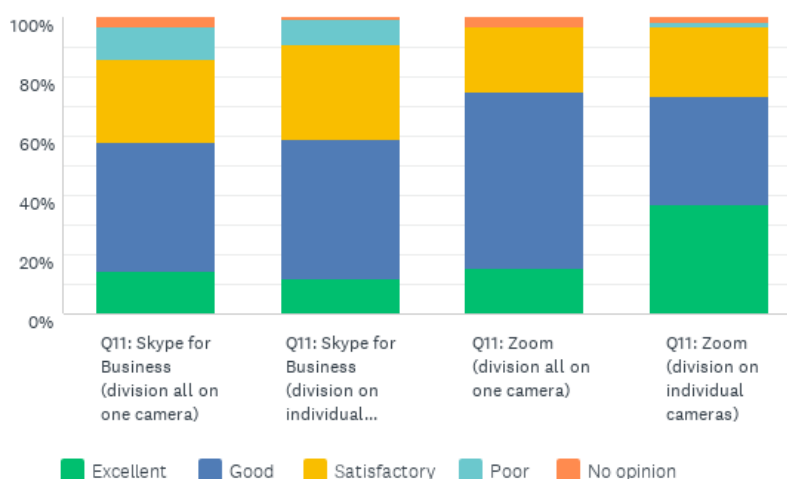
Further Comments

- Headset or a dedicated microphone for each speaker is advantageous.
- Suggestion of further tools (TEAMS, ...).
- Suggestion to improve quality of internet connection.

In some case the experience is dated before COVID. Apparently, the situation is getting better now.

Analysing the responses to Q13 in view of the responses given for Q11 (What software was used for the hearing) the following picture emerges (analysis by John Gray):

Q13 Please rate the software used for the videoconference for ease of use, and audio/video quality.

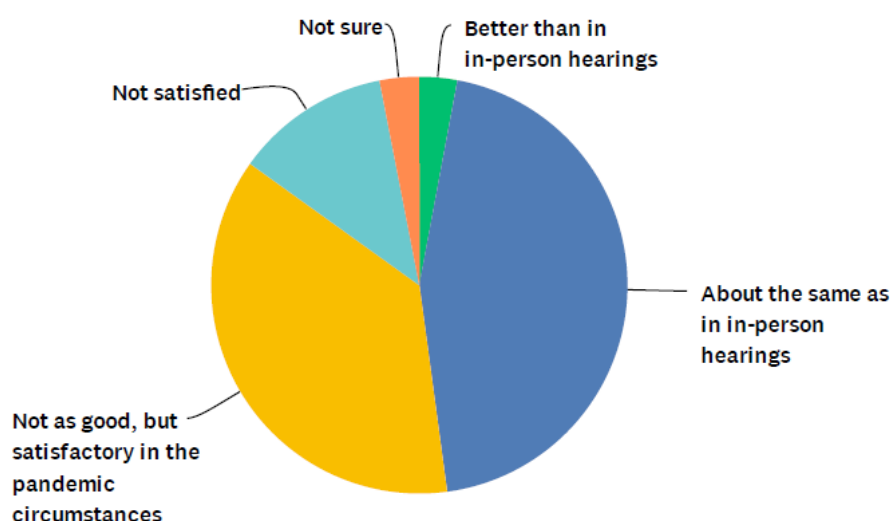


Comparing the responses according to the different answers given in Q11, we see clearly that Zoom provides a better experience for the users (97% Satisfactory. Good or Excellent), compared with Skype for Business (85%). Moreover, when using the proportion of users rating the software “excellent” is highest (37%) when every person has an individual camera. (**NOTE:** The chart shows percentages but the number of respondents using Zoom was smaller, presumably due to the very recent introduction of Zoom (100 Zoom experiences vs 748 SfB).) Data:

Q13 Please rate the software used for the videoconference for ease of use, and audio/video quality.											
	Excellent		Good		Satisfactory		Poor		No opinion		Total
Q11: Skype for Business (division all on one camera)	14.75%	50	43.07%	146	28.02%	95	11.21%	3	2.95%	1	33
Q11: Skype for Business (division on individual cameras)	11.98%	49	47.19%	193	31.78%	13	8.31%	4	0.73%	0	9
Q11: Zoom (division all on one camera)	15.63%	5	59.38%	19	21.88%	7	0.00%	0	3.13%	1	32
Q11: Zoom (division on individual cameras)	36.76%	25	36.76%	25	23.53%	16	1.47%	1	1.47%	1	68
Total	15.21%	129	45.17%	383	29.25%	24	8.61%	7	1.77%	5	84
Comment											14
											5
											84
											8

Q14 Were you satisfied that you could get your points across to the division (compared with your experience of in-person hearings)?

Answered: 848 Skipped: 1,099



ANSWER CHOICES	RESPONSES	
Better than in in-person hearings	2.95%	25
About the same as in in-person hearings	44.93%	381
Not as good, but satisfactory in the pandemic circumstances	37.03%	314
Not satisfied	12.03%	102
Not sure	3.07%	26
TOTAL		848

Q14 – 122 comments; evaluation of results by Martin Bierbaum:

A number of respondents point out that nonverbal communication is impaired in ViCos. According to the respondents, this makes it difficult to determine how arguments are received by the examiners/board members or whether the examiners/board members pay any attention at all.

Several comments point out that it is difficult to see the individual examiners/board members if they are all recorded by the same camera. Some of these comments suggest that each examiner/board member should have his/her own camera, so that a close-up of each face is visible in the ViCo.

A couple of respondents emphasize the role of the chairperson in leading the parties through the proceedings, e.g. by carefully explaining what is about to happen in each step and summarizing each party's arguments.

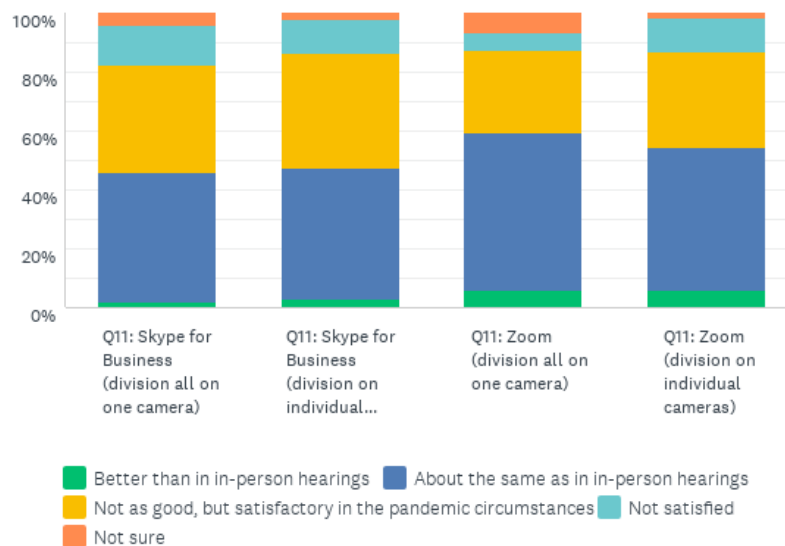
Some respondents noted that their experience only relates to "simple/relatively straightforward" cases and suggested that ViCos might be less suited for more complex cases.

Some respondents noted that it is difficult to present additional evidence during ViCos, such as presenting physical evidence or explaining something with the help of drawings or props.

One respondent asserted that remote attendees would be at a disadvantage in hybrid ViCos, as they are more likely to be ignored and cannot interject into another party's presentation as easily.

Analysing the responses to Q14 in view of the responses given for Q11 (What software was used for the hearing) the following picture emerges (analysis by John Gray):

Q14 Were you satisfied that you could get your points across to the division (compared with your experience of in-person hearings)?



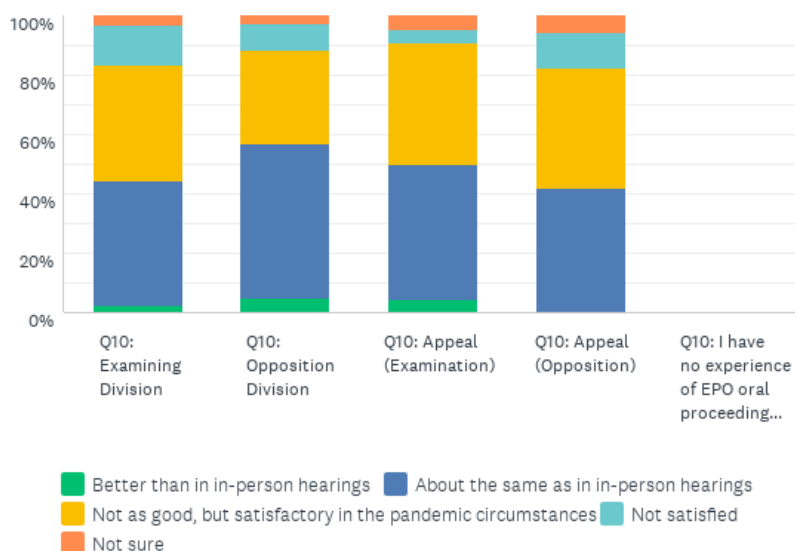
Comparing the responses according to the different answers given in Q11, we see that those who experienced OP via Zoom felt they could get their points across a little better than those experiencing Skype for Business. Just over half of the Zoom users felt that the experience was at least as good as in-person hearings, while 87% felt that the experience was at least satisfactory *in the circumstances of the pandemic*. Conversely, however, 35-40% of the Zoom users and 50% of the SfB users felt they were not able to get their point across as well as in in-person hearings and, consistently, around 11-13% were not satisfied in any of the ViCo platforms. (**NOTE:** The graphs show percentages but the overall number of respondents using Zoom was smaller, due to the very recent introduction of Zoom (100 Zoom experiences vs 748 SfB).)

Data comparing by Q11:

Q14 Were you satisfied that you could get your points across to the division (compared with your experience of in-person hearings)?											
	Better than in in-person hearings		About the same as in in-person hearings		Not as good, but satisfactory in the pandemic circumstances		Not satisfied		Not sure		Total
Q11: Skype for Business (division all on one camera)	2.06%	7	43.95%	149	36.58%	124	13.27%	45	4.13%	14	39.98%
Q11: Skype for Business (division on individual cameras)	2.93%	12	44.50%	182	38.88%	159	11.49%	47	2.20%	9	48.23%
Q11: Zoom (division all on one camera)	6.25%	2	53.13%	17	28.13%	9	6.25%	2	6.25%	2	3.77%
Q11: Zoom (division on individual cameras)	5.88%	4	48.53%	33	32.35%	22	11.76%	8	1.47%	1	8.02%
Total	2.95%	25	44.93%	381	37.03%	314	12.03%	102	3.07%	6	100.00%
Comment											14.39%
											Answer red
											84
											8

Further analysing the responses to Q14 in view of the responses given for Q10 (What type of hearing was it?), the following picture emerges (analysis by John Gray):

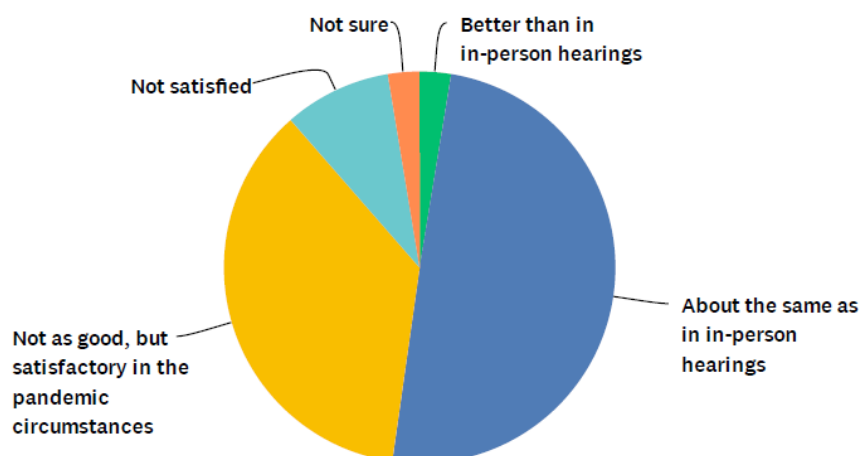
Q14 Were you satisfied that you could get your points across to the division (compared with your experience of in-person hearings)?



Comparing the responses according to the different answers given in Q10 (type of hearing), we see a higher level of satisfaction in Opposition Division hearings than in other types of hearing. Of those who experienced OP in Examination Division and Opposition Appeal, only about 42% felt they could get their points across as well as they would in in-person hearings. Around 13% were not satisfied that they could get their points across. (**NOTE:** The vast majority of these experiences, and 100% of the Examination Appeal hearings had been experienced in Skype for Business. It will need to be reviewed over time whether the experience with Examining Division and Board of Appeal hearings is better in Zoom.)

Q15 Were you satisfied that you could follow the points made by the division or other participants (compared with your experience of in-person hearings)?

Answered: 848 Skipped: 1,099



ANSWER CHOICES	RESPONSES	
Better than in in-person hearings	2.59%	22
About the same as in in-person hearings	49.65%	421
Not as good, but satisfactory in the pandemic circumstances	36.32%	308
Not satisfied	8.84%	75
Not sure	2.59%	22
TOTAL		848

Q15 – 80 comments; evaluation of results by Martin Bierbaum:

Similar to the comments on question 14, some respondents noted that nonverbal communication is impaired and that the faces of individual participants, especially examiners/board members, are not clearly visible. Similar to question 14, some respondents contend that each examiner/board member should have his/her own camera.

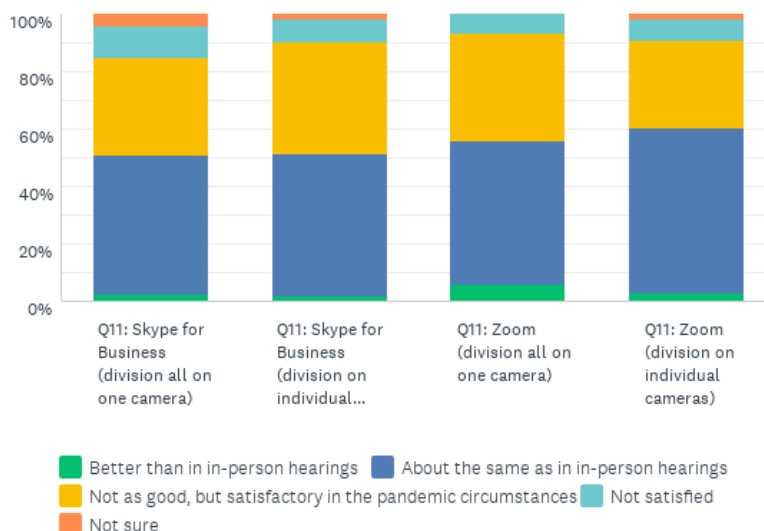
Several respondents reported connection problems during the ViCo. One respondent reported that arguments needed to be repeated by the primary examiner due to the bad connection.

Some respondents reported audio/acoustic problems. One respondent noted that it is more difficult to understand non-native speakers with an accent. Another respondent noted that separation of the board members by glass plates causes an echo.

However, others noted that audibility is improved by ViCo, for example because the volume can be adapted to the volume of the person who is speaking.

Analysing the responses to Q15 in view of the responses given for Q11 (What software was used for the hearing) the following picture emerges (analysis by John Gray):

Q15 Were you satisfied that you could follow the points made by the division or other participants (compared with your experience of in-person hearings)?



Comparing the responses according to the different answers given in Q11, we see a pattern very similar to Q14: those who experienced OP via Zoom felt they could follow the points made by others a little better than those experiencing Skype for Business. In fact, 60% of the Zoom-on-individual cameras users felt that the experience was as good as in-person hearings, while 92% felt that the experience was, at least, *satisfactory in the circumstances of the pandemic*. Conversely, however, 38-43% of the Zoom users and 45% of the SfB users felt they were not able to follow the points being made as well as they would in in-person hearings. (**NOTE:** The graphs show percentages, but the number of respondents using Zoom was smaller, presumably due to the very recent introduction of Zoom (100 Zoom experiences vs 748 SfB).)

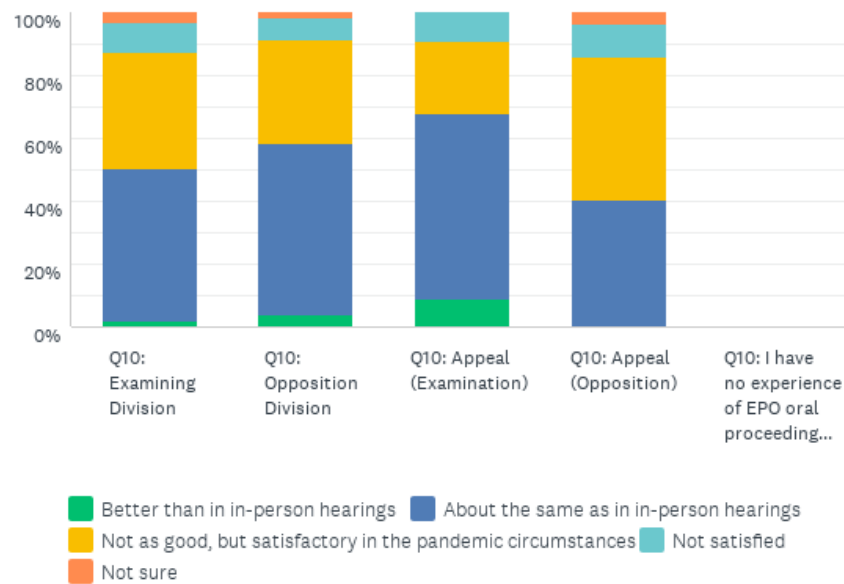
Data comparing by Q11

Q15 Were you satisfied that you could follow the points made by the division or other participants (compared with your experience of in-person hearings)?

	Better than in in-person hearings		About the same as in in-person hearings		Not as good, but satisfactory in the pandemic circumstances		Not satisfied		Not sure		Total	
Q11: Skype for Business (division all on one camera)	2.65%	9	48.38%	164	33.92%	115	10.91%	37	4.13%	14	39.98%	33
Q11: Skype for Business (division on individual cameras)	2.20%	9	49.39%	202	39.12%	160	7.58%	31	1.71%	7	48.23%	9
Q11: Zoom (division all on one camera)	6.25%	2	50.00%	16	37.50%	12	6.25%	2	0.00%	0	3.77%	32
Q11: Zoom (division on individual cameras)	2.94%	2	57.35%	39	30.88%	21	7.35%	5	1.47%	1	8.02%	68
Total	2.59%	22	49.65%	421	36.32%	308	8.84%	75	2.59%	22	100.00%	84
Comment											9.43%	80
											Answered	84
												8

Further analysing the responses to Q15 in view of the responses given for Q10 (What type of hearing was it?), the following picture emerges (analysis by John Gray):

Q15 Were you satisfied that you could follow the points made by the division or other participants (compared with your experience of in-person hearings)?



Comparing the responses according to the different answers given in Q10 (type of hearing), we see a pattern even more extreme than in Q14: of those who experienced OP in Opposition Appeal, only about 40% felt they could follow the points made by others as well as they would in in-person hearings. Over 10% were not satisfied that they could follow the points being made as well as they would in in-person hearings. **(NOTE: 90% of the Opposition Appeal hearings had been experienced in Skype for Business, i.e. 52 vs only 5 experiences of Zoom hearings. It will have to be explored whether the experience with Board of Appeal hearings is better in Zoom.)**

Q16 Before we return to more general questions, do you have any other comments about your most recent experience, or other experiences of EPO oral proceedings?

Answered: 185 Skipped: 1,762

Q16 – 185 answers; evaluation of results by Michael Kisters:

Since Question 16 was directed to “further” comments, it was not necessarily limited to ViCo. Insofar, I believe that the other questions are better suited for concrete statistical evaluation and Q16 gives some kind of “gut feeling” about ViCo.

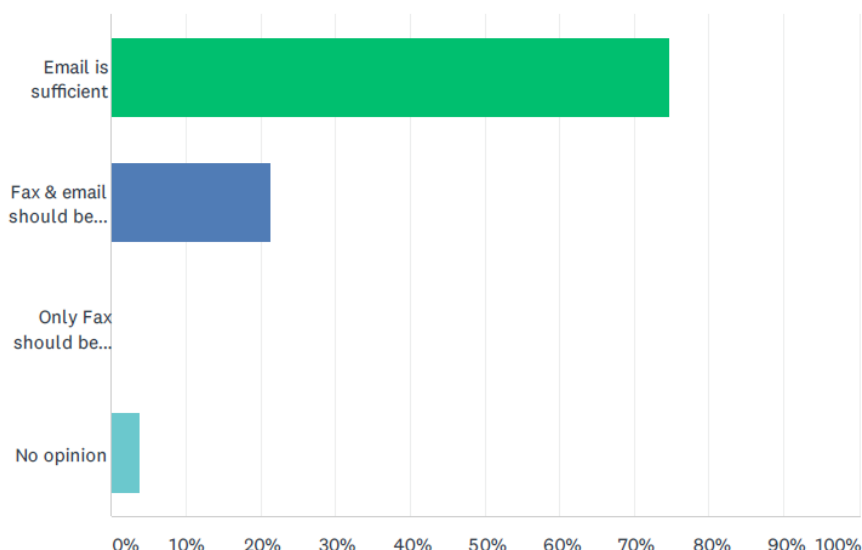
185 comments in total;

- 20 comments stating “no further comments” (omitted from evaluation); and
- 20 comments were not related to ViCo but to oral proceedings as such (omitted from evaluation)
- 80 comments were in favor of ViCo, citing:
 - less travel effort (especially in view of not-so-important cases);
 - more convenient working conditions;
 - less stressful due to lack of “personal interaction”; and
 - more or less same as in personal proceedings.
- 31 comments were critical of ViCo, citing:
 - technical difficulties; and
 - lack of “personal interaction” with the Board.
- 18 comments were neither positive nor negative but proposed technical or procedural improvements like:
 - Skype seems to be inferior to Zoom;
 - Showing the members of the board in separate windows (i.e. by separate cameras) was favored over showing the board as group.

To sum up, most comments were in support of ViCo with a decline of support from examination – opposition – appeal. It seems that the skill of the Board in handling proceedings is in general more important than the way the proceedings are conducted (in-person or ViCo). In other words, a Board that handles an oral proceeding skillfully “in person” will handle a ViCo OP in a similar way (and *vice versa*).

Q17 Under the Covid restrictions amended patent documents filed during Oral Proceedings can only be filed by email. Would it be desirable to be able to file documents also by fax?

Answered: 1,903 Skipped: 44



ANSWER CHOICES	RESPONSES	
Email is sufficient	74.67%	1,421
Fax & email should be allowed	21.39%	407
Only Fax should be allowed	0.21%	4
No opinion	3.73%	71
TOTAL		1,903

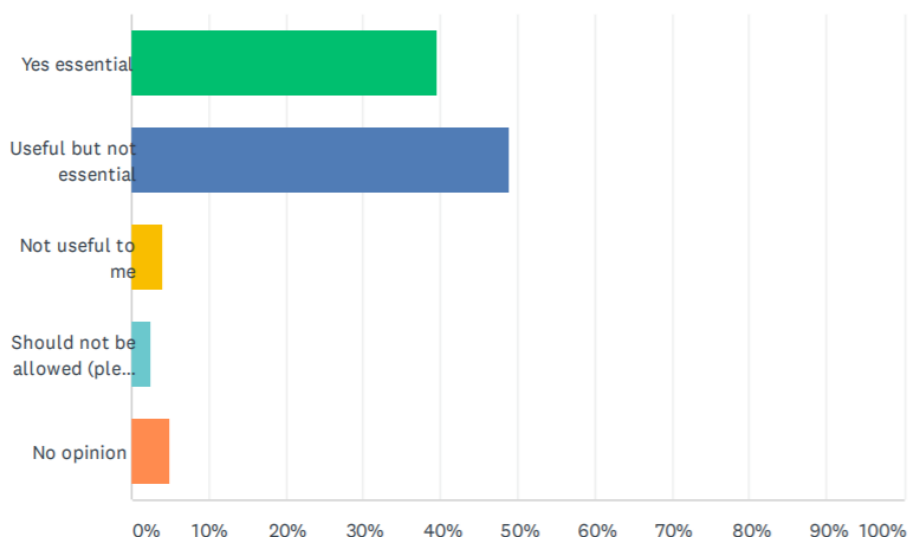
Q17 – 184 comments: evaluation of results by Gian Giuseppe Masciopinto:

- Email works well but is slow. Also suggested certified Mail or EPO mail bouncer (large majority- 93/184).
- mail and fax (or something different) as a backup solution (minority).
- Use of a fax apparently requires fewer steps at the submitting party's end but is outdated. Useful in case of visual disability. Fax does not reliably exist anymore in Switzerland (large minority).
- Dedicated conferencing tool with an upload/download system for filing and distributing documents (few).
- Secured share of data portal (very few).
- CMS (very few).

The majority considered fax to be outdated but suggested it as a backup to mail.

Q18 Should the videoconference application allow screen sharing and 'whiteboard' functions for use by parties (subject to the established guidelines)?

Answered: 1,903 Skipped: 44



ANSWER CHOICES	RESPONSES	
Yes essential	39.62%	754
Useful but not essential	48.87%	930
Not useful to me	3.94%	75
Should not be allowed (please explain in the comment box)	2.57%	49
No opinion	4.99%	95
TOTAL		1,903

Q18 – 217 comments; evaluation of results by Wolfgang Wilhelm:

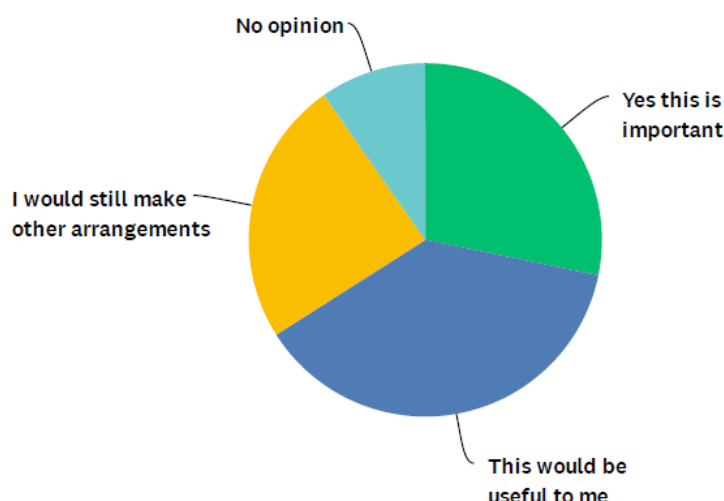
Most of the respondents recommended whiteboard functions as well as screen sharing for use in ViCos. The use of whiteboards or flipcharts is admissible in on-site oral proceedings and hence adequate means should be available in ViCo, too. Drawings are often more effective to explain complex processes and relationships than a long speech. Screen sharing might reduce the time-consuming procedure of sending documents per email back and forth. Screen sharing might *inter alia* speed up the amending of the description due to amended claims.

However, there are also concerns against whiteboard functions and screen sharing. The use of such means in ViCos might be another threshold for those that are inexperienced with electronic tools. Furthermore, such means might be prohibited due to security restrictions in some companies. There are also concerns that parties might misuse the possibility of screen sharing in order to introduce new matter or late filed documents.

An open issue is documentation of shared content; should shared content be recorded and included in the official records or not?

Q19 Would you prefer that the same videoconference application provided private 'rooms' for internal discussions (so that additional communication means for internal discussions within your team could be superfluous)?

Answered: 1,903 Skipped: 44



ANSWER CHOICES	RESPONSES	
Yes this is important	28.22%	537
This would be useful to me	37.78%	719
I would still make other arrangements	24.28%	462
No opinion	9.72%	185
TOTAL		1,903

Q19 – 136 comments; evaluation of results by Wolfgang Wilhelm:

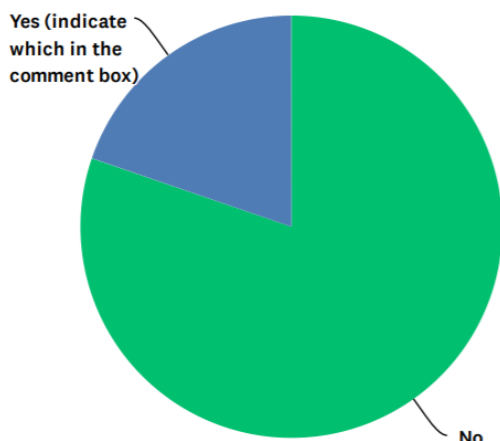
Providing private rooms for internal discussions inside a party is recommend by most of the respondents. If, especially in the current Covid crisis, other team members were located at different places, private rooms would be essential for confidential conferences between team members. Furthermore, private chat channels for discussion during the proceedings are recommend. Private rooms would also allow several different opponents to discuss during breaks. Setting up separate videoconferences or using cell phones or another communication means for internal discussions is considered inconvenient.

It is noticed that the Boards of Appeal, Opposition Divisions and the Examination Divisions also have their own private room for internal discussions.

However, several respondents raised concerns in respect of security and confidentiality of communication in such private rooms. Communication between attorney and client must be kept absolutely safe and secret. In this respect, several attorneys were unable to guarantee privacy and confidentiality to their clients. Several respondents do not rely on the EPO's security and confidentiality measures. Hence, several respondents prefer being responsible for their own communication channels and using their own arrangements independent of the EPO's ViCo tools.

Q20 Currently is any videoconferencing software prohibited in your workplace IT systems?

Answered: 1,844 Skipped: 103



ANSWER CHOICES	RESPONSES	
No	80.26%	1,480
Yes (indicate which in the comment box)	19.74%	364
TOTAL		1,844

Q20 – 410 comments; evaluation of results by David Brophy:

The respondents use a diverse range of ViCo software, and the responses showed that no ViCo solution exists that can be used by all respondents. Even among the major applications, it is frequently true that the only approved solution for attorneys in one company is specifically blacklisted for attorneys in another company.

20% of those responding reported a prohibition on at least one (and often more than one) ViCo application. In order of most prohibited among the four major packages, these are:

- Zoom (13%)
- Skype/Skype for Business (4%)
- Teams (3%)
- WebEx (3%)

In collating these numbers, we included both those who are outright prohibited from using a particular platform as well as a smaller number who reported that they are not allowed to install the software but may be able to participate using a web browser (the EPO states that web browser access is unsuitable for OPs involving interpretation, though it may be used where no interpretation is involved).

The solution that most respondents adopt, when faced with these prohibitions, is to use their own personal devices, or devices not linked to the company's network, to participate in a ViCo, although some respondents noted that this is unsatisfactory where the device in question cannot access the documents needed for the ViCo.

Apart from the 13% prohibited from using Zoom on a workplace device, a smaller number (2%) indicated that their organisation has concerns over the use of Zoom, without outright banning it. Several such respondents indicated that they are allowed use Zoom for oral proceedings as an exception to the general prohibition.

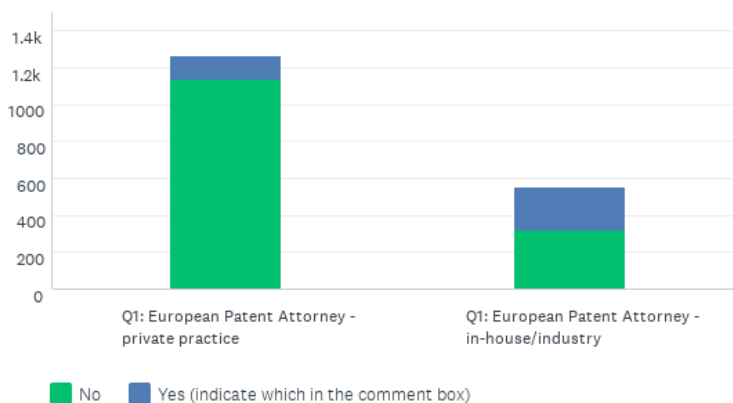
Over 2.5% of respondents (48 out of 1844) are prohibited from using both Zoom and Skype for Business, i.e. the two solutions employed by the EPO for oral proceedings. Just under 1% of the respondents (16 out of 1844) are prohibited from using all four of the major packages, namely Zoom, Teams, Skype for Business and WebEx.

The solution does not lie outside these four applications. Question 22 shows that no other application has an adoption rate above 4%, which appears to rule out that any of those less popular applications would be widely adopted in preference to any of the four main solutions, given the conservative nature of IT policies that emerges from the responses.

For the time being, with four major platforms which are largely incompatible with one another, restrictions on the use of any given platform is a problem that users will need to work around. The EPO has published a data protection policy specifically relating to the use of Zoom in oral proceedings, which may answer some of the questions that members may have regarding that platform: <https://www.epo.org/about-us/office/data-protection-and-privacy/zoom.html>.

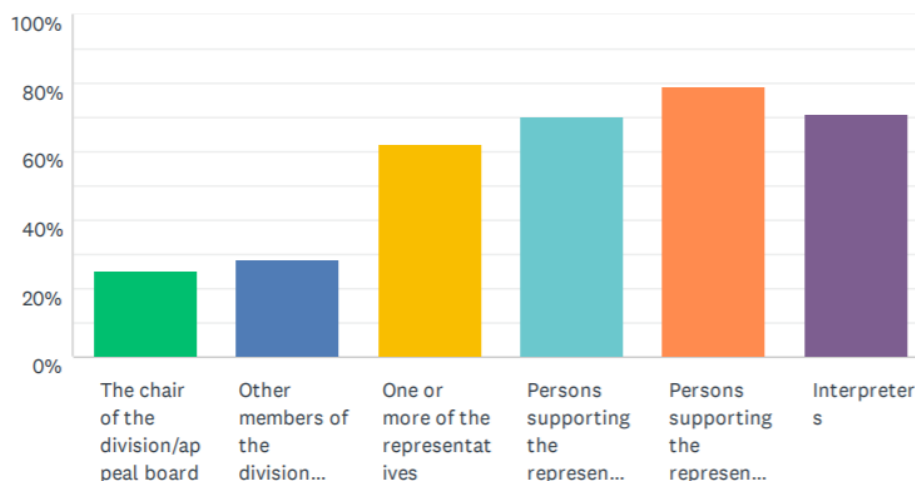
Analyzing the responses to Q20 in view of the responses given for Q1 (In house or Private Practice), the restriction on installing software seems to be more of a problem for those in-house (>40% vs <10% of those in private practice). (analysis by John Gray):

Q20 Currently is any videoconferencing software prohibited in your workplace IT systems?



Q21 Looking ahead to “in person” hearings (when circumstances allow), which participants (if any) should be allowed to join by videoconference if they choose:

Answered: 1,764 Skipped: 183



ANSWER CHOICES	RESPONSES	
The chair of the division/appeal board	25.23%	445
Other members of the division/appeal board	28.29%	499
One or more of the representatives	61.90%	1,092
Persons supporting the representative (if they will speak)	70.01%	1,235
Persons supporting the representative (if they will not speak)	78.97%	1,393
Interpreters	71.15%	1,255
Total Respondents: 1,764		

Q21 – 261 comments; evaluation of results by Heike Vogelsang-Wenke:

Some of the respondents used the opportunity to comment again that proceedings by ViCo should, on a voluntary basis, be possible for all parties and their representatives, and/or that mixed/hybrid proceedings should be avoided.

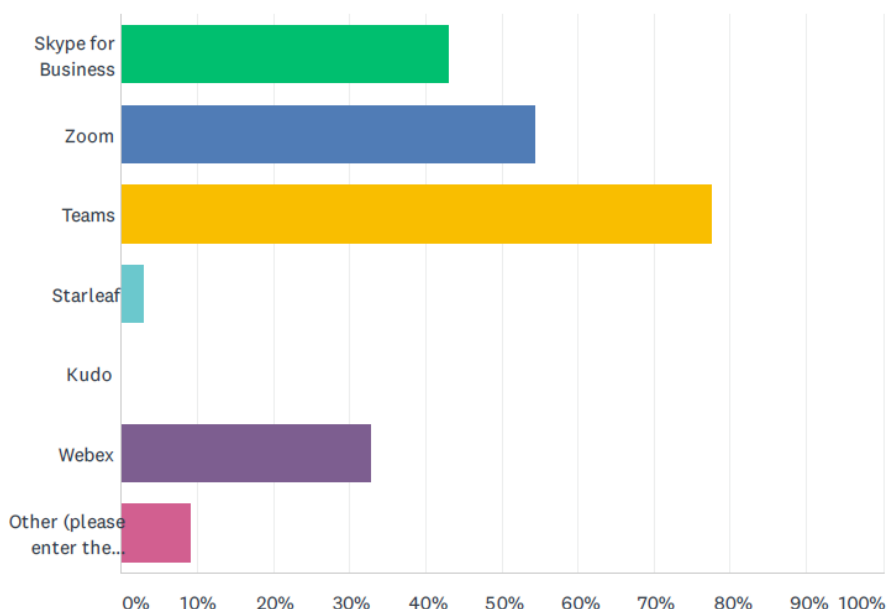
As regards the remote participation of interpreters, there seemed to be widespread concern that the connection may be interrupted or transmission delayed. Ignoring these possible problems, remote interpretation seems to be acceptable.

With respect to possible additional participants by ViCo (beyond those mentioned in the survey) the public was mentioned in about 10% of the responses (limited to public hearings of course). Other than that, respondents mentioned joining in should be allowed for their clients, technical experts or trainees. A considerable number of participants, however, responded either simply “None”, i.e. nobody should join by ViCo, or “either all in person, or all by ViCo”, which translated into “none” for in-person hearings.

A surprisingly uniform opinion, however, relates to the presence of the deciding panel, i.e. the members of the Opposition Division or Board of Appeal: for in-person hearings, their physical presence “in person” is strongly demanded by most of the respondents. Furthermore, the prevalent opinion is that the members of that panel should sit together in order to allow for a vivid, possibly controversial but productive discussion between the members of the division or Board. There are minor deviations, e.g. that if not all parties attend in person the same must be allowed for the Division or Board members. However, at least the Chair or the primary examiner (mentioned once) should be present. Generally, it was asked that the parties and the members of the deciding panel communicate their way of participation well in advance to the other party and panel, in order to avoid somebody travelling from a distant location to Munich or The Hague solely to see that s/he is facing video screens rather than a panel or an adverse party.

Q22 Which commercial application(s) do you use regularly in your work?

Answered: 1,858 Skipped: 89



ANSWER CHOICES	RESPONSES	
Skype for Business	43.00%	799
Zoom	54.31%	1,009
Teams	77.61%	1,442
Starleaf	2.96%	55
Kudo	0.16%	3
Webex	32.88%	611
Other (please enter the information in the comment box)	9.26%	172
Total Respondents: 1,858		

Q22 – 249 comments; evaluation of results by David Brophy:

91% of respondents use one or more of the four main commercial applications:

- Teams (78%)
- Zoom (54%)
- Skype for Business (43%)
- WebEx (33%)

32% of the respondents use neither Zoom nor Skype for Business, i.e. the two solutions allowed in EPO oral proceedings.

Below the top four applications, there is a very large gap to the second tier of solutions identified. No other application outside the “big four” had more than 4% of respondents using it. Of these “second tier” applications with much smaller user bases, the leading ones were:

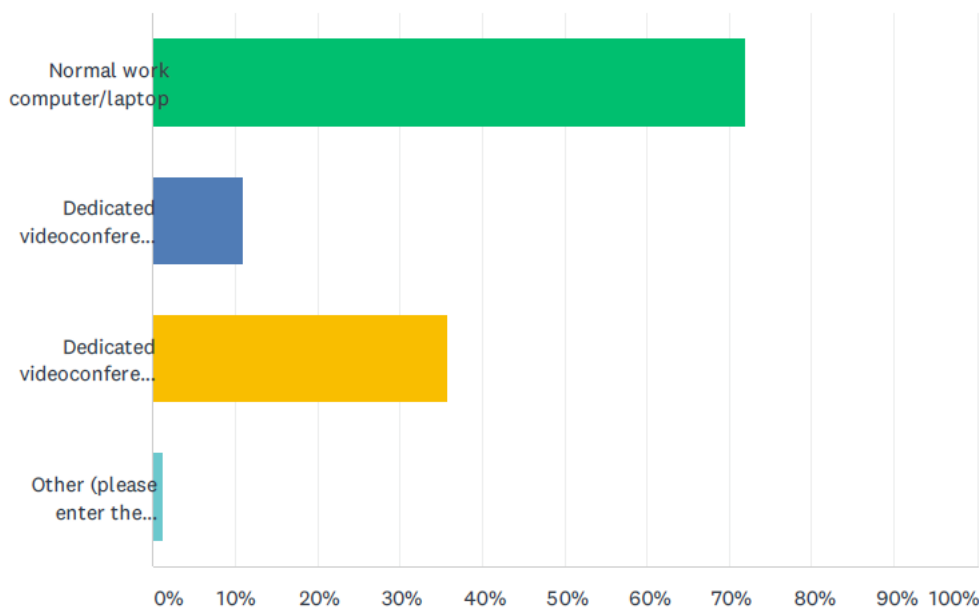
- Google Meet/Hangouts/Chat (3%)
- Starleaf (3%)
- GoToMeeting (2%)
- Lifesize (2%)
- Jitsi (1%)
- BlueJeans (1%)

Below this second tier, there was a third tier that included 30 different applications, all of which had fewer than 5 users among the respondents.

12 of the respondents said they did not use any videoconferencing software. A handful of these indicated that they would not use such software, regarding it as inherently insecure.

Q23 What is your preferred hardware for videoconferencing?

Answered: 1,865 Skipped: 82



ANSWER CHOICES	RESPONSES	
Normal work computer/laptop	71.90%	1,341
Dedicated videoconferencing computer/laptop	10.94%	204
Dedicated videoconferencing room with installed equipment	35.82%	668
Other (please enter the information in the comment box)	1.23%	23
Total Respondents: 1,865		

Q23 – 114 comments; evaluation of results by David Brophy:

The most favoured options were:

- Normal work computer/laptop (72%);
- Dedicated ViCo room with installed equipment (36%); and
- Dedicated ViCo computer/laptop (11%).

The most frequent comment was that people used what they had, i.e. they might have preferred dedicated ViCo facilities but used a laptop with a webcam since that was what was available.

Many of the respondents who did not select one of the three choices presented, nevertheless identified a combination of e.g. a laptop/PC together with a large screen, e.g. in a ViCo room. Of the remainder, a small number had no ViCo equipment or used their own personal computers or an iPad.

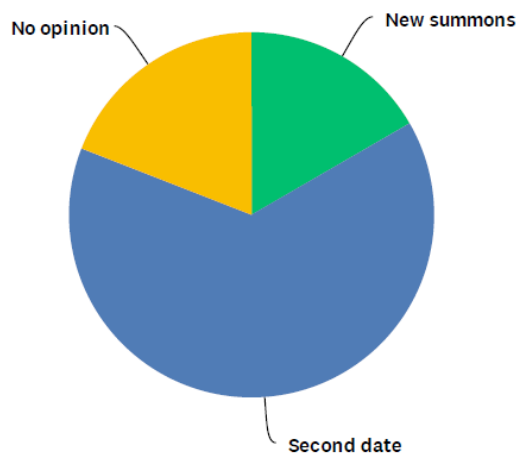
A number of comments recommended a good webcam, a good headset and microphone, a large screen or two screens. This is also stressed by the EPO in the training webinars jointly run with epi, in particular the need to use a headset and microphone when there are interpreters involved.

One comment that should however be drawn to the attention of the EPO is that “Our firm is now forced to invest in dedicated computers and cameras (pan/tilt/zoom) as set out in the EPO's requirements”. For users sitting directly in front of a laptop or monitor with a decent quality (720p or above) webcam, it is questionable why they would need pan/tilt/zoom functions. The respondent is correct that this is an EPO recommendation*, but we wonder why it should be considered necessary. No other user mentioned that they had a webcam with this facility (which adds considerably to the modest cost of a good webcam) and, while it is common in dedicated ViCo suites, the majority of users appear to be relying on laptop webcams without pan/tilt/zoom functions.

*<https://www.epo.org/applying/online-services/proceedings/technical-guidelines.html>

Q24 In the event that the connection is lost during a videoconference and cannot be reestablished, would you prefer that a new summons be issued or simply a second date to be scheduled?

Answered: 1,903 Skipped: 44



ANSWER CHOICES	RESPONSES	
New summons	16.66%	317
Second date	64.27%	1,223
No opinion	19.08%	363
TOTAL		1,903

Q24 - no comments possible

Q25 Do you have any other comments/suggestions?

Answered: 243 Skipped: 1,704

Q25 – 243 answers; evaluation of results by Friedrich Scheele:

Summary:

ViCo seems to be the “new normality” for a large number of epi members, because using such techniques is very common today. A professional group that constantly deals with innovations should be open to innovations. Even after the Covid pandemic, ViCo should be the preferred choice as this avoids time-consuming travels. On the other hand, for some members, travelling seems to be a good time for preparation for a hearing, which under ViCo conditions has to be done in daily work environment. Several members want to have ViCo only on a voluntary basis.

A frequently mentioned aspect is new rules for preparing and conducting ViCo hearings, especially when technical problems arise. Under any circumstances, parties in *inter partes* proceedings should be prevented from provoking a second hearing, e.g. by simulating technical problems. Fixing a second date already in the summons seems to be regarded as a possible solution. If it comes to a second day of a hearing, the agenda should be restricted to open questions.

Several technical improvements have been mentioned in detail; epi members bring in technical expertise to move things forward. However, there seems no common need for solving a specific frequent problem. Members complain e.g. about the size of each picture, interference when two persons speak at the same time, possibilities to file or display documents or demand a permanent second channel such as telephone when the video connection gets lost.

If it comes to a hearing, the applicant has always spent time and money on the application or patent. The hearing is therefore very important as the last possibility to get a return on investment. However, this applies to in-person as well as ViCo hearings. Apparently, the assumption is that personal contact and greater effort will bring greater seriousness. Nevertheless, seriousness as a virtue is not accessible to the EPO or the epi through procedural rules.

Some users stress their concerns on participation of the public and the right to be heard due to technical restrictions or a lack of non-verbal communication.

THE END