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1. General principles

1.1. Exclusion and objection

Pursuant to Art. 24(1) EPC, members of the boards of appeal or of the Enlarged Board of Appeal may not take part in a case in which they have any personal interest, or if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal. If a member of a board or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the board accordingly (Art. 24(2) EPC). Art. 24(3) EPC additionally provides that members of a board of appeal may be objected to by any party for one of the reasons mentioned in Art. 24(1) EPC, or if suspected of partiality. The decision as to the action to be taken in the cases specified in paragraphs 2 and 3 of Art. 24 EPC shall be taken without the participation of the member concerned. For the purposes of taking this decision, the member objected to is replaced (Art. 24(4) EPC).

If the board has knowledge of a possible reason for exclusion or objection which does not originate from a member himself or from any party to the proceedings, according to Art. 3(3) RPBA 2020 and Art. 4(3) RPEBA there shall be no further proceedings in the case before a decision on the exclusion or objection is taken. Art. 3(3) RPBA 2020 amends Art. 3(3) RPBA 2007 for reasons of clarity/consistency to "exclusion or objection"; Art. 4(3) RPEBA still has the wording of Art. 3(3) RPBA 2007, which does not include the word "objection". For the purposes of taking this decision, the procedure of Art. 24(4) EPC shall be applied.

While there are no provisions comparable to Art. 24 EPC that are applicable to members of the departments of first instance, the case law of the boards of appeal has determined that the basic requirement of impartiality applies also to them (see G 5/91, OJ 1992, 617; see also in this chapter III.J.1.6 below).

In G 2/08 of 15 June 2009 the Enlarged Board noted that under "exclusion and objection" (Art. 24 EPC) the legislator distinguishes between, on the one hand, an irrefutable presumption of law consisting in those compelling **grounds for exclusion** (Art. 24(1) EPC; see in this chapter III.J.5.1.) that must apply ex officio, and may therefore be raised by anyone, i.e. the parties, the board or a third person, without their having to justify any personal interest as of right, and, on the other hand, the **grounds for objection** (Art. 24(3) EPC; see in this chapter III.J.5.3.) that may be raised by any party to the proceedings if it suspects partiality of a member of a board of appeal or of the Enlarged