

1.4. Parties' right to have their case decided by the judge designated by law

Before the beginning of each working year, in accordance with R. 12b(4) EPC and Art. 1(1) RPBA 2020, a business distribution scheme is drawn up for the distribution among the boards of appeal of all appeals that may be filed during the year, designating the members who may serve on each board and their respective alternates. The scheme may be amended during the working year. A business distribution scheme is likewise determined for the Enlarged Board of Appeal before the beginning of the working year (R. 13 EPC, Art. 2 RPEBA). This too may be amended during the working year.

In G 1/05 of 7 December 2006 (OJ 2007, 362) the Enlarged Board of Appeal stated that it was very important that board members discharged their duty to sit in the cases allocated to them. Board members cannot withdraw from the proceedings at will, i.e. for reasons which have nothing to do with the purpose of the provisions on exclusion and objection (see in this chapter III.J.2.1.). On the other hand it should also be avoided that a board member has to sit in a case where he or she is convinced or fears that he or she might not be able to be impartial.

In G 2/08 of 15 June 2009 the Enlarged Board also pointed out that its members have a duty to sit on the cases allocated to them (see also G 3/08 of 16 October 2009) according to their jurisdiction both "*ratione legis*" and "*ratione materiae*". That is to say, parties to judicial proceedings have a right to have their case considered and decided by the judge designated or appointed by law. This essential principle is even enshrined at a constitutional level in some EPC contracting states, e.g. Germany, Austria and Switzerland (see G 1/05 of 7 December 2006, OJ 2007, 362; T 954/98 of 9 December 1999, J 15/04, R 2/14 of 17 February 2015, R 15/11). On the other hand, Art. 6(1) of the European Convention of Human Rights (ECHR) requires inter alia that "in the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". These principles are not incompatible and have to be construed in such a way that they are not mutually exclusive.

In R 19/12 of 25 April 2014 the Enlarged Board likewise stressed that interpretation of the rules on objections of suspected partiality had to find a balance between two principles: no one may escape the jurisdiction of the judge appointed by law, but on the other hand everyone has a fundamental right to a fair trial before an independent and impartial tribunal (Art. 6(1) ECHR, Art. 47(2) of the Charter of Fundamental Rights of the European Union).

In R 15/11 the board, referring to G 1/05, held that not only could board members not withdraw from the proceedings at will, but also that the provisions on business distribution must apply for a case re-opened before the board, unless there was a compelling reason for proceeding otherwise. The Enlarged Board stated it was therefore appropriate, when exercising the power of discretion conveyed by R. 108(3), second sentence, EPC, to consider the criteria and standards that have been developed for the replacement of members of the board of appeal following an objection of suspected partiality pursuant to Art. 24(3) and (4) EPC.