

Board of Appeal, since said party enjoys a personal and legitimate interest in the proceedings and is entitled to due process of law in respect of said interest. In such a case the burden of proof lies with the party who raises the objection, since board members, including those of the Enlarged Board of Appeal, are a priori **presumed to be unbiased** (see in this chapter III.J.1.5.). This distinction is also reflected in Art. 112a(2)(a) EPC, which provides as a ground of petition for review that a member of a board of appeal took part in the decision in breach of Art. 24(1) EPC or despite having been excluded pursuant to a decision under Art. 24(4) EPC. In other words, whereas the grounds under Art. 24(1) EPC are considered to be peremptory due to the violation of the legal principle that nobody should be a judge in his own cause, the ground which could have justified an objection for suspicion of partiality is not directly envisaged as constituting a priori (i.e. unless proven and decided by the board; see also R 20/09) a cause of review (Art. 24(3) EPC). See also G 3/08 of 16 October 2009.

1.2. Rationale and importance

According to the Enlarged Board in G 1/05 of 7 December 2006 (OJ 2007, 362), the right to object to a judge for reasons of suspicion of partiality is meant to prevent judges from being influenced in their decision-making – be it deliberately or inadvertently – by extraneous considerations, prejudices and predilections, i.e. by considerations other than the arguments they consider factually and legally relevant for the case under consideration.

In G 5/91 (OJ 1992, 617) and G 1/05 of 7 December 2006 the Enlarged Board underlined the importance of a very strict observance of the requirement of impartiality in proceedings before it and the other boards of appeal in view of their judicial functions at final instance within the European patent granting system.

1.3. The European Convention on Human Rights

In G 1/05 of 7 December 2006 (OJ 2007, 362) the Enlarged Board stated that the principle of equal treatment and the right of parties to a fair trial enshrined in Art. 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) obliged the boards of appeal to decide the individual cases pending before them according to uniformly applied criteria and not in an arbitrary manner. In interlocutory decision G 2/08 of 15 June 2009 the Enlarged Board also stressed that it and the other boards of appeal act as judicial bodies and apply general principles of procedural law.

In R 19/12 of 25 April 2014 the Enlarged Board observed that Art. 6 ECHR had been recognised in G 1/05 and G 2/08 as the binding standard for proceedings before the boards of appeal because it relied on principles of law common to all the European Patent Organisation's member states and applied to all its departments (see also R 2/14 of 17 February 2015; D 11/91, OJ 1995, 721). This justified applying both national case law and that of the European Court of Human Rights as a supplementary means of interpretation for the EPC.