

5.2. Grounds for exclusion under Article 24(2) EPC: any other reason

In G 1/05 of 7 December 2006 (OJ 2007, 362) the Enlarged Board stated, with reference to R. 28, 2.(a) of the Rules of Court of the European Court of Human Rights and national civil procedure rules, that a close family relationship with a party was one of the classic grounds for legally excluding a judge from taking part in the case concerned. That was not generally so where a family or other close relationship was not with the party but with a representative of the party. If a member of a board of appeal in a notice of withdrawal gives a ground which may by its nature constitute a possible ground for an objection of partiality that ground should normally be respected by the decision on replacement of the board member concerned, because it can be expected that the member submitting the notice knows best whether or not a possible suspicion of partiality could arise (see also J 15/04).

In T 584/09 of 1 March 2013 the board held that the reason the members had given for recusing themselves, namely the avoidance of any appearance of partiality resulting from their having to decide afresh on the same matters, could be an "other reason" within the meaning of Art. 24(2) EPC (see also T 1627/09 of 14 September 2018).

In J 15/04 the Legal Board noted that the notices of self-recusation were based on the situation that the two members concerned did not share the chairman's legal opinion in respect of the occurrence of a possible suspicion of partiality and a presumption that the appellant might therefore doubt their legal integrity. It held that a legal disagreement between the members of a board as such **did not establish any ground for exclusion** or objection under Art. 24 EPC. Each member of a board was responsible for a decision even if he was voted down by the majority of the other members of the board.

5.3. Grounds for objection under Article 24(3) EPC

5.3.1 Expressions of preliminary opinions

In T 241/98 of 22 March 1999 the board of appeal observed that forming an opinion is one of the most important tasks of a board. Issuing a preliminary opinion is to be seen within this context and therefore cannot be regarded as partial (see also in this chapter III.J.6.2.3).

5.3.2 Disqualifying partiality

Members of a board of appeal may be objected to by any party for one of the reasons under Art. 24(1) EPC, or if suspected of partiality (Art. 24(3) EPC). For the grounds for objection under Art. 24(1) EPC, see chapter III.J.5.1. For the "subjective" and "objective" test for partiality, see chapter III.J.1.5.

In T 261/88 of 16 February 1993, the board held that a disqualifying partiality presumed that there was a preconceived attitude on the part of a deciding person towards a party to the case. It was limited to situations where the opinion of a person responsible for taking decisions affecting the right of parties (e.g. a judge) was swayed by his attitude toward a party. Conversely, such a person would not be disqualified for having a certain tendency