

The board had discretion to hold oral proceedings under Art. 116 EPC by videoconference either at a party's request or, as here, at its own instance if it considered this expedient. The boards' practice since May 2020 of conducting oral proceedings by videoconference had been codified in new Art. 15a RPBA 2020.

In T 2030/18 the board held that it was justified to hold oral proceedings by videoconference following the Enlarged Board of Appeal's order in G 1/21 of 16 July 2021 (OJ 2022, A49) despite the appellant having argued in favour of oral proceedings being held in-person. In T 2817/19 in application of the order of the Enlarged Board of Appeal in case G 1/21, which allowed the conduct of oral proceedings before the boards of appeal in the form of a videoconference during a general emergency even if not all of the parties to the proceedings had given their consent thereto, the respondent's request that the oral proceedings be held in person was rejected.

In T 245/18 the appellant (opponent) challenged the board's decision to go ahead as planned with holding the oral proceedings by videoconference even though one of the parties had not consented, instead of staying the proceedings until the Enlarged Board of Appeal had issued its decision in G 1/21. The board held that by setting a date under Art. 15(9) RPBA 2020, instead of announcing its decision straight away, it had ensured that, in this particular case, its decision to hold the oral proceedings by videoconference would not conflict with the Enlarged Board's then still pending decision. Had the outcome of the since issued decision been different, the board, instead of taking a final decision, could have set a new date for oral proceedings and reopened them. The clarification in G 1/21 that it was at any rate permissible to hold oral proceedings by videoconference without a party's consent in emergency situations was, the board found, applicable here. There had undoubtedly been such an emergency at the time at issue in this case, given that the COVID-19 pandemic declared in March 2020 had been far from over and was still entailing significant travel restrictions in May 2021. It was therefore not necessary to reopen the oral proceedings.

#### 7.3.4 Case law prior to the COVID-19 pandemic

Prior to the first communication concerning oral proceedings before the boards of appeal entitled "Restrictions due to the coronavirus (COVID-19) pandemic and introduction of video-conferencing technology in appeal proceedings", published on the website of the boards of Appeal on 6 May 2020, and prior to the introduction of Art. 15a RPBA 2020, oral proceedings via video conference were not possible before the boards of appeal.

The boards previously rejected requests for oral proceedings to be held by videoconference, see T 1266/07 (lack of general framework on this matter). It would have been necessary to ensure that the use of video conferencing was reconciled with the requirement that oral proceedings before the boards be public. See inter alia T 37/08, T 663/10, T 1930/12, T 1942/12, T 1081/12, T 2313/12, T 1529/14, T 932/16.

In T 2068/14 the board held that it had discretion regarding the organisation of oral proceedings, including, holding them by video conference, considering in particular whether the case in hand was ex parte or inter partes. A further important issue was the