

In T.1055/05 the board decided that the examining division's refusal to minute the submissions of a party's representative during oral proceedings did not infringe the right to be heard or constitute grounds for suspecting partiality.

In T.710/15 the opposition division had rejected a new argument under Art. 114(2) EPC, which is only a basis for disregarding new facts or evidence. The board held that such an error of judgment did not prove the partiality of the chairman or the opposition division.

In T.568/17 the board noted that the examiner's communication had contained severe errors of judgment, but that this alone did not justify a suspicion of partiality. With reference to G 1/05 of 7 December 2006 (OJ 2007, 362), the board acknowledged that evidence of actual partiality was not required for an objection of suspected partiality to succeed. However, the suspicion of partiality must be justified on an objective basis which could be verified by the board. A mere allegation of unspecified and undocumented "negative statements" did not suffice.

5. Suspected partiality of members of the boards of appeal

5.1. Grounds for exclusion under Article 24(1) EPC

5.1.1 Previous involvement of a board member as a party's representative in the case in question

In R.16/10 the Enlarged Board held that the meaning of the English text of Art. 24(1) EPC taken as a whole, in its proper context and with respect to the text of the other two languages, was clear. It rejected the petitioner's argument that Art. 24(1) EPC included not only the specific situation where one of the members had represented a party in the case in question but also the general situation where a member had previously acted as representative of that party in any matter. Art. 24(1) EPC related to involvement in the particular case in question and not to any past representation (see also chapter V.B.4.1. "Article 112a(2)(a) EPC – alleged breach of Article 24 EPC").

5.1.2 Participation in the decision under appeal

In T.1028/96 of 15 September 1999 (OJ 2000, 475) the board stated that a member of a board in opposition appeal proceedings who had participated in the decision to grant the patent had not "participated in the decision under appeal" within the meaning of Art. 24(1) EPC. However, in certain special circumstances members of a board in opposition appeal proceedings may be "suspected of partiality" within the meaning of Art. 24(3) EPC if they participated in the decision to grant the patent in suit.

In J.15/04 the Legal Board considered whether it would be appropriate to exclude a member of the board from proceedings whenever he had played any role in a previous case which had any functional coherence with the one under consideration. It noted that if members of a board were to be excluded because that board decided the same legal question in every case in an identical way, any established jurisprudence of a board would lead to exclusion of its members whenever the same legal question was at stake. The