

principle of judicial efficiency also constituted an essential element of the right to a fair trial and outweighed any allegation concerning a generally "possible" suspicion of partiality which was not based on the specific facts of the case. By the same token, the principle of a fair trial did not generally exclude a member of the boards of appeal from dealing with a party's case repeatedly, as might happen when a board referred a case back to the first instance and the appeal from the following decision established the competence of the same board. The Legal Board held that any broader interpretation of the wording "participated in the decision under appeal" pursuant to Art. 24(1) EPC had to be based on the occurrence of specific facts of the case to be decided which were sufficient to raise specific concrete doubts on the ability of the member of the board to hear the appeal with an objective judicial mind and which could not be concluded from the mere procedural fact that a member of the board had already been involved in former proceedings with the same party or the same legal question to be decided in the case in hand. The essence of Art. 24(1) EPC 1973 was not to establish an assumption that any former involvement of a member of the board in a case dealing with the interests of a specific party established a suspicion of partiality of that member in all subsequent cases, but to exclude the participation of this member in reviewing a decision which had been dealt with by himself as part of the deciding body. In the case at issue (a divisional application), the Legal Board refused the partiality objection.

In T 1020/06 of 28 November 2008 the board found that there was no provision in the RPBA 2003 or the Business Distribution Scheme (BDS) for a member to be excluded from participation in an appeal case pending before a technical board if that member had already dealt with a similar legal or factual question in another case pending before the same or another technical board. On the contrary, Art. 7 BDS stipulated that, where appeals pending before the board were closely linked the chairman could order that the board decide in the same composition. The board rejected the objections of partiality under Art. 24(3) EPC 1973 against the original board members.

In T 1889/13 of 14 March 2017 the board stated, with reference to J 15/04, that the mere desire for a board which has not encountered any of the relevant factual and legal issues in a related case could not justify an obligation to appoint non-overlapping boards in cases concerning divisional and parent applications in the absence of specific facts which were sufficient to raise specific concrete doubts on the ability of the board members to hear the appeal with an objective judicial mind. Practical considerations and the procedural framework not only give rise to a provision in the business distribution scheme encouraging identical compositions in closely linked cases, but may even require that overlapping or identical board compositions are established in cases which may involve closely linked questions. The board further considered that cases involving grant and opposition appeal proceedings for the same file had to be clearly distinguished from cases involving parent and divisional applications. The conflicts and limitations concerning cases involving grant and opposition appeal proceedings for the same file did not exist with regard to cases involving parent and divisional applications.