

In T.2474/17 the board stated that the conclusion to hold the oral proceedings as a videoconference was in line with Art. 15a(1) RPBA 2020 and in line with the Enlarged Board of Appeal's decision G.1/21. According to the Enlarged Board's reasoning, the pandemic was a "general emergency impairing the parties' possibilities to attend in-person oral proceedings at the EPO premises", thus constituting "good reasons" for the conduct of oral proceedings by videoconference, despite the appellant's explicit wish for in-person oral proceedings. The continued delay of holding oral proceedings during a pandemic is further ground to overrule a party's wish to hold oral proceedings in person.

### 7.3.3 Decisions during the COVID-19 pandemic and before G 1/21

In T.1378/16 the oral proceedings that took place on 8 May 2020 were the first held by videoconference in the history of the boards of the appeal. The board considered it appropriate to address the legal basis for oral proceedings within the meaning of Art. 116 EPC: In the past, the boards have rejected requests for oral proceedings to be held by videoconference, mainly on the grounds that there was no "general framework" to this effect, as no provision was made for suitable ViCo rooms and for the public to attend ViCo-based hearings (see e.g. T.1266/07, T.2068/14). At the same time, the boards have held that Art. 116 EPC does not mandate oral proceedings taking place with the physical presence of the parties. Several boards have considered that it was within their discretion to decide whether or not to select this form for the parties' oral submissions (T.2068/14, T.195/14, T.932/16). See also T.1879/16.

T.492/18 dealt with the issue of the attendance of an accompanying person by means of video connection. The oral proceedings took place in person. The board stated that the possibility of holding oral proceedings by video conference was predicated by the boards' ability to offer the necessary technical facilities. At the time the decision was taken, facilities for holding oral proceedings in mixed format, with members of a party attending at the Office's premises and other members attending remotely, were not available to the board for the oral proceedings. For these reasons, the board was not able to accede to the appellant's request.

T.2320/16 was the first case before the boards of appeal for which oral proceedings by videoconference were held without the agreement of a party to the appeal proceedings (this decision predated T.1807/15). The board stated that Art. 116 EPC did not define the exact form of oral proceedings, other than the proceedings being oral in nature. In particular, it did not explicitly exclude oral proceedings by videoconference.

In T.328/16 the board refused a request, filed after the oral proceedings by videoconference had been opened, for their cancellation and the scheduling of a new date for oral proceedings attended by all parties in person. It informed the parties that switching from in-person oral proceedings to oral proceedings by videoconference was not only in the interests of keeping all parties safe in view of what was happening with the COVID-19 pandemic but also in line with the protective measures in place in the European Patent Organisation's host state and throughout the rest of Europe. Granting the request would have delayed the proceedings considerably, especially given that oral proceedings initially planned for 8 May 2020 had already had to be rescheduled as a result of the pandemic.