

In T 2475/17, following a substantial procedural violation (infringement of Art. 113(2) EPC), the board set aside the decision and remitted the case to the department of first instance pursuant to Art. 111(1) EPC and Art. 11 RPBA 2020 for further prosecution. The appellant had requested that the board order that the examining division conduct the examination proceedings in a completely different composition. The board found that the appellant had not convincingly demonstrated that the procedural violations identified had resulted from the examining division's composition. In its view, the appellant's mere assertion that these procedural violations indicated partiality and that there was therefore the risk that the examining division would act in a biased manner when continuing the proceedings could not justify ordering that its composition be changed.

#### **4.3. Personal interest**

In T 143/91 the board held that a member of an opposition division was biased if he had a personal interest within the meaning of Art. 24(1) EPC 1973. The mere fact that the member had previously been employed by a company dependent on a party to the opposition proceedings was, however, not sufficient proof of such an interest.

Under Art. 17(3) and (4) of the Service Regulations for permanent and other employees of the EPO (January 2022 version) any permanent employee who, in the performance of his duties, is called upon to decide on a matter in which he has a personal interest such as to impair his independence shall inform the President of the Office ( or the President of the Boards of Appeal in the case of members of the boards of appeal).

#### **4.4. Disqualifying partiality**

In T 261/88 of 16 February 1993 the board stated that disqualifying partiality presumed that there was a preconceived attitude on the part of a deciding person towards a party to the case. When considering an allegation of partiality (in this case mainly based on the fact that the examiner was a former employee of the opponent), regard must be had to the particular facts of the case (cf. G 5/91). That the examiner's views differed from those held by the party was not disqualifying in itself. The board held that disqualifying partiality was limited to situations where the opinion of a person responsible for taking decisions affecting the right of parties was swayed by his attitude towards a party.

In T 900/02 the board stated that a suspicion of partiality inevitably arose if a member of an opposition division, or any other first-instance body, first solicited and then accepted employment with a firm in which a partner or other employee was conducting a case pending before that member. It stressed that, to be above all suspicion of partiality, every member had to avoid any such situation at any time during the proceedings. No-one could be seen as independent of both parties while in the employ of one of them. The board held that the second examiner's employment by the respondent's representative's firm was both a fundamental deficiency in the first instance proceedings under Art. 10 RPBA 1980 and a substantial procedural violation under R. 67 EPC 1973.