

Art. 24(4) EPC 1973 extended to cases in which the board had knowledge of a possible reason for exclusion or objection which did not originate from a member himself or from any party to the proceedings. Thus, Art. 3 RPBA 2003 established the possibility of an objection by other members of the same board. In the case at hand, the replacement of the originally appointed chairman by an alternate chairman for the purposes of taking a decision under Art. 24(4) EPC 1973 was justified under Art. 3(1) RPBA 2003.

### **2.3. Objection by a party to a board member or members**

Most partiality proceedings are initiated by a party objecting to a board member under Art. 24(3) EPC. According to the established jurisprudence of the boards of appeal, if a party is to receive a fair hearing before a tribunal, such a party should have no reasonable ground (on an objective basis) to suspect that any member of the tribunal is partial or prejudiced in relation to deciding the case (cf. G 5/91, OJ 1992, 617; G 1/05 of 7 December 2006, OJ 2007, 362; T 433/93, OJ 1997, 509; T 95/04, T 283/03, T 1193/02).

Art. 24(3) EPC states that "members" of a board of appeal may be objected to by any party. In T 843/91 of 17 March 1993 (OJ 1994, 818) the board held that this implied that all the members of a board may be objected to, together or separately (see also T 1020/06 of 12 November 2008 in which all the members of the original board were replaced pursuant to Art. 24(4), second sentence, EPC 1973).

### **2.4. Objection by a third party**

In R 2/14 of 17 February 2015 the Enlarged Board stated that grounds for exclusion under Art. 24(1) EPC must be applied ex officio and may be raised by anyone, i.e. the parties, the board, or a third party. In addition to this, members of a board of appeal or of the Enlarged Board of Appeal may be objected to by any party for suspected partiality pursuant to Art. 24(3) EPC.

In G 2/08 of 15 June 2009 the Enlarged Board of Appeal noted that objections of suspicion of partiality were the monopoly of parties to the proceedings. However, under Art. 4(1) RPBA, if the Enlarged Board of Appeal had knowledge of a possible reason for exclusion or objection which did not originate from a member himself or from any party to the proceedings, then the procedure of Art. 24(4) EPC was to be applied (see also Art. 3(1) RPBA 2020). When construing the meaning of the wording "possible reason for exclusion or objection", one had to bear in mind the following distinction: (a) grounds that may be raised ex officio according to Art. 24(1) EPC and (b) an objection of partiality, reserved to the parties.

The Enlarged Board stated it might appear appropriate not to proceed any further with a complaint if an alleged reason for exclusion or objection not originating from a party to the proceedings or the Enlarged Board of Appeal itself would amount to an abuse of procedure. That would be the case where a complaint was not substantiated at all, ignored established case law, or had been filed maliciously in order to damage a member's reputation or with the purpose of delaying the proceedings, this list not being exhaustive.