

T. 990/06 concerned enlargement of the opposition division by the addition of a legally qualified examiner. The board stressed that the division's composition had to be clear at all times so that its compliance with Art. 19(2) EPC and its members' impartiality pursuant to G. 5/91 could be verified.

See also chapter III.J.4 "Suspected partiality of members of the departments of first instance", as well as chapter III.K.1. "Composition of the competent departments of first instance".

1.7. Applicability of Article 24 EPC to disciplinary proceedings

Art. 3 of the Additional Rules of Procedure of the DBA of the EPO (see Supplementary publication 1, OJ 2022) contains rules on exclusion and objection in proceedings before the Disciplinary Board of Appeal. Art. 16 Regulation on Discipline for Professional Representatives (RDR) provides that Art. 24 EPC shall apply mutatis mutandis as regards the exclusion of and objection to members of any of the Disciplinary Bodies (Supplementary publication 1, OJ 2022).

In D. 7/82 (OJ 1983, 185) the Disciplinary Board applied Art. 24(3) EPC by analogy.

In D. 25/05 the Disciplinary Board dismissed the request for exclusion of A as inadmissible under Art. 16 RDR and Art. 24 EPC, the appellant having taken a procedural step while aware of the possible reason for objection.

2. Initiation of partiality proceedings and other procedural issues

Art. 24 EPC provides for two procedural alternatives. First, under paragraph 2, the member concerned may inform the board of a reason for exclusion. Second, under paragraph 3, a party may raise an objection if it has reason to do so. Art. 3(1) RPBA 2020 (see also Art. 3(1) RPBA 2007) and Art. 4(1) RPEBA additionally provide that the procedure under Art. 24(4) EPC is to be applied if a board has knowledge of a possible reason for exclusion or objection which does not originate from a member himself or from any party to the proceedings.

2.1. Notices of self-recusation

Under Art. 24(2) EPC, if, for one of the reasons mentioned in Art. 24(1) EPC, or for any other reason, a member of a board of appeal or a member of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly.

In G. 1/05 of 7 December 2006 (OJ 2007, 362) a member of the Enlarged Board of Appeal informed it that she ought not to be taking part in the referral, since one of the opponents in the underlying case was represented by the law firm in which her husband and her son were partners. The Enlarged Board held that if a member of a board of appeal in a notice of withdrawal under Art. 24(2) EPC 1973 gave a ground which could by its nature constitute a possible ground for an objection of partiality, that ground should normally be respected by the decision on replacement of the board member concerned because it