

6.2.4 Suspected partiality of the Chairman of the Enlarged Board of Appeal who at the same time was Vice-President of Directorate-General 3 (VP3)

Previously, the Boards of Appeal, together with their administrative services, were integrated into the organisational structure of the European Patent Office as a Directorate-General (DG3) directed by a Vice-President (VP3). For the case law relevant to the previous structure of the Boards of Appeal, in particular R 19/12 of 25 April 2014, R 2/14 of 17 February 2015, and R 8/13 of 20 March 2015, see Case Law of the Boards of Appeal, 9th Edition, 2019, III.J.6.2.3.

Following a structural reform in 2016 (see Annual Report of the EPO 2016), the Boards of Appeal are now organised as a separate unit directed by the President of the Boards of Appeal (see Supplementary Publication 1, OJ 2017). The President of the Boards of Appeal also serves as the Chairman of the Enlarged Board of Appeal. For more information on the current structure of the Boards of Appeal, see chapter VII.1.1. "The judiciary of the European Patent Organisation".

7. Legal restrictions for former board members

In accordance with Art. 20a(2) Service Regulations for permanent and other employees of the EPO (January 2022 version), a member of the boards or former member of the boards intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform the Administrative Council thereof. If that activity is related to the work he carried out during the last three years of his service and could lead to a conflict with the integrity of the EPO's appeal system, the Administrative Council may, having regard to his interests and to those of the EPO's appeal system, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit.

In G 2/94 (OJ 1996, 401) the Enlarged Board of Appeal noted that there was a potential conflict between what might be seen as a right of former board of appeal members to seek subsequent employment on the basis of their special knowledge by making oral submissions during proceedings before the EPO, and the need for proceedings before the EPO to be conducted free from any suspicion of partiality. The public interest in the proper conduct of proceedings before the EPO had to prevail over the personal interest of former board of appeal members wishing to make oral submissions on behalf of parties to such proceedings. The Enlarged Board found that, in the absence of specific legislation, the point in time following the termination of a former member's appointment to the boards of appeal after which he or she may make oral submissions in proceedings before the boards of appeal was a matter within the judicial discretion of the boards of appeal. The Enlarged Board held that three years should normally have elapsed before the former member should be given permission to make oral submissions as an accompanying person. See also chapter III.V.5.3. "Oral submissions by former members of the boards of appeal".

In T 585/06 the board noted that the former member of the boards of appeal was no longer an EPO employee when he attended the oral proceedings. By virtue of the fundamental principle of freedom to exercise a profession, he was in principle not prevented from working as a consultant in the field of patent law. He had not acted as an authorised