

DECISION OF THE ADMINISTRATIVE COUNCIL
of 30 June 2016
amending the Implementing Regulations to the
European Patent Convention

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention (hereinafter referred to as "EPC") and
in particular Article 33(1)(c) thereof,

On a proposal from the President of the European Patent Office,

HAS DECIDED AS FOLLOWS:

Article 1

The Implementing Regulations to the EPC shall be amended as follows:

1. Rule 9(1) shall read as follows:

"The European Patent Office shall be divided administratively into Directorates-General, to which the departments specified in Article 15(a) to (e), and the services set up to deal with legal matters and the internal administration of the Office, shall be assigned."

2. Rule 12 shall be replaced by the following new Rules 12a, b, c and d:

"Rule 12a

**Organisation and management of the Boards of Appeal Unit and President of the
Boards of Appeal**

(1) The Boards of Appeal and the Enlarged Board of Appeal, including their registries and support services, shall be organised as a separate unit (the "Boards of Appeal Unit") and be directed by the President of the Boards of Appeal. The Chairman of the Enlarged Board of Appeal shall act as President of the Boards of Appeal. The President of the Boards of Appeal shall be appointed by the Administrative Council on a joint proposal made by the Committee established under Rule 12c, paragraph 1, and the President of the European Patent Office. If the President of the Boards of Appeal is absent or indisposed, one of the members of the Enlarged Board of Appeal shall take his place in accordance with the procedure laid down by the Administrative Council.

(2) The President of the Boards of Appeal shall manage the Boards of Appeal Unit and, to this end, have the functions and powers delegated to him by the President of the European Patent Office. In exercising the delegated functions and powers, the President of the Boards of Appeal shall be responsible solely to the Administrative Council and shall be subject to its hierarchical and disciplinary authority.

(3) Without prejudice to Article 10, paragraph 2(d), and Article 46, the President of the Boards of Appeal shall prepare a substantiated budget request for the Boards of Appeal Unit. This request shall be examined and discussed with the relevant departments of the European Patent Office, and be presented by the President of the Boards of Appeal to the Committee established under Rule 12c, paragraph 1, for opinion, before being forwarded to the President of the European Patent Office for consideration for the yearly draft budget. The President of the European Patent Office shall provide the President of the Boards of Appeal with the necessary resources, as set out in the adopted budget.

(4) The President of the European Patent Office shall make the services mentioned in Rule 9, paragraph 1, available to the President of the Boards of Appeal as far as necessary and within the limits of the adopted budget.

Rule 12b

Presidium of the Boards of Appeal and business distribution scheme for the Boards of Appeal

(1) The autonomous authority within the Boards of Appeal Unit (the "Presidium of the Boards of Appeal") shall consist of the President of the Boards of Appeal, who shall act as chairman, and twelve members of the Boards of Appeal, six being Chairmen and six being other members.

(2) All members of the Presidium shall be elected by the Chairmen and members of the Boards of Appeal for two working years. If the full composition of the Presidium cannot be reached, the vacancies shall be filled by designating the most senior Chairmen and members.

(3) The Presidium shall:

(a) adopt the Rules of Procedure for the election and designation of its members;

(b) adopt, without prejudice to regulations adopted in accordance with Article 10, paragraph 2(c), and Article 33, paragraph 2(b), a Code of Conduct for the members and Chairmen of the Boards of Appeal and of the Enlarged Board of Appeal, which shall be subject to the approval of the Administrative Council;

(c) advise the President of the Boards of Appeal on proposals for amendments to the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal;

(d) advise the President of the Boards of Appeal on matters concerning the functioning of the Boards of Appeal Unit in general.

(4) Before the beginning of each working year, the Presidium, extended to include all Chairmen, shall allocate duties to the Boards of Appeal. In the same composition, it shall decide on conflicts regarding the allocation of duties between two or more Boards of Appeal. The extended Presidium shall designate the regular and alternate members of the various Boards of Appeal. Any member of a Board of Appeal may be designated as a member of more than one Board of Appeal. These measures may, where necessary, be amended during the course of the working year in question.

(5) The Presidium may only take a decision if at least five of its members are present; these must include the President of the Boards of Appeal or his deputy, and the Chairmen of two Boards of Appeal. Where the tasks mentioned in paragraph 4 are concerned, nine members must be present, including the President of the Boards of Appeal or his deputy, and the Chairmen of three Boards of Appeal. Decisions shall be taken by a majority vote; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.

(6) The Administrative Council may allocate duties under Article 134a, paragraph 1(c), to the Boards of Appeal.

Rule 12c

Boards of Appeal Committee and procedure for adoption of the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal

(1) The Administrative Council shall set up a committee (the "Boards of Appeal Committee") to advise it and the President of the Boards of Appeal on the Boards of Appeal Unit in general and to adopt the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal. The Committee shall be composed of six members appointed by the Administrative Council, three from among the delegations of the Contracting States within the meaning of Article 26, and three from among serving or former judges of international or European courts or of national courts of the Contracting States. The President of the European Patent Office and the President of the Boards of Appeal shall have the right to attend the Committee's meetings. Further details, in particular as to the Committee's composition, alternate members, working arrangements and functions in advising the Boards of Appeal Unit, shall be determined by the Administrative Council in the decision setting up the Committee.

(2) On a proposal from the President of the Boards of Appeal and after the President of the European Patent Office has been given the opportunity to comment, the Committee set up under paragraph 1 shall adopt the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal.

Rule 12d

Appointment and re-appointment of the members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal

- (1) The Chairman of the Enlarged Board of Appeal shall, on his appointment, also be appointed as a legally qualified member of the Boards of Appeal.
- (2) Upon delegation from the President of the European Patent Office, the President of the Boards of Appeal shall exercise the right to propose the members, including the Chairmen, of the Boards of Appeal and the members of the Enlarged Board of Appeal for appointment by the Administrative Council, and the right to be consulted on their re-appointment (Article 11, paragraph 3) and on the appointment and re-appointment of external legally qualified members (Article 11, paragraph 5).
- (3) The President of the Boards of Appeal shall exercise the right under paragraph 2 to be consulted on re-appointments by submitting a reasoned opinion, including an evaluation of the member's or Chairman's performance, to the Administrative Council. The criteria for evaluating performance shall be set by the President of the Boards of Appeal in consultation with the Committee established under Rule 12c, paragraph 1. Subject to a positive opinion and performance evaluation and the number of posts under Article 11, paragraph 3, available in the adopted budget for the Boards of Appeal Unit, the members, including the Chairmen, of the Boards of Appeal and the members of the Enlarged Board of Appeal shall be re-appointed at the end of their five-year term under Article 23, paragraph 1."

3. Rule 13 shall read as follows:

"Rule 13

Business distribution scheme for the Enlarged Board of Appeal

Before the beginning of each working year, the members of the Enlarged Board of Appeal appointed under Article 11, paragraph 3, shall designate the regular and alternate members of the Enlarged Board of Appeal in proceedings under Article 22, paragraph 1(a) and (b), and the regular and alternate members in proceedings under Article 22, paragraph 1(c). Decisions may only be taken if at least five members are present, including the Chairman of the Enlarged Board of Appeal or his deputy; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes."

Article 2

References in legal texts to Rules 12 and 13 of the Implementing Regulations to the EPC as in force on 30 June 2016 shall be replaced by a reference to the corresponding amended provision.

Article 3

The provisions set out in Article 1 of this decision enter into force on 1 July 2016.

Done at Munich, 30 June 2016

For the Administrative Council
The Chairman

A handwritten signature in black ink that reads "J. KONGSTAD". The signature is written in a cursive, slightly slanted style.

Jesper KONGSTAD