

CA/3/19

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SUBJECT: Approval of the Rules of Procedure of the Boards of Appeal

SUBMITTED BY: President of the Boards of Appeal

ADDRESSEES: Administrative Council (for decision)

SUMMARY

The President of the Boards of Appeal proposes that the Administrative Council approves the revised version of the Rules of Procedure of the Boards of Appeal adopted by the Boards of Appeal Committee, which is set out in the Annex to this document.

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PART I

I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. It is proposed that, pursuant to Article 23, paragraph 4, second sentence, EPC, the Administrative Council approves the revised version of the Rules of Procedure of the Boards of Appeal (RPBA) adopted by the Boards of Appeal Committee (BOAC), which is set out in the Annex to this document.

III. MAJORITY NEEDED

3. Simple.

IV. CONTEXT

4. The aims of the revision of the Rules of Procedure of the Boards of Appeal are to increase:
 - (i) efficiency, by reducing the number of issues to be treated,
 - (ii) predictability for the parties and
 - (iii) harmonisation.
5. In addition, important elements of case management have been introduced so as to allow the Boards of Appeal to organise their work and use their resources in an efficient way.
6. BOAC/5/18 contained the first public draft (in English) of the RPBA, dated 1 February 2018. Stakeholders were invited to provide their comments in a detailed online consultation which closed at the end of April 2018. The results of the consultation were incorporated into a second public draft (in English), dated 25 October 2018 (see BOAC/3/19 Annex 3). On 5 December 2018, the BOAC and the President of the Boards of Appeal jointly hosted a user consultation conference to discuss this second public draft. The conference was attended by around 140 participants, who were mainly representatives of various user associations (including the epi and BusinessEurope) and patent attorneys.

7. A revised English draft, which incorporated the changes made to the second public draft in the light of the users' comments received both in advance of and at the user consultation conference (see BOAC/3/19 Annex 1), was presented to the BOAC at its 6th meeting on 23 January 2019.
8. At its 6th meeting (see BOAC/4/19, point 4), the BOAC unanimously agreed on the draft of the English version of the revised Rules of Procedure of the Boards of Appeal, subject to minor modifications to Articles 1(2) and 24(1) and the explanatory remarks to Article 13. The BOAC also noted that all three language versions of the Rules of Procedure of the Boards of Appeal would be formally adopted by written procedure in April 2019, in time for the Administrative Council to approve the Rules in June 2019.
9. In close cooperation with the BOAC, the President of the Boards of Appeal then adapted the French and German versions of the RPBA to bring them into line with the English version agreed at the 6th meeting of the BOAC. All three language versions were harmonised. This exercise led to minor amendments of a clarifying or linguistic nature to the English version of the text.
10. A headnote was introduced into the RPBA in order to make clear that all terms referring to persons (such as the Chair, the rapporteur or the Registrar) apply to all persons irrespective of gender.
11. The Presidium of the Boards of Appeal advised the President of the Boards of Appeal on the amendments to the RPBA (Rule 12b, paragraph 3(c), EPC). The President of the European Patent Office was given the opportunity to comment (Rule 12c, paragraph 2, EPC).
12. The BOAC adopted the revised version of the RPBA by written procedure on 4 April 2019 (BOAC/5/19).
13. Section VI of the present document contains a table submitted to the BOAC in document BOAC/5/19. This table sets out the version of the RPBA currently in force in the left-hand column, the amendments proposed to the BOAC in the middle column, and explanatory remarks in the right-hand column.
14. The Annex sets out the revised version of the RPBA adopted by the BOAC in accordance with Rule 12c, paragraph 2, EPC.

V. ARGUMENTS

15. The amendments to the RPBA may be divided into two broad categories. First, several improvements have been introduced in relation to the management of the overall case load of the Boards of Appeal and to the management of individual cases (see section V.A. below). Secondly, changes have been made to clarify that the primary object of appeal proceedings is to review the decision under appeal in a judicial manner; one of the consequences of the Boards' function being above all to review the appealed decision is that, as the appeal proceedings progress, the possibilities for parties to amend their case become increasingly limited (see section V.B. below).
16. The revised RPBA contain transitional provisions, which are explained in section V.C.
17. Detailed explanatory remarks to all changes are to be found in the table in section VI. The most important points are as follows:

A. CASE MANAGEMENT

18. In relation to case management, the following measures have been incorporated into the revised RPBA.
 - Publication of a list of cases that are likely to be dealt with in the following year – new Article 1(2);
 - Greater flexibility in designating members for a particular board composition – new Article 1(3) and Article 5(1);
 - More tasks for the case rapporteur – new Article 5;
 - Hearing connected cases one after the other and consolidation of appeal proceedings – new Article 10(2);
 - Possibility to request acceleration of appeal proceedings – new Article 10(3) to (6);
 - New rule defining the circumstances in which a case may be remitted to the department of first instance – new Article 11;

- Possibility for the Boards to extend the period for filing a reply to the statement of grounds of appeal up to a maximum of six months – new Article 12(7);
- Mandatory communication and a new timescale for the Boards when preparing for oral proceedings – new Article 15(1);
- Detailed provisions on the possibility for parties to request a change of the date of oral proceedings – new Article 15(2);
- Possibility for the Boards, in specific circumstances, to draft the reasons for a decision in abridged form – new Article 15(7) and (8);
- New timescale for the Boards to issue the written decision to the parties – new Article 15(9).

a) Publication of a list of cases that are likely to be dealt with in the following year – new Article 1(2)

19. New Article 1(2) introduces the advance publication of a list of cases for each Board in which, in the coming year, the Board is likely to hold oral proceedings, issue a communication, or issue a decision in written proceedings. This advance planning of the expected workload for the coming year is intended to increase efficiency for the Boards. It is also intended to make the work of the Boards more transparent and predictable.

b) Greater flexibility in designating members for a particular board composition – new Article 1(3) and Article 5(1)

20. A distinction is made in the revised RPBA between the "Chair of the Board", who is the Chairman or Chairwoman appointed by the Administrative Council, and the "Chair in the particular appeal", who is responsible for a specific case.
21. The Chair of the Board may designate himself or herself or any other member of the Board to be the Chair in the particular appeal (see new Article 1(3)).

22. New Article 5(1) provides that the Chair of the Board may first designate only the rapporteur before determining the remaining composition of the Board. The other members may be determined, for example, when a case is entered in the list of cases referred to in new Article 1(2). The possibility of determining the remaining composition at a later stage allows Boards to organise their work in a more flexible and efficient manner. Before the composition is completed, the rapporteur is permitted to do some clearly defined preparatory work in the cases allocated to him or her (see next section).

c) More tasks for the case rapporteur – new Article 5

23. New Article 5(3) introduces another important element of early case management.

24. In general, cases before a Board are treated on the basis of the "first in, first out" principle. The rapporteur should depart from this principle when synergistic effects can be achieved.

25. Subject to the direction of the Chair of the Board, who has the complete overview of the cases pending before his or her Board, the rapporteur will assess whether the appeal should be given priority over other appeals assigned to him or her, for example if a remittal seems likely or if the appeal appears to be inadmissible following the report from the Registrar under Article 6(3). The rapporteur will also examine whether the appeal should be treated together with other appeals (see new Article 10(2)).

26. However, the rapporteur may only draft communications, make the preparations for the oral proceedings and draft decisions once the composition of the Board is complete (see new Article 5(1), fourth sentence, in conjunction with new Article 5(4) and (5)).

d) Hearing connected cases one after the other and consolidation of appeal proceedings – new Article 10(2)

27. New Article 10(2) introduces a further measure to improve the management of the cases allocated to a Board. If appeals are clearly connected to each other (e.g. divisional applications, parent applications, applications based on the same priority application) and are to be heard by a Board in the same composition, the Board should hear them one immediately after the other. The Board may, after having heard the parties, also deal with such appeals in consolidated proceedings.

e) Possibility to request acceleration of appeal proceedings – new Article 10(3) to (6)

28. The revised RPBA now expressly foresees the possibility for parties to request acceleration of appeal proceedings (see new Article 10(3)). This allows the Boards to give one appeal priority over other pending appeals. Valid reasons for acceleration are, in particular, that infringement proceedings have been brought or are envisaged, or that the decision of potential licensees of the patent in suit hinges on the outcome of the appeal. Once the Board has decided whether to grant the request, it will inform the parties accordingly, and will provide its reasons if it refuses the request.
29. New Article 10(4) allows a court to request acceleration. A court does not need to provide a specific reason for requesting acceleration. As a rule, Boards will grant a request for acceleration from a court. The Board will then also promptly inform the court of when oral proceedings are likely to take place.
30. New Article 10(5) codifies the Boards' inherent power to accelerate their own proceedings. For example, a Board could accelerate an appeal if the case is highly likely to be remitted because of a fundamental deficiency in the proceedings at first instance (see new Article 11; see also new Article 5(3)).
31. New Article 10(6) lays down the twofold effects of accelerated processing: the case is given priority over other cases, and the Board may adopt a strict framework for the purpose of case management, subject always to the parties' right to be heard and the principle of fair proceedings.

f) New rule defining the circumstances in which a case may be remitted to the department of first instance – new Article 11

32. According to new Article 11, the Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so.
33. The aim of the new provision is to reduce the likelihood of a "ping-pong" effect between the Boards and the departments of first instance, and a consequent undue prolongation of the entire proceedings before the EPO. Whether "special reasons" present themselves is to be decided on a case-by-case basis. If all issues can be decided without an undue burden, a Board should normally not remit the case.

g) Possibility for the Boards to extend the period for filing a reply to the statement of grounds of appeal up to a maximum of six months – new Article 12(7)

34. New Article 12(7), which adapts and replaces current Article 12(5), clarifies in its first sentence that periods specified by the Board may be extended.

35. Moreover, the period for reply specified in new Article 12(1)(c) may exceptionally be extended at the Board's discretion by a maximum of two additional months, thus up to a maximum of six months (see new second sentence of Article 12(7)).

h) Mandatory communication and a new timescale for the Boards when preparing for oral proceedings – new Article 15(1)

36. As an important case management instrument, new Article 15(1) provides that the Board must issue a communication in preparation for oral proceedings. In order to help concentration on the essentials and to ensure that the oral proceedings are conducted efficiently, the communication will be based on a thorough analysis of the case and draw attention to matters that seem to be of particular significance for the decision to be taken. In most cases, the Board will also give a preliminary opinion in its communication.

37. In addition, new Article 15(1) introduces a new timescale according to which the Board will endeavour to give at least four months' notice of the summons and to issue the communication at least four months in advance of the date of the oral proceedings.

i) Detailed provisions on the possibility for parties to request a change of the date of oral proceedings – new Article 15(2)

38. According to new Article 15(2), a party may request a change of the date fixed for oral proceedings. The party has to show a "serious reason". In order to foster a harmonised approach by the Boards, the new provision identifies a list of typical examples of when such "serious reasons" justify a change of date (new Article 15(2)(b)) and when they do not (new Article 15(2)(c)).

39. New Article 15(2)(b) sets out a non-exhaustive list of examples of reasons which may justify a change of date:
- (i) notification of a summons to oral proceedings in other proceedings before the European Patent Office or a national court received before notification of the summons to oral proceedings before the Board;
 - (ii) serious illness;
 - (iii) a death within the family;
 - (iv) marriage or formation of a similar recognised partnership;
 - (v) military service or other obligatory performance of civic duties;
 - (vi) holidays or business trips which have been firmly booked before notification of the summons to oral proceedings.
40. New Article 15(2)(c) sets out a non-exhaustive list of examples of reasons which, as a rule, do not justify a change of date:
- (i) filing of new requests, facts, objections, arguments or evidence;
 - (ii) excessive work pressure;
 - (iii) unavailability of a duly represented party;
 - (iv) unavailability of an accompanying person;
 - (v) appointment of a new professional representative.

However, it is within the Board's discretion to change the date of oral proceedings in these situations too, for example, if it considers that oral submissions by the party or an accompanying person, such as a technical expert, are particularly relevant for deciding the case.

j) Possibility for the Boards, in specific circumstances, to draft the reasons for decisions in abridged form – new Article 15(7) and (8)

41. New Article 15(7) provides the Board with an option to issue a decision in which the reasons are given in abridged form.
42. The provision applies to the "decision on the appeal", meaning the decision which is taken in order to conclude the appeal proceedings, if it has been announced in the oral proceedings, and only on condition that the parties give their consent. However, where it has been indicated to the Board that a third party or a court has, in the particular case, a legitimate interest in the reasons for the decision not being in abridged form, they are not abridged.

43. In appropriate cases, the reasoning of the decision may already be included in abridged form in the minutes of the oral proceedings, and then subsequently only referred to in the reasons for the written decision (to meet the requirements of Rule 102 EPC). This may be appropriate, for example, if the decision is limited to a single issue.
44. New Article 15(8) provides a further option for the reasons for the decision to be put in abridged form. This provision relieves the Board of the need to set out in full the reasons for its decision if it agrees with the findings and reasoning of the decision under appeal. The Board may do so if it agrees with all the findings of the decision under appeal or only with the findings on one or more specific issues. In contrast to new Article 15(7), new Article 15(8) does not require the explicit consent of the parties and is not limited to decisions announced at oral proceedings.
- k) New timescale for the Boards to issue the written decision to the parties – new Article 15(9)**
45. New Article 15(9) regulates the issuing of the "decision on the appeal", meaning the decision which is taken in order to conclude the appeal proceedings. This excludes, for example, decisions which refer a question of law to the Enlarged Board of Appeal, decisions to take evidence or decisions to postpone oral proceedings.
46. Decisions on the appeal, including any issued in written proceedings, are to be issued in a timely manner. In the usual case, which is that the decision on the appeal is announced at the oral proceedings, "in a timely manner" means that the written decision will be despatched within three months of the date of the oral proceedings.
- B. PRIMARY OBJECT OF APPEAL PROCEEDINGS AND THE "CONVERGENT APPROACH" TO AMENDMENTS MADE TO PARTY'S CASE**
- a) Primary object: to review the decision under appeal in a judicial manner**
47. According to new Article 12(2), the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner. The Boards of Appeal constitute the first and final judicial instance in the procedures before the European Patent Office. In this capacity, they review appealed decisions on points of law and fact.

48. One of the consequences of the Boards' function being above all to review the appealed decision is that, as the appeal proceedings progress, the possibilities for parties to amend their case become increasingly limited. This "convergent approach" consists of three levels, now regulated in new Articles 12(4), 13(1) and 13(2). Which of these provisions apply, depends on the point at which a party changes its case:
- new Article 12(4): at the outset of the appeal proceedings;
 - new Article 13(1): after the initial stage of the appeal proceedings, but before the period set in a communication under Rule 100, paragraph 2, EPC has expired or a summons to oral proceedings has been notified;
 - new Article 13(2): after the period set in a communication under Rule 100, paragraph 2, EPC has expired or a summons to oral proceedings has been notified.
49. The most important elements of the "convergent approach" are that the onus is on a party to explain and justify any amendment to its case, that an amendment should as a rule narrow down the scope of the case, and that any amendment may be admitted only at the discretion of the Board.
50. New Articles 12(4), 13(1) and 13(2) lay down a number of criteria which the Boards should use in the exercise of their discretion; this is intended to foster a more harmonised approach in the way this discretion is applied.
51. It is axiomatic that, in the application of the convergent approach, the parties' right to be heard guaranteed by Article 113 EPC and their right to fair proceedings more generally are to be respected.
- b) First level of the convergent approach**
52. According to new Article 12(4), parts of the statement of grounds of appeal or the respondent's reply, i.e. parts of a party's appeal case, which are not directed to requests, facts, etc. on which the decision under appeal was based (see new Article 12(2)), are regarded as an amendment. In general, this definition of "amendment" also encompasses requests, facts, objections, arguments and evidence which the party submitted before the department of first instance but on which that department did not base its decision.

53. However, if, on appeal, the party demonstrates that those requests, facts, etc., were admissibly raised, and were also maintained until the department of first instance took its decision, they will not be considered an amendment and, therefore, will be part of the appeal proceedings. Otherwise, this part of the appeal case will be regarded as an amendment and may only be admitted at the discretion of the Board.
54. Submissions of a party which concern only the interpretation of the law are not an amendment within the meaning of new Article 12(4).

c) Second level of the convergent approach

55. New Article 13(1) implements the second level of the convergent approach applicable in appeal proceedings. It defines the conditions under which a party may amend its appeal case after the initial stage of the proceedings and before the period set in a communication under Rule 100, paragraph 2, EPC has expired or before a summons to oral proceedings has been notified. The party must provide reasons as to why the amendment is submitted at this stage of the appeal proceedings. Its admittance is subject to the Board's discretion alone.
56. A non-exhaustive list of criteria for applying that discretion is given. By way of specific reference to new Article 12(4) to (6), it is clarified that the criteria set out in those provisions also apply to any submissions made at this stage. The criteria set out in new Article 13 (1) are stricter than those given for the first level of the convergent approach in new Article 12(4). At the second level of the convergent approach, the Board may take into account, for example, whether the amendment is suitable to resolve the issues raised (in new Article 12(4) it may be sufficient that the amendment "addresses" them), or whether the amendment is detrimental to procedural economy (in new Article 12(4) "the need for procedural economy" is referred to).
57. In addition, where an amendment to a patent application or patent is concerned, the onus on the applicant or patent proprietor is to demonstrate both why the amendment, prima facie, overcomes the objections raised and to demonstrate why the amendment, prima facie, does not give rise to new objections. It should be noted that the decision whether to admit the amendment into the proceedings always depends on the circumstances of the case. Thus, when deciding whether to admit the amendment, a Board will take into account, for example, that the amendment is an appropriate reaction to a previously admitted new document or objection.

d) Third level of the convergent approach

58. New Article 13(2) implements the third level of the convergent approach applicable in appeal proceedings. It imposes the most stringent limitations on a party wishing to amend its appeal case at an advanced stage of the proceedings, either after expiry of a period set in a communication of the Board under Rule 100, paragraph 2, EPC or, where no such communication is issued, after a summons to oral proceedings has been notified. A communication under new Article 15(1) which does not expressly invite a party to file observations within a period specified by the Board is not a communication within the meaning of new Article 13(2).
59. The basic principle of the third level of the convergent approach is that, at this stage of the appeal proceedings, amendments to a party's appeal case are not to be taken into consideration. However, a limited exception is provided for: it requires a party to present compelling reasons which justify clearly why the circumstances leading to the amendment are indeed exceptional in the particular appeal ("cogent reasons"). For example, if a party submits that the Board raised an objection for the first time in a communication, it must explain precisely why this objection is new and does not fall under objections previously raised by the Board or a party. The Board may decide to admit the amendment in the exercise of its discretion.
60. At the third level of the convergent approach, the Board may also rely on criteria applicable at the second level of the convergent approach, i.e. as set out in new Article 13(1).
61. The notification of the summons to oral proceedings triggers the third level of the convergent approach where no communication under Rule 100, paragraph 2, EPC is issued. While parties may be summoned at any stage of the appeal proceedings, new Article 15(1) provides that the Boards will endeavour to issue the summons in opposition appeal proceedings no earlier than two months after receipt of the written reply or replies referred to in new Article 12(1)(c). This is intended to prevent the unexpected issuing of a summons to oral proceedings shortly after receipt of the reply or replies, unless there are particular reasons for an earlier issue. The two-month minimum waiting time gives a party the opportunity to react to another party's written reply with submissions which are subject to the less strict second level of the convergent approach, i.e. new Article 13(1).

C. ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS

62. Pursuant to new Article 24, the revised version of the Rules of Procedure of the Boards of Appeal enters into force on 1 January 2020.
63. New Article 25 lays down the transitional provisions. The revised version of the Rules of Procedure of the Boards of Appeal will in principle apply to all appeals pending on the date of its entry into force.
64. As submissions already on file may be affected, two exceptions are foreseen in order to protect legitimate expectations which parties may have had at the time of filing such earlier submissions.
65. New Article 12(4) to (6) will not apply to a statement of grounds of appeal filed before the date of entry into force of the revised version, or to replies thereto filed within the four-month period, irrespective of whether this period expires before, on or after the date of entry into force of the revised version. Instead, Article 12(4) of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force will continue to apply. Any submission which is already on file before the entry into force of the revised version, and which is subsequent to the statement of grounds of appeal or the reply thereto, will however be subject to all the provisions of new Article 13(1), including the analogous application of new Article 12(4) to (6).
66. A further exception is provided for with respect to the strict provision of new Article 13(2). It will only apply to a submission filed after the statement of grounds of appeal or reply thereto if, at the date of entry into force of the revised version, the summons to oral proceedings or a communication of the Board under Rule 100, paragraph 2, EPC has not been notified. Otherwise, Article 13 of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force of the revised version will continue to apply.

VI. TABLE CONTAINED IN BOAC/5/19 SETTING OUT THE AMENDMENTS TO THE RPBA AND THE EXPLANATORY REMARKS

Deletions are struck through; additions/modifications are highlighted.

| RPBA – current provisions | RPBA – proposed provisions | Explanatory remarks |
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| Article 1 Business distribution and composition | Article 1 Business distribution and composition | |
| (1) The Presidium referred to in Rule 12, paragraph 4, EPC, shall before the beginning of each working year draw up a business distribution scheme for the distribution among the Boards of Appeal of all appeals that may be filed during the year, designating the members who may serve on each Board and their respective alternates. The scheme may be amended during the working year. | (1) The Presidium referred to in Rule 12b, paragraph 4, EPC, shall before the beginning of each working year draw up a business distribution scheme for the distribution among the Boards of Appeal of all appeals that may be filed during the year, designating the members who may serve on each Board and their respective alternates. The scheme may be amended during the working year. | Change(s) for reasons of clarity/consistency. |

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| | <p>(2) The Chair (Chairman or Chairwoman) of each Board shall, before the beginning of each working year, draw up a list of the cases in which the Board is likely to hold oral proceedings, issue a communication under Rule 100, paragraph 2, EPC, or issue a decision in written proceedings in that year. The President of the Boards of Appeal shall, before the beginning of each working year, publish the list of each Board.</p> | <p>Proposed new paragraph 2 introduces the advance publication of a list of cases for each Board in which, in the coming year, the Board is likely to hold oral proceedings, issue a communication, or issue a decision in written proceedings.</p> <p>The published list will be based on a working plan drawn up by each Chair for his or her Board before the beginning of each working year. This advance planning of the expected workload for the coming year is intended to increase efficiency for the Boards and the parties. It is also intended to make the work of the Boards more transparent and predictable. The list of cases will be provisional only, to allow sufficient flexibility to deal with unforeseen developments during the year (e.g. withdrawal of appeal, postponement of oral proceedings, deemed withdrawal of application due to non-payment of a renewal fee, request for acceleration, etc.). The list of cases will be published in good time before the beginning of the year to which it applies.</p> <p>No rights may be derived from the mention of a case in the list.</p> <p>The term "Chair" is introduced into the Rules of Procedure of the Boards of Appeal for reasons of gender neutrality.</p> |
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| <p>(2) The Chairman of each Board of Appeal shall determine the composition of the Board for each particular case in accordance with the business distribution scheme.</p> | <p>(23) The Chairman of each Board of Appeal shall determine the composition of the Board for each particular case in accordance with the business distribution scheme. The Chair shall designate himself or herself or a technically or legally qualified member as Chair in the particular appeal.</p> | <p>Current paragraph 2 of Article 1 is amended and renumbered as paragraph 3.</p> <p>Change(s) in first sentence for reasons of clarity/consistency and gender neutrality.</p> <p>Proposed new second sentence corresponds to current Article 2(3).</p> |
| <p>Article 2 Replacement of members</p> | <p>Article 2 Replacement of members</p> | |
| <p>(1) Members shall be replaced by alternates if they are prevented from participating, particularly as a result of sickness, excessive workload, and commitments which cannot be avoided.</p> | <p>(1) A Member or the Chair in a particular appeal shall be replaced by alternates if they are prevented from participating, particularly as a result of sickness, excessive workload, and or commitments which cannot be avoided.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(2) Any member requesting to be replaced by an alternate shall inform the Chairman of the Board concerned of his unavailability without delay.</p> | <p>(2) Any member or the Chair in a particular appeal request wishing to be replaced by an alternate shall inform the Chairman of the Board concerned of their unavailability without delay.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |

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| <p>(3) The Chairman of the Board may designate another member of the Board to replace him or her as Chairman in a particular appeal in accordance with the business distribution scheme.</p> | <p>(3) The Chairman of the Board may designate another member of the Board to replace him or her as the Chairman in a particular appeal in accordance with the business distribution scheme.</p> | <p>Deleted due to insertion of proposed new second sentence of Article 1(3), and extension of paragraph 1 ("... or the Chair in a particular appeal ...").</p> |
| <p>Article 3 Exclusion and objection</p> | <p>Article 3 Exclusion and objection</p> | |
| <p>(1) 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, then the procedure of Article 24, paragraph 4, EPC shall be applied.</p> | <p>(1) If a Board has knowledge of a possible reason for exclusion or objection under Article 24 EPC which does not originate from a the member himself concerned or from any a party to the proceedings, then the procedure of Article 24, paragraph 4, EPC shall be applied.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>(2) The member concerned shall be invited to present his comments as to whether there is a reason for exclusion.</p> | <p>(2) The member concerned shall be invited to present his comments as to whether there is a reason for exclusion or objection.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>(3) Before a decision is taken on the exclusion of the member, there shall be no further proceedings in the case.</p> | <p>(3) Before a decision is taken on the exclusion or objection of the member, there shall be no further proceedings in the case.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |

| Article 4 Procedural compliance | Article 4 Procedural compliance | |
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| <p>(1) The Chairman shall for each appeal designate a member of the Board or himself to consider the admissibility of the appeal.</p> | <p>(1) The Chairman of the Board shall for each appeal designate a member of the Board or himself, who may also be the Chair of the Board, to consider the admissibility of the appeal.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> <p>In most cases, the Chair of the Board will designate a legally qualified member to consider the admissibility of the appeal. Where the rapporteur (in most cases a technically qualified member) has been designated before the composition of the Board has been completed (see proposed new paragraph 1 of Article 5), the Chair of the Board may decide to designate the legally qualified member to consider the admissibility of the appeal only once the complete composition of the Board has been determined.</p> |
| <p>(2) The Chairman or a member designated by him shall ensure that the parties comply with these Rules and with directions of the Board and shall propose action to be taken as appropriate.</p> | <p>(2) The Chairman in the particular appeal or a member designated by the Chair of the Board shall ensure that the parties comply with these Rules of Procedure and with directions of the Board and shall propose action to be taken as appropriate.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |

| Article 5 Rapporteurs | Article 5 Rapporteurs | |
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| <p>(1) The Chairman of each Board shall for each appeal designate a member of his Board, or himself, as rapporteur. If appropriate in the light of the subject- matter of the case, the Chairman may designate an additional rapporteur.</p> | <p>(1) For each appeal, the Chairman of each the Board shall for each appeal designate a technically or legally qualified member of the Board or himself, who may also be the Chair of the Board, as rapporteur. If appropriate in the light of the subject-matter of the case, the Chairman of the Board may designate an additional rapporteur. The composition of the Board may be completed at a later stage, in accordance with Article 1, paragraph 3. The steps referred to in paragraphs 4 and 5 may not be taken until the composition of the Board has been completed in accordance with Article 1, paragraph 3.</p> | <p>Proposed new paragraph 1 provides that the Chair may designate the rapporteur before determining the remaining composition of the Board. The latter may be determined, for example, when a case is entered in the list of cases referred to in paragraph 2 of Article 1.</p> <p>The steps referred to in proposed new paragraph 3 may be carried out by the rapporteur and, if applicable, the additional rapporteur, regardless of whether the remaining composition of the Board has already been determined. However, according to proposed new fourth sentence of paragraph 1, the rapporteur and, if applicable, the additional rapporteur, may only draft communications, make the preparations for the oral proceedings and draft decisions once the composition of the Board is complete.</p> |
| <p>(2) If an additional rapporteur is appointed, the steps referred to in paragraphs 3 to 5 shall be taken by the rapporteur and additional rapporteur jointly unless the Chairman directs otherwise.</p> | <p>(2) If an additional rapporteur is appointed, the steps referred to in paragraphs 3 to 5 shall be taken by the rapporteur and additional rapporteur jointly unless the Chairman directs otherwise.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |

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| <p>(3) The rapporteur shall carry out a preliminary study of the appeal and may prepare communications to the parties subject to the direction of the Chairman of the Board. Communications shall be signed by the rapporteur on behalf of the Board.</p> | <p>(3) The rapporteur shall carry out a preliminary study of the appeal and may prepare communications to the parties subject to the direction of the Chairman of the Board and shall, subject to the direction of the Chair of the Board, assess whether the appeal should be given priority over, or should be treated together with, other appeals assigned to the rapporteur. Communications shall be signed by the rapporteur on behalf of the Board.</p> | <p>Proposed new paragraph 3 introduces an important element of early case management. Subject to the direction of the Chair of the Board, who has the complete overview, the rapporteur will assess whether the appeal should be given priority over other appeals assigned to him or her, for example if a remittal seems likely or if the appeal appears to be inadmissible following the report from the registrar under Article 6, paragraph 3. The rapporteur will also examine whether the appeal should be treated together with other appeals.</p> <p>In general, cases are treated on the basis of the first in, first out principle. However, the rapporteur should depart from this principle when synergistic effects can be achieved (for example by similar cases being treated in a row).</p> <p>The second sentence of current paragraph 3 of Article 5 is deleted and its content is clarified and integrated into proposed new paragraph 4, which applies once the composition of the Board is complete.</p> |
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| <p>(4) The rapporteur shall make the preparations for meetings of the Board and for oral proceedings.</p> | <p>(4) The rapporteur shall draft communications on behalf of the Board, subject to the direction of the Chair in the particular appeal, and shall make the preparations for meetings of the Board and for oral proceedings.</p> | <p>Current paragraph 4 of Article 5 is amended in line with proposed new paragraph 1, fourth sentence, to take into account that the rapporteur may only draft communications once the composition of the Board is complete.</p> |
| <p>(5) The rapporteur shall draft decisions.</p> | <p>(5) The rapporteur shall draft decisions.</p> | |
| <p>(6) If a rapporteur or additional rapporteur considers that his knowledge of the language of the proceedings is insufficient for drafting communications or decisions, he may draft these in one of the other official languages. His drafts shall be translated by the European Patent Office into the language of the proceedings and the translations shall be checked by the rapporteur or by another member of the Board concerned.</p> | <p>(6) If a rapporteur or additional rapporteur who considers that their knowledge of the language of the proceedings is insufficient for drafting communications or decisions, he may draft these in one of the other official languages. His drafts shall be translated by the European Patent Office into the language of the proceedings and the translations shall be checked by the rapporteur or by another member of the Board concerned in the particular appeal.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>Article 6 Registries</p> | <p>Article 6 Registries</p> | |
| <p>(1) Registries shall be established for the Boards of Appeal. Registrars shall be responsible for the discharge of the functions of the Registries. One of the Registrars shall be designated Senior Registrar.</p> | <p>(1) Registries shall be established for the Boards of Appeal. Registrars shall be responsible for the discharge of the functions of the Registries. One of the Registrars shall be designated Senior Registrar as head of the Registry.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |

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| <p>(2) The Presidium referred to in Rule 12, paragraph 1, EPC may entrust to the Registrars the execution of functions which involve no technical or legal difficulties, in particular in relation to arranging for inspection of files, issuing summonses to oral proceedings and notifications and granting requests for further processing of applications.</p> | <p>(2) The Presidium referred to in Rule 12b, paragraph 1, EPC may entrust to the Registrars the execution of functions which involve no technical or legal difficulties, in particular in relation to arranging for inspection of files, issuing summonses to oral proceedings, and notifications and granting requests for further processing of applications.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(3) The Registrar shall report to the Chairman of the Board concerned on the admissibility of each newly filed appeal.</p> | <p>(3) The Registrar shall report to the Chairman of the Board concerned on the admissibility of each newly filed appeal.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>(4) Minutes of oral proceedings and of the taking of evidence shall be drawn up by the Registrar or such other employee of the Office as the Chairman may designate.</p> | <p>(4) The Chair in the particular appeal shall designate a member of the Board or, with the agreement of the Chair of the Board, the Registrar, to draw up the Mminutes of the oral proceedings and of the taking of evidence shall be drawn up by the Registrar or such other employee of the Office as the Chairman may designate.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> <p>The content of the minutes of oral proceedings is regulated in Rule 124 EPC. Accordingly, the minutes drawn up by the Board record the essential procedural acts, for example the parties' requests and the submission of documents during the oral proceedings. However, arguments presented by the parties during the oral proceedings are generally not included in the minutes, although they may form part of the Board's written decision.</p> |

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| <p>Article 7 Attendance of interpreters</p> | <p>Article 7 Attendance of interpreters</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>If required, the Chairman of any Board shall make arrangements for interpretation during oral proceedings, the taking of evidence or the deliberations of his Board.</p> | <p>If required, the Chairman of any Board in the particular appeal shall make arrangements for interpretation during oral proceedings, the taking of evidence or the deliberations of his the Board.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>Article 8 Change in the composition of the Board</p> | <p>Article 8 Change in the composition of the a Board</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(1) If the composition of a Board is changed after oral proceedings, the parties to the proceedings shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board in its new composition. Fresh oral proceedings shall also be held if so requested by the new member and if the other members of the Board concerned have given their agreement.</p> | <p>(1) If the composition of a Board is changed after oral proceedings, the parties to the proceedings shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board in its new composition. Fresh oral proceedings shall also be held if so requested by the new member and if the other members of the Board concerned in the particular appeal have given their agreement.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(2) Each new member shall be bound to the same extent as the other members by an interim decision which has already been taken.</p> | <p>(2) Each new member shall be bound to the same extent as the other members by an interim interlocutory decision which has already been taken.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |

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| <p>(3) If, when a Board has already reached a final decision, a member is unable to act, he shall not be replaced by an alternate. If the Chairman is unable to act, the member of the Board concerned having the longer or longest service on the Boards of Appeal or, in the case where members have the same length of service, the elder or eldest member, shall sign the decision on behalf of the Chairman.</p> | <p>(3) If, when a A member who is unable to act after the Board has already reached a final decision on the appeal, a member is unable to act, he shall not be replaced by an alternate. If the Chairman in a particular appeal is unable to act, the member of the Board concerned having the longer or longest service on the Boards of Appeal or, in the case where members have the same length of service, the elder or eldest member, shall sign the decision on behalf of the Chairman.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> <p>The "decision on the appeal" is the decision which is taken in order to conclude the appeal proceedings. This excludes, for example, decisions which refer a question of law to the Enlarged Board of Appeal, decisions to take evidence or decisions to postpone oral proceedings.</p> |
| <p>Article 9 Enlargement of a Board of Appeal</p> | <p>Article 9 Enlargement of a Board of Appeal</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>If a Board of Appeal consisting of two technically qualified members and one legally qualified member considers that the nature of the appeal requires that the Board should consist of three technically qualified members and two legally qualified members, the decision to enlarge the Board shall be taken at the earliest possible stage in the examination of that appeal.</p> | <p>If a Board of Appeal consisting of two technically qualified members and one legally qualified member considers that the nature of the appeal requires that the Board should consist of three technically qualified members and two legally qualified members, the decision to enlarge the Board shall be taken at the earliest possible stage in the examination of that appeal.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |

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| <p>Article 10 Consolidation of appeal proceedings</p> | <p>Article 10 Consolidation and acceleration of appeal proceedings</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(1) If several appeals are filed from a decision, these appeals shall be considered in the same proceedings.</p> | <p>(1) If several appeals are filed from a decision, these appeals shall be considered dealt with in the same proceedings.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(2) If appeals are filed from separate decisions and all the appeals are designated to be examined by one Board in a common composition, that Board may deal with those appeals in consolidated proceedings with the consent of the parties.</p> | <p>(2) If appeals are filed from separate decisions but are clearly connected to each other and if all the appeals they are designated to be examined by one a Board in a common the same composition, that Board shall endeavour to deal with them one immediately after the other. The Board may, after having heard the parties, also may deal with these such appeals in consolidated proceedings with the consent of the parties.</p> | <p>Proposed new paragraph 2 is linked to case management and introduces the provision that, if appeals are clearly connected to each other (e.g. divisional applications, parent applications, applications based on the same priority application), the Board should hear them one immediately after the other. The Board may also consolidate such appeal proceedings. While the parties' consent is no longer required for the consolidation, the parties' right to be heard and their right to fair proceedings will not be adversely affected. Consolidation may also be requested by the parties.</p> |

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| | <p>(3) On request by a party, the Board may accelerate the appeal proceedings. The request shall contain reasons justifying the acceleration and shall, where appropriate, be supported by documentary evidence. The Board shall inform the parties whether the request has been granted.</p> | <p>Proposed new paragraphs 3 to 6 replace the Notice from the Vice-President Directorate-General 3 dated 17 March 2008 concerning accelerated processing before the boards of appeal, OJ EPO 2008, 220.</p> <p>The possibility of accelerating proceedings allows the Boards to give one appeal priority over other pending appeals (see proposed new paragraph 6). The acceleration will not adversely affect the parties' right to be heard (cf. Article 113 EPC and proposed new paragraph 3 of Article 13), their right to fair proceedings more generally, or the quality of the Board's decision.</p> <p>Proposed new paragraph 3 gives the Board the discretionary power to decide on a party's request for acceleration. The party must give reasons, supported where appropriate by documentary evidence, to enable the Board to decide whether to accelerate or not. Valid reasons for acceleration are, in particular, that infringement proceedings have been brought or are envisaged, or that the decision of potential licensees of the patent in suit hinges on the outcome of the appeal. A mere statement that there is such a situation is not sufficient; rather, in the case of a pending infringement action, for example, the requester should provide documentary evidence such as a copy of the writ of summons indicating the case reference and the names of the parties. However, the party no longer needs to show a "legitimate interest" (requirement of the current Notice). The other parties may comment on the request and the reasons provided, but the Board will not normally invite them to do so.</p> <p>A Board may also decide not to accelerate the</p> |
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| | | <p>appeal proceedings, even if the reason provided by the requester would in principle justify acceleration. For example, a Board may refuse a request for acceleration because there are already several accelerated cases pending before it: the more such requests are accepted by a Board, the greater the risk that the treatment of non-accelerated cases is further delayed.</p> <p>Once the Board has decided whether to grant the request, it will inform the parties accordingly, and will provide its reasons if it refuses the request.</p> <p>Even if there is no request from a party, a Board may accelerate the appeal proceedings of its own motion, see proposed new paragraph 5.</p> <p>The party requesting acceleration may also apply to the Board to have the request excluded from file inspection, see Article 128(4) EPC, Rule 144(d) EPC and decision of the President of the EPO, Special edition No. 3, OJ EPO 2007, J.3. According to these provisions, if a request for exclusion from file inspection is made, the document concerned will provisionally be excluded from file inspection until a final decision on the request is taken, see Article 1(3) in conjunction with (2)(a) of the above-mentioned decision of the President of the EPO. However, the requester should expect any submission that it files in the proceedings before the Board to be forwarded to other parties to the appeal.</p> |
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| | <p>(4) If a court or other competent authority in a Contracting State requests acceleration of the appeal proceedings, the Board shall inform the court or authority and the parties whether the request has been granted and when oral proceedings, if foreseen, are likely to take place.</p> | <p>Proposed new paragraph 4 allows a court to request acceleration. The term "court" is intended to include the Unified Patent Court (UPC). A court does not need to provide a specific reason for requesting acceleration. As a rule, Boards will grant a request for acceleration from a court. The Board will then also promptly inform the court of when oral proceedings are likely to take place. If a Board exceptionally refuses a request, it will inform the court and the parties of the reasons for its refusal.</p> |
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| | <p>(5) The Board may accelerate the appeal proceedings of its own motion.</p> | <p>Proposed new paragraph 5 codifies the Boards' inherent power to accelerate their own proceedings. For example, a Board could accelerate the appeal if the case is highly likely to be remitted because of a fundamental deficiency in the proceedings at first instance (see proposed new Article 11).</p> <p>Contrary to the situations regulated by proposed new paragraphs 3 and 4, there is no need in the case of proposed new paragraph 5 to inform the parties. The parties' rights will not be adversely affected by acceleration of the appeal of the Board's own motion. For example, if the acceleration occurs after one party has amended its case, the other parties will be given the opportunity to react, in accordance with the provisions applicable at the particular stage of the proceedings.</p> |
| | <p>(6) If the Board accelerates the appeal proceedings, it shall give the appeal priority over other appeals. The Board may adopt a strict framework for the proceedings.</p> | <p>Proposed new paragraph 6 lays down the twofold effects of accelerated processing: the case is given priority over other cases, and the Board may adopt a strict framework for the purpose of case management, subject always to the parties' right to be heard and the principle of fair proceedings. Thus the Board may, for example, give parties directions, set a timeline (e.g. for submissions), and summon parties at an early date. If parties do not adhere to this framework, the Board may deem it appropriate to discontinue the acceleration.</p> |

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| <p>Article 11 Remission to the department of first instance</p> | <p>Article 11 Remission to the department of first instance Remittal</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>A Board shall remit a case to the department of first instance if fundamental deficiencies are apparent in the first instance proceedings, unless special reasons present themselves for doing otherwise.</p> | <p>The Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so. As a rule, fundamental deficiencies which are apparent in the proceedings before that department constitute such special reasons.</p> | <p>According to Article 111(1), second sentence, EPC, a Board may either exercise any power within the competence of the department of first instance or remit the case to that department for further prosecution. The aim of the new provision is to reduce the likelihood of a "ping-pong" effect between the Boards and the departments of first instance, and a consequent undue prolongation of the entire proceedings before the EPO. When exercising its discretion under Article 111 EPC, the Board should take account of this aim. As a consequence of the convergent approach now implemented in proposed new Articles 12 and 13, it is to be expected that more issues will be raised and dealt with in the proceedings at first instance, thereby reducing the need to remit cases.</p> <p>Proposed new Article 11 only applies to cases that are remitted "for further prosecution". In particular, it does not apply to cases that are remitted with an order by the Board to grant a patent or to maintain a patent in amended form, with or without the description to be adapted.</p> <p>Whether "special reasons" present themselves is to be decided on a case-by-case basis. If all issues can be decided without an undue burden, a Board should normally not remit the case.</p> |

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| | | According to the second sentence of proposed new Article 11, where a Board ascertains that a fundamental deficiency is apparent in the proceedings at first instance, it will normally remit the case. |
| Article 12 Basis of proceedings | Article 12 Basis of appeal proceedings | Change(s) for reasons of clarity/consistency. |
| (1) Appeal proceedings shall be based on | (1) Appeal proceedings shall be based on | |
| | (a) the decision under appeal and minutes of any oral proceedings before the department having issued that decision; | In view of the nature of the appeal proceedings as reflected in proposed new paragraph 2 (i.e. review of the impugned decision in a judicial manner), proposed new paragraph 1(a) clarifies that these documents are to be taken into account. |
| (a) the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC; | (ab) the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC; | Renumbered. |
| (b) in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal; | (bc) in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal; | Renumbered. |

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| <p>(c) any communication sent by the Board and any answer thereto filed pursuant to directions of the Board.</p> | <p>(ed) any communication sent by the Board and any answer thereto filed pursuant to directions of the Board;</p> | <p>Renumbered.</p> |
| | <p>(e) minutes of any video or telephone conference with the party or parties sent by the Board.</p> | <p>According to proposed new paragraph 1(e), if an exchange of information between the party or parties and the Board via video or telephone conference takes place (e.g. for the purpose of case management or settling minor issues), the Board's written minutes of the conference are the relevant part to be taken into account.</p> |
| | <p>(2) In view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based.</p> | <p>Proposed new paragraph 2 provides a general definition of the nature and scope of the appeal proceedings in accordance with the established case law. The Boards of Appeal constitute the first and final judicial instance in the procedures before the European Patent Office. In this capacity, they review appealed decisions on points of law and fact.</p> <p>The term "requests" in this context is not limited to amended texts of patent applications or patents.</p> <p>The term "objection" in these Rules of Procedure does not mean a ground for opposition but may be an attack made under a ground for opposition. Hence, the Enlarged Board of Appeal's findings in decision G 9/91 (OJ EPO 1993, 408) and opinion G 10/91 (OJ EPO 1993, 420) continue to apply. The term "objection" includes e.g. what is sometimes referred to by Boards or parties as a "line of attack".</p> |

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| <p>(2) The statement of grounds of appeal and the reply shall contain a party's complete case. They shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on. All documents referred to shall be</p> | <p>(23) The statement of grounds of appeal and the reply shall contain a party's complete appeal case. Accordingly, they shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on. All documents referred to shall be</p> | <p>Current paragraph 2 of Article 12 is amended and renumbered as paragraph 3.</p> <p>In proposed new paragraph 3 the terms "requests" and "objections" are added for consistency with proposed new paragraphs 2 and 6.</p> |
| <p>(a) attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;</p> | <p>(a) attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;</p> | |
| <p>(b) filed in any event to the extent that the Board so directs in a particular case.</p> | <p>(b) filed in any event to the extent that the Board so directs in a particular case.</p> | |
| <p>(3) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit in (1)(b).</p> | <p>(3) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit in (1)(b).</p> | <p>Current paragraph 3 of Article 12 is moved, in slightly amended form, to paragraph 8.</p> |

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| <p>(4) Without prejudice to the power of the Board to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings, everything presented by the parties under (1) shall be taken into account by the Board if and to the extent it relates to the case under appeal and meets the requirements in (2).</p> | <p>(4) Any part of a party's appeal case which does not meet the requirements in paragraph 2 is to be regarded as an amendment, unless the party demonstrates that this part was admissibly raised and maintained in the proceedings leading to the decision under appeal. Any such amendment may be admitted only at the discretion of the Board.</p> <p>The party shall clearly identify each amendment and provide reasons for submitting it in the appeal proceedings. In the case of an amendment to a patent application or patent, the party shall also indicate the basis for the amendment in the application as filed and provide reasons why the amendment overcomes the objections raised.</p> <p>The Board shall exercise its discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy.</p> | <p>Convergent approach – first level At the outset of the appeal proceedings, reversing the approach of current Article 12, paragraph 4</p> <p>Proposed new paragraph 4 implements, at the outset of the appeal proceedings, the first level of the convergent approach applicable in these proceedings. The second and third levels of this approach are implemented in proposed new paragraphs 1 and 2 of Article 13, respectively. It is axiomatic that, in the application of the convergent approach, the parties' right to be heard guaranteed by Article 113 EPC and their right to fair proceedings more generally are to be respected.</p> <p>Proposed new paragraph 4 replaces current paragraph 4 of Article 12. Accordingly, it is no longer the rule that "everything presented" (see current paragraph 4) at the outset of the appeal proceedings is now included in the appeal proceedings. Rather, under proposed new paragraph 4 the admittance of an amendment to a party's case made at the outset of the appeal proceedings is subject to the discretion of the Board. For the avoidance of doubt, it should be noted that the admissibility of the appeal continues to be examined on the basis of all the documents filed by the appellant at this stage, even if they are not admitted under this paragraph for the purpose of examining the merits of the appeal.</p> <p>According to proposed new paragraph 4, parts of the statement of grounds of appeal or the respondent's reply, i.e. parts of a party's appeal case, which are</p> |
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| | | <p>not directed to requests, facts, etc. on which the decision under appeal was based (see proposed new paragraph 2) are regarded as an amendment. In general, this definition of "amendment" also encompasses requests, facts, objections, arguments and evidence which the party submitted before the department of first instance but on which that department did not base its decision. However, if, on appeal, the party demonstrates that those requests, facts, etc., were admissibly raised, and were also maintained until the department of first instance took its decision, they will not be considered an amendment and, therefore, will be part of the appeal proceedings. Otherwise, this part of its appeal case will be regarded as an amendment and may only be admitted at the discretion of the Board.</p> <p>Submissions of a party which concern only the interpretation of the law are not an amendment within the meaning of proposed new paragraph 4.</p> <p>A party must clearly identify and justify an amendment as defined in sentence 1. Thus, in the case of an amendment to the patent application or the patent, for example a claim amendment, the applicant or patent proprietor must explain why the amended claim overcomes the objections raised, i.e. raised in the decision under appeal, or by the opponent in its statement of grounds of appeal.</p> <p>The non-exhaustive list of criteria that the Board can apply when exercising its discretion under proposed new paragraph 4 is based on the established case law and includes elements of current paragraph 1 of Article 13. The Board will also consider the reasons</p> |
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| | | <p>provided by the party for submitting the amendment only at the stage of the appeal proceedings, for example, that it could not adequately react to a request or document filed at a late stage in the proceedings at first instance. The phrase "issues which led to the decision under appeal" is not restricted to issues that were decided upon or mentioned in the decision under appeal.</p> <p>When exercising its discretion in view of the need for procedural economy, the Board may consider whether an amendment to a patent application or patent gives rise to further objections, in particular under Article 84 or 123(2) EPC.</p> |
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| | <p>(5) The Board has discretion not to admit any part of a submission by a party which does not meet the requirements in paragraph 3.</p> | <p>Under proposed new paragraph 5, even if the statement of grounds of appeal or the reply contains a part which is not considered to be an amendment within the meaning of proposed new paragraph 4, the Board can nevertheless decide not to admit, i.e. decide not to take into account in the decision-making process, that part for not meeting the criteria mentioned in proposed new paragraph 3. The Board already has this power under the current Rules of Procedure (see current Article 12, paragraphs 2 and 4).</p> <p>For example, a party is required, as under the current Rules of Procedure, to "specify expressly" all the requests, facts, etc. relied on. If it does not do so, but merely refers to its submissions before the department of first instance, the Board may decide not to take these requests, facts, etc. into account. It may be that a party's submission meets neither the requirements of proposed new paragraph 4 nor those of proposed new paragraph 3.</p> <p>The term "part of a submission" can also include the complete submission.</p> |
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| | <p>(6) The Board shall not admit requests, facts, objections or evidence which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.</p> <p>The Board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.</p> | <p>Proposed new paragraph 6, first sentence, takes up the section of current paragraph 4 of Article 12 and the established case law which concern the admittance of requests, facts, etc. which were not admitted in the proceedings at first instance. It still allows for their admittance in cases where the way in which the department of first instance exercised its discretion suffered from an error. Such an error may be seen to have occurred, for example, if the department of first instance did not exercise its discretion at all, or if, when exercising its discretion, it omitted a relevant factor, or if it exercised its discretion in an unreasonable way.</p> <p>Even if there was no such error, a Board may nevertheless still admit requests, facts, etc. because the circumstances have changed at the appeal stage. For example, where an opposition division correctly exercised its discretion not to admit a document for lack of relevance, a Board may still decide to admit this document because it has now become relevant in view of a claim amendment made at the appeal stage.</p> <p>Proposed new paragraph 6, second sentence, takes up the section of current paragraph 4 of Article 12 and the established case law which relate to requests, facts, etc. that could and should have been submitted during the proceedings at first instance, or were no longer maintained during those (for example, where requests were withdrawn), thereby preventing the department of first instance from taking a decision on them. It still allows for their admittance where the circumstances have changed at the appeal stage.</p> |
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| | | The provisions of proposed new paragraphs 4, 5 and 6 apply in parallel throughout the appeal proceedings. |
| (5) Extension of time limits may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request. | (57) Periods specified by the Board Extension of time limits may exceptionally be allowed in extended at the Board's discretion following receipt of upon a written and reasoned request, presented before the expiry of such period. The same applies mutatis mutandis to the period referred to in paragraph 1(c); however, this period may only be extended up to a maximum of six months. | Proposed new paragraph 7, which adapts and replaces current paragraph 5 of Article 12, clarifies in its first sentence that periods specified by the Board may be extended. The wording is aligned with Rules 100(2) and 132(2) EPC, and the paragraph applies throughout the appeal proceedings. Although the period for reply is specified in proposed new paragraph 1(c), and is thus not a period specified by the Board, this period may exceptionally be extended at the Board's discretion by a maximum of two additional months, thus up to a maximum of six months. It is to be noted that a reply to the statement of grounds of appeal filed by the respondent after expiry of the period for that reply will normally fall under the provisions of Article 13. |
| | (38) Subject to Articles 113 and 116 EPC, the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit period referred to in paragraph (1)(bc). | The provisions of proposed new paragraph 8 have been moved here from current paragraph 3 of Article 12 and amended for reasons of clarity/consistency. |

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| <p>Article 13 Amendment to a party's case</p> | <p>Article 13 Amendment to a party's appeal case</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(1) Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.</p> | <p>(1) Any amendment to a party's appeal case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion is subject to the party's justification for its amendment and may be admitted only at the discretion of the Board. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.</p> <p>Article 12, paragraphs 4 to 6, shall apply mutatis mutandis.</p> <p>The party shall provide reasons for submitting the amendment at this stage of the appeal proceedings.</p> <p>The Board shall exercise its discretion in view of, inter alia, the current state of the proceedings, the suitability of the amendment to resolve the issues which were admissibly raised by another party in the appeal proceedings or which were raised by the Board, whether the amendment is detrimental to procedural economy, and, in the case of an amendment to a patent application or patent, whether the party has demonstrated that any such amendment, prima facie, overcomes the issues raised by another party in the appeal proceedings or by the Board and does not give rise to new objections.</p> | <p>Convergent approach – second level Limitation on a party amending its appeal case after the initial stage of the proceedings, but before the period set in a communication under Rule 100(2) EPC has expired or a summons to oral proceedings has been notified</p> <p>Proposed new paragraph 1 implements the second level of the convergent approach applicable in appeal proceedings. It defines the conditions under which a party may amend its appeal case after the initial stage of the proceedings and before the period set in a communication under Rule 100(2) EPC has expired or a summons to oral proceedings has been notified (see also proposed new paragraph 2 below). The party must provide reasons as to why the amendment is submitted at this stage of the appeal proceedings. The admittance is subject to the Board's discretion alone.</p> <p>A non-exhaustive list of criteria for applying that discretion is given. By way of specific reference to proposed new paragraphs 4 to 6 of Article 12, it is clarified that the criteria set out in those provisions also apply to any submissions made at this stage. The criteria set out in proposed new paragraph 1 of Article 13 are stricter than those given for the first level of the convergent approach in proposed new paragraph 4 of Article 12. At the second level of the convergent approach, the Board may take into account, for example, whether the amendment is suitable to resolve the issues concerned (in proposed new paragraph 4 of Article 12 it may be</p> |

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| | | <p>sufficient that the amendment "addresses" them), or whether the amendment is detrimental to procedural economy (in proposed new paragraph 4 of Article 12 "the need for procedural economy" is referred to). Where the Board raises an issue of its own motion under Article 114(1) EPC, the party's right to be heard under Article 113(1) EPC must be respected.</p> <p>In addition, where an amendment to a patent application or patent is concerned, the onus on the applicant or patent proprietor is to demonstrate both why the amendment, prima facie, overcomes the objections raised (at the first level of the convergent approach, the applicant or patent proprietor has only to provide reasons) and to demonstrate why the amendment, prima facie, does not give rise to new objections. It should be noted that the decision whether to admit the amendment always depends on the circumstances of the case. Thus, a Board, when deciding whether to admit the amendment, will take into account, for example, that the amendment is an appropriate reaction to a previously admitted new document or objection.</p> |
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| | <p>(2) Any amendment to a party's appeal case made after the expiry of a period specified by the Board in a communication under Rule 100, paragraph 2, EPC or, where such a communication is not issued, after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.</p> | <p>Convergent approach – third level Ultimate limitation on a party amending its appeal case</p> <p>Proposed new paragraph 2 implements the third level of the convergent approach applicable in appeal proceedings. It imposes the most stringent limitations on a party wishing to amend its appeal case at an advanced stage of the proceedings, either after expiry of a period set in a communication of the Board under Rule 100(2) EPC or, where no such communication is issued, after a summons to oral proceedings has been notified. A communication under proposed new paragraph 1 of Article 15 which does not expressly invite a party to file observations within a period specified by the Board is not a communication within the meaning of proposed new paragraph 2.</p> <p>It is to be noted that, if an applicant fails to reply in due time to an invitation in a communication under Rule 100(2) EPC, the application will be deemed to be withdrawn under Rule 100(3) EPC, irrespective of whether the communication is sent before or after notification of a summons.</p> <p>The basic principle of the third level of the convergent approach is that, at this stage of the appeal proceedings, amendments to a party's appeal case are not to be taken into consideration. However, a limited exception is provided for: it requires a party to present compelling reasons which justify clearly why the circumstances leading to the amendment are indeed exceptional in the particular</p> |
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| | | <p>appeal ("cogent reasons"). For example, if a party submits that the Board raised an objection for the first time in a communication, it must explain precisely why this objection is new and does not fall under objections previously raised by the Board or a party. The Board may decide to admit the amendment in the exercise of its discretion.</p> <p>At the third level of the convergent approach, the Board may also rely on criteria applicable at the second level of the convergent approach, i.e. as set out in proposed new paragraph 1 of Article 13.</p> <p>The notification of the summons to oral proceedings triggers the third stage of the convergent approach where no communication under Rule 100(2) EPC is issued. While parties may be summoned at any stage of the appeal proceedings, proposed new paragraph 1 of Article 15 provides that the Boards will endeavour to issue the summons in opposition appeal proceedings no earlier than two months after receipt of the written reply or replies referred to in proposed new paragraph 1(c) of Article 12. This is intended to prevent the unexpected issuing of a summons to oral proceedings shortly after receipt of the reply or replies, unless there are particular reasons for an earlier issue. The intention behind the two-month minimum waiting time is to give a party the opportunity to react to another party's written reply with submissions falling under the less strict second level of the convergent approach, i.e. proposed new paragraph 1 of Article 13.</p> |
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| <p>(2) Other parties shall be entitled to submit their observations on any amendment not held inadmissible by the Board ex officio.</p> | <p>(23) Other parties shall be entitled to submit their observations on any amendment not held inadmissible by the Board ex officio.</p> | <p>Renumbered.</p> |
| <p>(3) Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.</p> | <p>(3) Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.</p> | <p>The provisions of current paragraph 3 of Article 13 are replaced by proposed new paragraph 2.</p> |
| <p>Article 14 Interventions</p> | <p>Article 14 Interventions</p> | |
| <p>Articles 12 and 13 shall apply mutatis mutandis to interventions commenced while an appeal is pending.</p> | <p>Where, during a pending appeal, notice of intervention is filed, Articles 12 and 13 shall apply in so far as justified by the circumstances of the case.</p> | <p>According to current Article 14, current Articles 12 and 13 shall apply mutatis mutandis to interventions commenced while an appeal is pending, and this is so irrespective of the circumstances of the appeal case. According to the Enlarged Board of Appeal, if the intervention is filed during the appeal proceedings, the intervener acquires the status of an opponent and has the same rights and obligations as any opponent who has not filed an appeal, apart from having the right to raise new grounds of opposition (G 3/04, OJ EPO 2006, 118, with reference to G 1/94, OJ EPO 1994, 787).</p> <p>If the intervention is filed during the appeal proceedings, special circumstances may occur, however, which do not justify an unrestricted</p> |

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| | | <p>application of proposed new Articles 12 and 13 in the circumstances of the individual case, for example for reasons of procedural fairness. Therefore, proposed new Article 14 now expressly states that, if a notice of intervention is filed during appeal proceedings, the extent to which proposed new Articles 12 and 13 may be applied will depend on the circumstances of the individual appeal case.</p> <p>According to the proposed revised wording, if, for example, an intervention is filed shortly before oral proceedings, the Board may, where appropriate, not apply or only partially apply proposed new Articles 12 and 13, if it is of the opinion that this is justified by the circumstances of the individual appeal case. The intervener may, for example, present a new ground for opposition at the appeal stage (G 1/94, OJ EPO 1994, 787), meaning that the principle of proposed new paragraph 2 of Article 12 in particular is not pertinent in such a case.</p> |
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| <p>Article 15 Oral proceedings</p> | <p>Article 15 Oral proceedings and issuing decisions</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(1) If oral proceedings are to take place, the Board may send a communication drawing attention to matters which seem to be of special significance, or to the fact that questions appear no longer to be contentious, or containing other observations that may help concentration on essentials during the oral proceedings.</p> | <p>(1) Without prejudice to Rule 115, paragraph 1, EPC, the Board shall, if oral proceedings are to take place, endeavour to give at least four months' notice of the summons. In cases where there is more than one party, the Board shall endeavour to issue the summons no earlier than two months after receipt of the written reply or replies referred to in Article 12, paragraph 1(c). A single date is fixed for the oral proceedings.</p> <p>In order to help concentration on essentials during the oral proceedings, the Board shall issue a communication drawing attention to matters that seem to be of particular significance for the decision to be taken. The Board may also provide a preliminary opinion. The Board shall endeavour to issue the communication at least four months in advance of the date of the oral proceedings.</p> | <p>Proposed new paragraph 1 introduces a new timescale for summoning the parties to oral proceedings, not only as a courtesy to parties but also to ensure a more efficient use of the rooms available for oral proceedings.</p> <p>As has been the practice hitherto, a single date for oral proceedings is fixed, which can be for one or more days.</p> <p>As an important case management instrument, proposed new paragraph 1 also provides that a communication is to be issued by the Board. In order to help concentration on the essentials and to ensure that the oral proceedings are conducted efficiently, the communication will be based on a thorough analysis of the case and draw attention to matters that seem to be of particular significance for the decision to be taken. The Board may also address additional matters during the oral proceedings.</p> <p>In most cases, the Board will give a preliminary opinion in its communication. However, in some cases the Board may not consider it appropriate to do so.</p> <p>A new timescale is introduced in the first and last sentences of proposed new paragraph 1 according to which the Board will endeavour to give at least four months' notice of the summons and to issue the communication at least four months in advance of</p> |

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| | | <p>the date of the oral proceedings.</p> <p>According to the second sentence of proposed new paragraph 1, in opposition appeal proceedings, the Board will endeavour to issue the summons no earlier than two months after receipt of the written reply or replies referred to in proposed new Article 12, paragraph 1(c). However, Boards may issue a summons earlier if there are particular reasons for doing so (for example, if appeal proceedings are accelerated).</p> <p>The communication is not necessarily sent together with the summons to oral proceedings. Whether this is done depends on the handling of the individual case.</p> <p>To be noted is that in the communication a period for response can be set. Only where the communication expressly invites a party to file observations within a period specified by the Board can it be regarded as a communication within the meaning of Rule 100(2) EPC and, in such a case, proposed new paragraph 2 of Article 13 is applicable. If the Board merely refers parties to the possibility of filing written submissions by a certain date, without expressly inviting them to do so, this is not a communication within the meaning of proposed new paragraph 2 of Article 13.</p> |
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| <p>(2) A change of date for oral proceedings may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request made as far in advance of the appointed date as possible.</p> | <p>(2) A request of a party for a change of the date fixed for oral proceedings may be allowed if the party has put forward serious reasons which justify the fixing of a new date. If the party is represented, the serious reasons must relate to the representative.</p> | <p>Proposed new paragraph 2 deals with the possibility of changing the date. It replaces current paragraph 2 and supersedes the Notice of the Vice-President of Directorate-General 3 of the EPO dated 16 July 2007 concerning oral proceedings before the boards of appeal of the EPO ("Notice"), OJ EPO 2007, Special Edition No. 3, 115.</p> <p>According to proposed new paragraph 2, it is within the Board's discretion to change the date at the request of a party. The party has to show a "serious reason". Where the party is represented, the reason put forward by the party must relate to the representative. For the rare situations in which oral submissions by a party or an accompanying person are particularly relevant for deciding the case, the Board may consider changing the date (whether upon request or of its own motion), see also explanatory remarks to proposed new paragraph 2(c) below.</p> |
| | <p>(a) The request shall be filed in writing, reasoned and, where appropriate, supported by documentary evidence. The request shall be filed as soon as possible after the summons to oral proceedings has been notified and the serious reasons in question have arisen. The request should include a list of dates on which the requesting party is not available for oral proceedings.</p> | <p>Proposed new paragraph 2(a) sets out the requirements for the request. If the requirements are not met, the Board may reject the request for this reason alone. In addition, so that it is easier for the Board to find a suitable replacement date, the requester should (but is not obliged to) indicate in the request dates on which he or she is not available. The other parties may also provide a list of dates on which they are not available, or the Board may invite the parties to provide such a list.</p> |

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| | <p>(b) Reasons which may justify a change of the date for oral proceedings include:</p> <ul style="list-style-type: none"> (i) notification of a summons to oral proceedings in other proceedings before the European Patent Office or a national court received before notification of the summons to oral proceedings before the Board; (ii) serious illness; (iii) a death within the family; (iv) marriage or formation of a similar recognised partnership; (v) military service or other obligatory performance of civic duties; (vi) holidays or business trips which have been firmly booked before notification of the summons to oral proceedings. | <p>Proposed new paragraph 2(b) sets out a non-exhaustive list of examples of reasons which may justify a change of date. These examples have been taken, with slight adaptations, from the Notice: in (i), the proposed new wording clarifies the term "previous notification" as used in the Notice; in (iv), mention is now made of both marriage and the formation of a similar recognised partnership; in (vi), business trips have been added to holidays.</p> <p>If the party presents a reason identified in new paragraph 2(b) and satisfies the requirements under new paragraph 2(a), the Board will normally, though not automatically, grant the request.</p> <p>The Board will consider all the circumstances; for example, it may also take into account that oral proceedings in another case have already been scheduled for the previous or following day at a different location.</p> <p>The term "national court" in paragraph 2(b) is intended to include the UPC.</p> |
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| | <p>(c) Reasons which, as a rule, do not justify a change of the date for oral proceedings include:</p> <ul style="list-style-type: none"> (i) filing of new requests, facts, objections, arguments or evidence; (ii) excessive work pressure; (iii) unavailability of a duly represented party; (iv) unavailability of an accompanying person; (v) appointment of a new professional representative. | <p>Proposed new paragraph 2(c) sets out a non-exhaustive list of examples of reasons which, as a rule, do not justify a change of date. However, it is within the Board's discretion to change the date of oral proceedings in these situations too, for example, if the Board considers that oral submissions by the party or an accompanying person, such as a technical expert, are particularly relevant for deciding the case.</p> <p>The obligation mentioned in the Notice to state in the request why another representative cannot stand in for the one prevented from attending has been dispensed with.</p> |
| <p>(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.</p> | <p>(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any a party duly summoned who may then be treated as relying only on its written case.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(4) The Chairman presides over the oral proceedings and ensures their fair, orderly and efficient conduct.</p> | <p>(4) The Chairman presides over the oral proceedings and ensures their fair, orderly and efficient conduct.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |

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| <p>(5) When a case is ready for decision during oral proceedings, the Chairman shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.</p> | <p>(5) When a case is ready for decision during oral proceedings, the Chairman shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chairman.</p> | <p>(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chairman.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| | <p>(7) Where the decision on the appeal has been announced orally in accordance with paragraph 6, the reasons for the decision, or parts thereof, may, with the explicit consent of the parties, be put in writing in abridged form. However, where it has been indicated to the Board that a third party or a court has, in the particular case, a legitimate interest in the reasons for the decision not being in abridged form, they shall not be abridged. Where appropriate, the reasons for the decision in abridged form may already be included in the minutes of the oral proceedings.</p> | <p>Proposed new paragraph 7 provides the Board with an option to issue a decision in which the reasons are given in abridged form. When deciding whether to put (part of) the reasons in abridged form, the Board may consider, for example, the possible effect on the quality of its decision, the consistency and development of the case law of the Boards of Appeal, and the interests of third parties or a court (including the UPC), or the public in general.</p> <p>The provision applies to the decision on the appeal, meaning the decision which is taken in order to conclude the appeal proceedings, if it has been announced in the oral proceedings and only on condition that the parties give their consent. Not giving consent will not be to a party's detriment. Consenting to the reasons being put in abridged form is without prejudice to a party's right to file a petition for review.</p> |

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| | | <p>Following the summary of the facts (Rule 102(f) EPC), the reasons (Rule 102(g) EPC) may consist only of the decisive findings on which the decision is based.</p> <p>If the Board has been made aware of a legitimate interest in the written decision containing the Board's full reasoning, the reasons will not be given in abridged form.</p> <p>In appropriate cases, the reasoning for the decision may already be included in abridged form in the minutes of the oral proceedings, and then subsequently only referred to in the reasons of the written decision (to meet the requirements of Rule 102 EPC). This may be appropriate, for example, if the decision is limited to a single issue.</p> |
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| | <p>(8) If the Board agrees with the finding of the department which issued the decision under appeal, on one or more issues, and with the reasons given for it in the decision under appeal, the Board may put the reasons for its decision in abridged form in respect of that issue.</p> | <p>Proposed new paragraph 8 provides a further option for the reasons for the decision to be put in abridged form (see explanatory remarks to proposed new paragraph 7 above). In contrast to proposed new paragraph 7, proposed new paragraph 8 does not require the explicit consent of the parties and is not limited to decisions announced at oral proceedings. As also mentioned in the explanatory remarks to proposed new paragraph 7, when deciding whether to put (part of) the reasons in abridged form, the Board may consider, for example, the possible effect on the quality of its decision, the consistency and development of the case law of the Boards of Appeal, and the interests of third parties or a court (including the UPC), or the public in general.</p> <p>Proposed new paragraph 8 relieves the Board of the need to set out in full the reasons for its decision if it agrees with the findings and reasoning of the decision under appeal. The Board may do so if it agrees with all the findings of the decision under appeal or only with the findings on one or more specific issues.</p> <p>However, if the statement of grounds of appeal contains submissions not presented before the department of first instance, the Board may normally be expected to address these in the reasons for its decision, so that the requirements of Article 113(1) EPC in particular are fulfilled.</p> |
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| | <p>(9) The Board shall issue the decision on the appeal in a timely manner.</p> | <p>Proposed new paragraph 9 regulates the issuing of the "decision on the appeal", meaning the decision which is taken in order to conclude the appeal proceedings. This excludes, for example, decisions which refer a question of law to the Enlarged Board of Appeal, decisions to take evidence or decisions to postpone oral proceedings.</p> <p>Proposed new paragraph 9 sets out the general rule that all decisions on the appeal, including any issued in the course of the written proceedings, are to be issued in a timely manner.</p> <p>As in the past, the Chair announces the decision at the end of the oral proceedings, unless the board considers it unsuitable to do so.</p> |
| | <p>(a) Where the Chair announces the decision on the appeal orally in accordance with paragraph 6, the Board shall put the decision in writing and despatch it within three months of the date of the oral proceedings. If the Board is unable to do so, it shall inform the parties when the decision is to be despatched. The President of the Boards of Appeal shall also be informed thereof.</p> | <p>Proposed new paragraph 9(a) governs the usual case in which the decision on the appeal is announced at the oral proceedings. In such a case, "in a timely manner" for the purposes of proposed new paragraph 9 means that the decision will be despatched within three months.</p> <p>However, if the Board is unable to do so, the parties will be informed of when it will be despatched. Typical cases in this regard are, for example, the sickness of a member, a particularly complex case, or a decision that is foreseen for publication in the EPO Official Journal.</p> <p>The Board does not have to inform the parties of the</p> |

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| | | <p>reasons why the despatch of its decision is delayed. The Board should however inform the parties of a delay as soon as possible after it becomes aware that the three-month period cannot be met and should normally do so before expiry of that period. Any further delay (that is, if the Board is unable to meet the later date communicated to the parties) would have to be communicated separately.</p> <p>No sanction is foreseen in the event that the Board does not despatch its decision within the relevant period or by the relevant date. The attention of the President of the Boards of Appeal will be drawn to any such delay. The new provision emphasises the ongoing commitment of the Boards to despatching their decisions in good time.</p> |
| | <p>(b) When a case is ready for decision at the conclusion of the oral proceedings but the Chair does not announce the decision on the appeal orally in accordance with paragraph 6, the Chair shall indicate the date on which the decision on the appeal is to be despatched, which shall not be later than three months after the closure of the oral proceedings. If the Board is unable to despatch the decision on the appeal by that date, it shall inform the parties of a new date or, in exceptional circumstances, shall issue a communication specifying the further procedural steps that will be taken.</p> | <p>Proposed new paragraph 9(b) regulates the situation in which the Chair does not announce the decision on the appeal at the oral proceedings, even though the case is ready for decision. In such a case, the Chair has to indicate when the complete written decision concluding the appeal proceedings will be despatched to the parties.</p> <p>The maximum period is again three months. If the Board realises after the oral proceedings that the case is not yet ready for a (final) decision, it has to send a communication informing the parties of how the proceedings will be continued (e.g. appointment of further oral proceedings or a referral to the Enlarged Board of Appeal).</p> |

| Article 16 Costs | Article 16 Costs | |
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| (1) Subject to Article 104, paragraph 1, EPC, the Board may on request order a party to pay some or all of another party's costs which shall, without limiting the Board's discretion, include those incurred by any | (1) Subject to Article 104, paragraph 1, EPC, the Board may on request order a party to pay some or all of another party's costs. Without limiting the Board's discretion, such costs include those incurred by any | |
| (a) amendment pursuant to Article 13 to a party's case as filed pursuant to Article 12, paragraph 1; | (a) amendment to a party's appeal case pursuant to Article 13 to a party's case as filed pursuant to Article 12, paragraph 1; | Change(s) for reasons of clarity/consistency. |
| (b) extension of a time limit; | (b) extension of a time limit period; | Change(s) for reasons of clarity/consistency. |
| (c) acts or omissions prejudicing the timely and efficient conduct of oral proceedings; | (c) acts or omissions prejudicing the timely and efficient conduct of oral proceedings; | |
| (d) failure to comply with a direction of the Board; | (d) failure to comply with a direction of the Board; | |
| (e) abuse of procedure. | (e) abuse of procedure. | |

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| <p>(2) The costs ordered to be paid may be all or part of those incurred by the receiving party and may inter alia be expressed as a percentage or as a specific sum. In the latter event, the Board's decision shall be a final decision for the purposes of Article 104, paragraph 3, EPC. The costs ordered may include costs charged to a party by its professional representative, costs incurred by a party itself whether or not acting through a professional representative, and the costs of witnesses or experts paid by a party but shall be limited to costs necessarily and reasonably incurred.</p> | <p>(2) The costs ordered to be paid may be all or part of those incurred by the receiving party and may, inter alia, be expressed as a percentage or as a specific sum. In the latter event, the Board's decision shall be a final decision for the purposes of Article 104, paragraph 3, EPC. The costs ordered may include costs charged to a party by its professional representative, costs incurred by a party itself whether or not acting through a professional representative, and the costs of witnesses or experts paid by a party but shall be limited to costs necessarily and reasonably incurred.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>Article 17 Communications to the parties</p> | <p>Article 17 Communications to the parties</p> | |
| <p>(1) In the written phase of proceedings, replies to requests and directions on matters of procedure shall be given by means of communications.</p> | <p>(1) In the written phase of proceedings, replies to requests and directions on matters of procedure shall be given by means of communications.</p> | |

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| <p>(2) If a Board deems it expedient to communicate with the parties regarding a possible appreciation of substantive or legal matters, such communication shall be made in such a way as not to imply that the Board is in any way bound by it.</p> | <p>(2) If a Board deems it expedient to communicate with the parties regarding a possible appreciation of substantive or legal matters, such communication shall be made in such a way as not to imply that the Board is in any way bound by it.</p> | |
| <p>Article 18 EPO President's right to comment</p> | <p>Article 18 EPO President's Right of the President of the European Patent Office to comment</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>The Board may, on its own initiative or at the written, reasoned request of the President of the European Patent Office, invite him to comment in writing or orally on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the President's comments.</p> | <p>The Board may, on of its own initiative motion or at the written, reasoned request of the President of the European Patent Office, invite him the President to comment in writing or orally on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the President's comments.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>Article 19 Deliberation and voting</p> | <p>Article 19 Deliberation and voting</p> | |
| <p>(1) If the members of a Board are not all of the same opinion, the Board shall meet to deliberate regarding the decision to be taken. Only members of the Board shall participate in the deliberations; the Chairman may, however, authorise other officers to attend. Deliberations shall be secret.</p> | <p>(1) If the members of a Board are not all of the same opinion, the Board shall meet to deliberate regarding the decision to be taken. Only members of the Board shall participate in the deliberations; the Chairman may in the particular appeal may, however, authorise other officers to attend. The deliberations shall be secret.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |

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| <p>(2) During the deliberations between members of the Board, the opinion of the rapporteur shall be heard first, followed by that of the additional rapporteur if one has been appointed and, if the rapporteur is not the Chairman, the Chairman's last.</p> | <p>(2) During the deliberations between members of the Board, the opinion of the rapporteur shall be heard first, followed by that of the additional rapporteur if one has been appointed and, if the rapporteur is not the Chairman, by that of the Chairman's last.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>(3) If voting is necessary, votes shall be taken in the same sequence; even if the Chairman is the rapporteur, he shall vote last. Abstentions shall not be permitted.</p> | <p>(3) If voting is necessary, votes shall be taken in the same sequence; except that even if the Chairman is the, even when rapporteur, he shall vote last. Abstentions shall not be permitted.</p> | <p>Change(s) for reasons of clarity/consistency and gender neutrality.</p> |
| <p>Article 20 Deviations from an earlier decision of any Board or from the Guidelines</p> | <p>Article 20 Deviations from an earlier decision of any Board or from the Guidelines for Examination</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>(1) Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention given in an earlier decision of any Board, the grounds for this deviation shall be given, unless such grounds are in accordance with an earlier opinion or decision of the Enlarged Board of Appeal. The President of the European Patent Office shall be informed of the Board's decision.</p> | <p>(1) Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention given in an earlier decision of any Board, the grounds for this deviation shall be given, unless such grounds are in accordance with an earlier decision or opinion or decision of the Enlarged Board of Appeal according to Article 112, paragraph 1, EPC. The President of the European Patent Office shall be informed of the Board's decision.</p> | <p>Change(s) for reasons of clarity/consistency.</p> <p>Here it is clarified that a decision of the Enlarged Board of Appeal on a petition for review (Article 112a EPC) is not covered by this provision.</p> |

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| <p>(2) If, in its decision, a Board gives a different interpretation of the Convention to that provided for in the Guidelines, it shall state the grounds for its action if it considers that this decision will be more readily understood in the light of such grounds.</p> | <p>(2) If, in its decision, a Board gives a different interpretation of the Convention to that provided for in the Guidelines for Examination, it shall state the its grounds for its action doing so if it considers that this the decision will be more readily understood in the light of such grounds.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |
| <p>Article 21 Deviation from an earlier decision or opinion of the Enlarged Board of Appeal</p> | <p>Article 21 Deviation from an earlier decision or opinion of the Enlarged Board of Appeal</p> | |
| <p>Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention contained in an earlier opinion or decision of the Enlarged Board of Appeal, the question shall be referred to the Enlarged Board of Appeal.</p> | <p>Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention contained in an earlier decision or opinion or decision of the Enlarged Board of Appeal according to Article 112, paragraph 1, EPC, the question shall be referred to the Enlarged Board of Appeal.</p> | <p>Change(s) for reasons of clarity/consistency.</p> <p>Here it is clarified that a referral to the Enlarged Board of Appeal is not required in a case in which a Board wishes to deviate from a decision of the Enlarged Board of Appeal on a petition for review (Article 112a EPC).</p> |
| <p>Article 22 Referral of a question to the Enlarged Board of Appeal</p> | <p>Article 22 Referral of a question to the Enlarged Board of Appeal</p> | |
| <p>(1) If a point is to be referred to the Enlarged Board of Appeal, a decision to this effect shall be taken by the Board concerned.</p> | <p>(1) If a point question is to be referred to the Enlarged Board of Appeal in accordance with Article 112, paragraph 1, EPC, a decision to this effect shall be taken by the Board concerned.</p> | <p>Change(s) for reasons of clarity/consistency.</p> |

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| (2) The decision shall contain the items specified in Rule 102, sub-paragraphs (a), (b), (c), (d) and (f), EPC and the point which the Board refers to the Enlarged Board of Appeal. The context in which the point originated shall also be stated. | (2) The decision shall contain the items specified in Rule 102, sub-paragraphs (a), (b), (c), (d) and (f), EPC and the point question which the Board refers to the Enlarged Board of Appeal. The context in which the point question originated arose shall also be stated. | Change(s) for reasons of clarity/consistency. |
| (3) The decision shall be communicated to the parties. | (3) The decision shall be communicated to the parties. | |
| Article 23 Binding nature of the Rules of Procedure | Article 23 Binding nature of the Rules of Procedure | |
| These Rules of Procedure shall be binding upon the Boards of Appeal, provided that they do not lead to a situation which would be incompatible with the spirit and purpose of the Convention. | These Rules of Procedure shall be binding upon the Boards of Appeal, provided that they do not lead to a situation which would be incompatible with the spirit and purpose of the Convention. | |
| Article 24 Entry into force | Article 24 Entry into force | |
| These Rules of Procedure shall enter into force upon entry into force of the revised text of the European Patent Convention in accordance with Article 8 of the Revision Act. | (1) The revised version of the Rules of Procedure of the Boards of Appeal (the revised version) shall enter into force on 1 January 2020. (2) Subject to Article 25, the version of the Rules of Procedure of the Boards of Appeal valid until that time shall cease to be in force upon entry into force of the revised version. | Pursuant to proposed new Article 24, the revised version of the Rules of Procedure (the revised version) is to enter into force on 1 January 2020. This date will be at least six months after the date of approval by the Administrative Council, so that parties will have time to familiarise themselves with the new provisions before they become applicable. |

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| | <p>Article 25 Transitional provisions</p> | |
| | <p>(1) The revised version shall apply to any appeal pending on, or filed after, the date of the entry into force, subject to the following paragraphs.</p> | <p>Proposed new Article 25 lays down the transitional provisions. The revised version of the Rules of Procedure of the Boards of Appeal will in principle apply to all appeals pending on the date of its entry into force. Therefore, as submissions already on file may be affected, two exceptions are foreseen in order to protect legitimate expectations which parties may have had at the time of filing such earlier submissions.</p> |
| | <p>(2) Article 12, paragraphs 4 to 6, of the revised version shall not apply to any statement of grounds of appeal filed before the date of the entry into force and any reply to it filed in due time. Instead, Article 12, paragraph 4, of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force shall continue to apply.</p> | <p>An exception is made with respect to revised Article 12, paragraphs 4 to 6. These provisions will not apply to a statement of grounds of appeal filed before the date of entry into force of the revised version, or to replies thereto filed within the four-month period, irrespective of whether this period expires before, on or after the date of entry into force of the revised version. Any submission which is already on file before the entry into force of the revised version, and which is subsequent to the statement of grounds of appeal or the reply thereto, will however be subject to all the provisions of revised Article 13, paragraph 1, including the analogous application of revised Article 12, paragraphs 4 to 6.</p> |

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| | <p>(3) Where the summons to oral proceedings or a communication of the Board under Rule 100, paragraph 2, EPC has been notified before the date of the entry into force, Article 13, paragraph 2, of the revised version shall not apply. Instead, Article 13 of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force shall continue to apply.</p> | <p>A further exception is made with respect to the strict provision of revised Article 13, paragraph 2. It will only apply to a submission filed after the statement of grounds of appeal or reply thereto if, at the date of entry into force of the revised version, the summons to oral proceedings or a communication of the Board under Rule 100(2) EPC has not been notified. Otherwise, Article 13 of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force of the revised version will continue to apply.</p> |
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VII. LEGAL BASIS

67. Article 23, paragraph 4, second sentence, EPC

VIII. DOCUMENTS CITED

68. BOAC/5/18, BOAC/3/19, BOAC/4/19, BOAC/5/19

IX. RECOMMENDATION FOR PUBLICATION

69. Yes.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
approving the revised version of
the Rules of Procedure of the Boards of Appeal

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 23,
paragraph 4, thereof,

Having regard to the revised version of the Rules of Procedure of the Boards of Appeal,
adopted by the Boards of Appeal Committee on 4 April 2019 under Rule 12c, paragraph 2,
of the Implementing Regulations to the European Patent Convention,

HAS DECIDED AS FOLLOWS:

The revised version of the Rules of Procedure of the Boards of Appeal, as shown in the
Annex to this decision, is hereby approved.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Josef KRATOCHVÍL

ANNEX

DECISION

In accordance with Rule 12c, paragraph 2, of the Implementing Regulations to the European Patent Convention, the Boards of Appeal Committee adopts the following revised version of the Rules of Procedure of the Boards of Appeal:

All terms and pronouns referring to persons in these Rules of Procedure apply irrespective of gender.

Article 1

Business distribution and composition

(1) The Presidium referred to in Rule 12b, paragraph 4, EPC, shall before the beginning of each working year draw up a business distribution scheme for the distribution among the Boards of Appeal of all appeals that may be filed during the year, designating the members who may serve on each Board and their respective alternates. The scheme may be amended during the working year.

(2) The Chair (Chairman or Chairwoman) of each Board shall, before the beginning of each working year, draw up a list of the cases in which the Board is likely to hold oral proceeding issue a communication under Rule 100, paragraph 2, EPC, or issue a decision in written proceedings in that year. The President of the Boards of Appeal shall, before the beginning each working year, publish the list of each Board.

(3) The Chair of each Board of Appeal shall determine the composition of the Board for each particular case in accordance with the business distribution scheme. The Chair shall designate himself or herself or a technically or legally qualified member as Chair in the particular appeal.

Article 2

Replacement of members

(1) A member or the Chair in a particular appeal shall be replaced if prevented from participating, particularly as a result of sickness, excessive workload, or commitments which cannot be avoided.

(2) A member or the Chair in a particular appeal wishing to be replaced shall inform the Chair of the Board of their unavailability without delay.

Article 3

Exclusion and objection

- (1) If a Board has knowledge of a possible reason for exclusion or objection under Article 24 EPC which does not originate from the member concerned or from a party, then the procedure of Article 24, paragraph 4, EPC shall be applied.
- (2) The member concerned shall be invited to present comments as to whether there is a reason for exclusion or objection.
- (3) Before a decision is taken on the exclusion or objection, there shall be no further proceedings in the case.

Article 4

Procedural compliance

- (1) The Chair of the Board shall for each appeal designate a member of the Board, who may also be the Chair of the Board, to consider the admissibility of the appeal.
- (2) The Chair in the particular appeal or a member designated by the Chair of the Board shall ensure that the parties comply with these Rules of Procedure and with directions of the Board and shall propose action to be taken as appropriate.

Article 5

Rapporteurs

- (1) For each appeal, the Chair of the Board shall designate a technically or legally qualified member of the Board, who may also be the Chair of the Board, as rapporteur. If appropriate in the light of the subject-matter of the case, the Chair of the Board may designate an additional rapporteur. The composition of the Board may be completed at a later stage, in accordance with Article 1, paragraph 3. The steps referred to in paragraphs 4 and 5 may not be taken until the composition of the Board has been completed in accordance with Article 1, paragraph 3.
- (2) If an additional rapporteur is appointed, the steps referred to in paragraphs 3 to 5 shall be taken by the rapporteur and additional rapporteur jointly.
- (3) The rapporteur shall carry out a preliminary study of the appeal and shall, subject to the direction of the Chair of the Board, assess whether the appeal should be given priority over, or should be treated together with, other appeals assigned to the rapporteur.

(4) The rapporteur shall draft communications on behalf of the Board, subject to the direction of the Chair in the particular appeal, and shall make the preparations for meetings of the Board and for oral proceedings.

(5) The rapporteur shall draft decisions.

(6) A rapporteur or additional rapporteur who considers that their knowledge of the language of the proceedings is insufficient for drafting communications or decisions may draft these in one of the other official languages. The drafts shall be translated by the European Patent Office into the language of the proceedings and the translations shall be checked by the rapporteur or by another member of the Board in the particular appeal.

Article 6 Registries

(1) Registries shall be established for the Boards of Appeal. Registrars shall be responsible for the discharge of the functions of the Registries. One of the Registrars shall be designated as head of the Registry.

(2) The Presidium referred to in Rule 12b, paragraph 1, EPC may entrust to the Registrars the execution of functions which involve no technical or legal difficulties, in particular in relation to arranging for inspection of files, issuing summonses to oral proceedings, notifications and granting requests for further processing of applications.

(3) The Registrar shall report to the Chair of the Board on the admissibility of each newly filed appeal.

(4) The Chair in the particular appeal shall designate a member of the Board or, with the agreement of the Chair of the Board, the Registrar, to draw up the minutes of the oral proceedings and of the taking of evidence.

Article 7 Interpreters

If required, the Chair in the particular appeal shall make arrangements for interpretation during oral proceedings, the taking of evidence or the deliberations of the Board.

Article 8
Change in the composition of a Board

(1) If the composition of a Board is changed after oral proceedings, the parties shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board in its new composition. Fresh oral proceedings shall also be held if so requested by the new member and if the other members of the Board in the particular appeal have given their agreement.

(2) Each new member shall be bound to the same extent as the other members by an interlocutory decision which has already been taken.

(3) A member who is unable to act after the Board has already reached a decision on the appeal shall not be replaced. If the Chair in a particular appeal is unable to act, the member of the Board having the longer or longest service on the Boards of Appeal or, in the case where members have the same length of service, the elder or eldest member, shall sign the decision on behalf of the Chair.

Article 9
Enlargement of a Board

If a Board consisting of two technically qualified members and one legally qualified member considers that the nature of the appeal requires that the Board should consist of three technically qualified members and two legally qualified members, the decision to enlarge the Board shall be taken at the earliest possible stage in the examination of that appeal.

Article 10
Consolidation and acceleration of appeal proceedings

(1) If several appeals are filed from a decision, these appeals shall be dealt with in the same proceedings.

(2) If appeals are filed from separate decisions but are clearly connected to each other and if they are to be examined by a Board in the same composition, that Board shall endeavour to deal with them one immediately after the other. The Board may, after having heard the parties, also deal with such appeals in consolidated proceedings.

(3) On request by a party, the Board may accelerate the appeal proceedings. The request shall contain reasons justifying the acceleration and shall, where appropriate, be supported by documentary evidence. The Board shall inform the parties whether the request has been granted.

(4) If a court or other competent authority in a Contracting State requests acceleration of the appeal proceedings, the Board shall inform the court or authority and the parties whether the request has been granted and when oral proceedings, if foreseen, are likely to take place.

(5) The Board may accelerate the appeal proceedings of its own motion.

(6) If the Board accelerates the appeal proceedings, it shall give the appeal priority over other appeals. The Board may adopt a strict framework for the proceedings.

Article 11 Remittal

The Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so. As a rule, fundamental deficiencies which are apparent in the proceedings before that department constitute such special reasons.

Article 12 Basis of appeal proceedings

(1) Appeal proceedings shall be based on

(a) the decision under appeal and minutes of any oral proceedings before the department having issued that decision;

(b) the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC;

(c) in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal;

(d) any communication sent by the Board and any answer thereto filed pursuant to directions of the Board;

(e) minutes of any video or telephone conference with the party or parties sent by the Board.

(2) In view of the primary object of the appeal proceedings to review the decision under appeal in a judicial manner, a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based.

(3) The statement of grounds of appeal and the reply shall contain a party's complete appeal case. Accordingly, they shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on. All documents referred to shall be

(a) attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;

(b) filed in any event to the extent that the Board so directs in a particular case.

(4) Any part of a party's appeal case which does not meet the requirements in paragraph 2 is to be regarded as an amendment, unless the party demonstrates that this part was admissibly raised and maintained in the proceedings leading to the decision under appeal. Any such amendment may be admitted only at the discretion of the Board.

The party shall clearly identify each amendment and provide reasons for submitting it in the appeal proceedings. In the case of an amendment to a patent application or patent, the party shall also indicate the basis for the amendment in the application as filed and provide reasons why the amendment overcomes the objections raised.

The Board shall exercise its discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy.

(5) The Board has discretion not to admit any part of a submission by a party which does not meet the requirements in paragraph 3.

(6) The Board shall not admit requests, facts, objections or evidence which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

The Board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

(7) Periods specified by the Board may exceptionally be extended at the Board's discretion upon a written and reasoned request, presented before the expiry of such period. The same applies mutatis mutandis to the period referred to in paragraph 1(c); however, this period may only be extended up to a maximum of six months.

(8) Subject to Articles 113 and 116 EPC, the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the period referred to in paragraph 1(c).

Article 13
Amendment to a party's appeal case

(1) Any amendment to a party's appeal case after it has filed its grounds of appeal or reply is subject to the party's justification for its amendment and may be admitted only at the discretion of the Board.

Article 12, paragraphs 4 to 6, shall apply *mutatis mutandis*.

The party shall provide reasons for submitting the amendment at this stage of the appeal proceedings.

The Board shall exercise its discretion in view of, *inter alia*, the current state of the proceedings, the suitability of the amendment to resolve the issues which were admissibly raised by another party in the appeal proceedings or which were raised by the Board, whether the amendment is detrimental to procedural economy, and, in the case of an amendment to a patent application or patent, whether the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by another party in the appeal proceedings or by the Board and does not give rise to new objections.

(2) Any amendment to a party's appeal case made after the expiry of a period specified by the Board in a communication under Rule 100, paragraph 2, EPC or, where such a communication is not issued, after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

(3) Other parties shall be entitled to submit their observations on any amendment not held inadmissible by the Board *ex officio*.

Article 14
Interventions

Where, during a pending appeal, notice of intervention is filed, Articles 12 and 13 shall apply in so far as justified by the circumstances of the case.

Article 15

Oral proceedings and issuing decisions

(1) Without prejudice to Rule 115, paragraph 1, EPC, the Board shall, if oral proceedings are to take place, endeavour to give at least four months' notice of the summons. In cases where there is more than one party, the Board shall endeavour to issue the summons no earlier than two months after receipt of the written reply or replies referred to in Article 12, paragraph 1(c).

A single date is fixed for the oral proceedings.

In order to help concentration on essentials during the oral proceedings, the Board shall issue a communication drawing attention to matters that seem to be of particular significance for the decision to be taken. The Board may also provide a preliminary opinion. The Board shall endeavour to issue the communication at least four months in advance of the date of the oral proceedings.

(2) A request of a party for a change of the date fixed for oral proceedings may be allowed if the party has put forward serious reasons which justify the fixing of a new date. If the party is represented, the serious reasons must relate to the representative.

(a) The request shall be filed in writing, reasoned and, where appropriate, supported by documentary evidence. The request shall be filed as soon as possible after the summons to oral proceedings has been notified and the serious reasons in question have arisen. The request should include a list of dates on which the requesting party is not available for oral proceedings.

(b) Reasons which may justify a change of the date for oral proceedings include:

(i) notification of a summons to oral proceedings in other proceedings before the European Patent Office or a national court received before notification of the summons to oral proceedings before the Board;

(ii) serious illness;

(iii) a death within the family;

(iv) marriage or formation of a similar recognised partnership;

(v) military service or other obligatory performance of civic duties;

(vi) holidays or business trips which have been firmly booked before notification of the summons to oral proceedings.

(c) Reasons which, as a rule, do not justify a change of the date for oral proceedings include:

(i) filing of new requests, facts, objections, arguments or evidence;

(ii) excessive work pressure;

(iii) unavailability of a duly represented party;

(iv) unavailability of an accompanying person;

(v) appointment of a new professional representative.

(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of a party duly summoned who may then be treated as relying only on its written case.

(4) The Chair presides over the oral proceedings and ensures their fair, orderly and efficient conduct.

(5) When a case is ready for decision during oral proceedings, the Chair shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.

(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chair.

(7) Where the decision on the appeal has been announced orally in accordance with paragraph 6, the reasons for the decision, or parts thereof, may, with the explicit consent of the parties, be put in writing in abridged form. However, where it has been indicated to the Board that a third party or a court has, in the particular case, a legitimate interest in the reasons for the decision not being in abridged form, they shall not be abridged. Where appropriate, the reasons for the decision in abridged form may already be included in the minutes of the oral proceedings.

(8) If the Board agrees with the finding of the department which issued the decision under appeal, on one or more issues, and with the reasons given for it in the decision under appeal, the Board may put the reasons for its decision in abridged form in respect of that issue.

(9) The Board shall issue the decision on the appeal in a timely manner.

(a) Where the Chair announces the decision on the appeal orally in accordance with paragraph 6, the Board shall put the decision in writing and despatch it within three months of the date of the oral proceedings. If the Board is unable to do so, it shall inform the parties when the decision is to be despatched. The President of the Boards of Appeal shall also be informed thereof.

(b) When a case is ready for decision at the conclusion of the oral proceedings but the Chair does not announce the decision on the appeal orally in accordance with paragraph 6, the Chair shall indicate the date on which the decision on the appeal is to be despatched, which shall not be later than three months after the closure of the oral proceedings. If the Board is unable to despatch the decision on the appeal by that date, it shall inform the parties of a new date or, in exceptional circumstances, shall issue a communication specifying the further procedural steps that will be taken.

Article 16

Costs

(1) Subject to Article 104, paragraph 1, EPC, the Board may on request order a party to pay some or all of another party's costs. Without limiting the Board's discretion, such costs include those incurred by any

- (a) amendment to a party's appeal case pursuant to Article 13;
- (b) extension of a period;
- (c) acts or omissions prejudicing the timely and efficient conduct of oral proceedings;
- (d) failure to comply with a direction of the Board;
- (e) abuse of procedure.

(2) The costs ordered to be paid may be all or part of those incurred by the receiving party and may, inter alia, be expressed as a percentage or as a specific sum. In the latter event, the Board's decision shall be a final decision for the purposes of Article 104, paragraph 3, EPC. The costs ordered may include costs charged to a party by its professional representative, costs incurred by a party itself whether or not acting through a professional representative, and the costs of witnesses or experts paid by a party but shall be limited to costs necessarily and reasonably incurred.

Article 17

Communications to the parties

(1) In the written phase of proceedings, replies to requests and directions on matters of procedure shall be given by means of communications.

(2) If a Board deems it expedient to communicate with the parties regarding a possible appreciation of substantive or legal matters, such communication shall be made in such a way as not to imply that the Board is in any way bound by it.

Article 18
Right of the President of the European Patent Office to comment

The Board may, of its own motion or at the written, reasoned request of the President of the European Patent Office, invite the President to comment in writing or orally on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the President's comments.

Article 19
Deliberation and voting

(1) If the members of a Board are not all of the same opinion, the Board shall meet to deliberate regarding the decision to be taken. Only members of the Board shall participate in the deliberations; the Chair in the particular appeal may, however, authorise other officers to attend. The deliberations shall be secret.

(2) During the deliberations of the Board, the opinion of the rapporteur shall be heard first, followed by that of the additional rapporteur if one has been appointed and, if the rapporteur is not the Chair, by that of the Chair last.

(3) If voting is necessary, votes shall be taken in the same sequence, except that the Chair, even when rapporteur, shall vote last. Abstentions shall not be permitted.

Article 20
Deviations from an earlier decision of any Board or from the Guidelines for Examination

(1) Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention given in an earlier decision of any Board, the grounds for this deviation shall be given, unless such grounds are in accordance with an earlier decision or opinion of the Enlarged Board of Appeal according to Article 112, paragraph 1, EPC. The President of the European Patent Office shall be informed of the Board's decision.

(2) If, in its decision, a Board gives a different interpretation of the Convention from that provided for in the Guidelines for Examination, it shall state its grounds for doing so if it considers that the decision will be more readily understood in the light of such grounds.

Article 21

Deviation from an earlier decision or opinion of the Enlarged Board of Appeal

Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention contained in an earlier decision or opinion of the Enlarged Board of Appeal according to Article 112, paragraph 1, EPC, the question shall be referred to the Enlarged Board of Appeal.

Article 22

Referral of a question to the Enlarged Board of Appeal

- (1) If a question is to be referred to the Enlarged Board of Appeal in accordance with Article 112, paragraph 1, EPC, a decision to this effect shall be taken by the Board.
- (2) The decision shall contain the items specified in Rule 102, sub-paragraphs (a), (b), (c), (d) and (f), EPC and the question which the Board refers to the Enlarged Board of Appeal. The context in which the question arose shall also be stated.
- (3) The decision shall be communicated to the parties.

Article 23

Binding nature of the Rules of Procedure

These Rules of Procedure shall be binding upon the Boards of Appeal, provided that they do not lead to a situation which would be incompatible with the spirit and purpose of the Convention.

Article 24

Entry into force

- (1) The revised version of the Rules of Procedure of the Boards of Appeal (the revised version) shall enter into force on 1 January 2020.
- (2) Subject to Article 25, the version of the Rules of Procedure of the Boards of Appeal valid until that time shall cease to be in force upon entry into force of the revised version.

Article 25
Transitional provisions

(1) The revised version shall apply to any appeal pending on, or filed after, the date of the entry into force, subject to the following paragraphs.

(2) Article 12, paragraphs 4 to 6, of the revised version shall not apply to any statement of grounds of appeal filed before the date of the entry into force and any reply to it filed in due time. Instead, Article 12, paragraph 4, of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force shall continue to apply.

(3) Where the summons to oral proceedings or a communication of the Board under Rule 100, paragraph 2, EPC has been notified before the date of the entry into force, Article 13, paragraph 2, of the revised version shall not apply. Instead, Article 13 of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force shall continue to apply.

Done at Munich, 4 April 2019

For the Boards of Appeal Committee
The Chairman

Roland GROSSENBACHER