

Registry of the Enlarged Board of Appeal
Attn. Mr. Nicolas Michaleczek
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Dear Mr Michaleczek

Amicus Curiae Brief for EBA Referral G1/21 (Appeal Case T1807/15)
European Patent Number EP1609239
European Patent Application Number 04758381.0
Oral Proceedings scheduled for 28 May 2021

We wish to provide the Enlarged Board with comments concerning the points of law raised in the above proceedings, pursuant to Article 10(1) RPEBA.

We have read and considered the comments provided by IK-IP Ltd. Briefly, IK-IP take the view that the simple, direct answer to the referred question is that the conduct of oral proceedings in the form of a videoconference is indeed compatible with the right set out in Article 116(1), even if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in that form, but express a concern that the Board's decision may be interpreted more widely so as to support a routine requirement that *all* Oral Proceedings should be conducted in that manner. We find ourselves wholeheartedly in support of that view.

IK-IP respectfully ask that the Board take care that its decision is phrased so as to minimise the risk of improperly being construed as supporting unintended policy conclusions. We would take a step further. The principal argument in favour of a positive response to the referred question is that the EPC does not prescribe any specific form for Oral Proceedings. Hence, there is no basis in the EPC for objecting to the conduct of Oral Proceedings via a form such as videoconference, as such. Equally, however, there is no basis in the EPC for prescribing that *all* Oral Proceedings must necessarily be held in a specific form.

Thus, we respectfully suggest that a complete answer to the referred question ought reasonably set out the boundaries within which the question and answer exist – i.e.:

- that the conduct of Oral Proceedings via videoconference is capable of being compatible with the Article 116(1) right of the parties to be heard;

- that where it is proposed that Oral Proceedings be held in a specific form (such as a videoconference) which will, in the circumstances of the case in question, respect the Article 116(1) right of the parties, then this is compatible with the EPC even if one or more parties disagree, but;
- there is no basis in the EPC for a general rule that all Oral Proceedings must be held in a specific form, and therefore in order to respect the Article 116(1) rights of the parties the EPO must give due consideration to a reasoned objection to the conduct of Oral Proceedings in the form of (e.g.) videoconference if the parties wish to hold the Oral Proceedings in a different form.

We respectfully commend this view to the Board.

Yours faithfully
DOWNING IP

(Signed)

Michael Downing