



FÉDÉRATION INTERNATIONALE DES CONSEILS  
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF  
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION  
VON PATENTANWÄLTEN

**Roberto Pistolesi**  
Secretary General

27 April 2021

Registry of the Enlarged Board of Appeal  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
Germany

**For the attention of Mr Nicolas Michaleczek**

via email: [EBAamicuscuriae@epo.org](mailto:EBAamicuscuriae@epo.org)

**RE // Written statement for case G 1/21**

Dear Mr Michaleczek,

Please find enclosed the FICPI's written statement for case G 1/21 before the Enlarged Board of Appeal.

Yours sincerely,

Roberto Pistolesi  
Secretary General

Enc.



27 April 2021

## Written statement for case G 1/21 before the Enlarged Board of Appeal

Founded over 100 years ago, **FICPI** is the international representative association for IP attorneys in private practice throughout the world, with over 5,500 members in 86 countries and regions, including European patent attorneys, national patent attorneys and patent agents in all EPC contracting and extension states.

**FICPI** aims to study all administrative or legislative reforms and all improvements to international treaties and conventions, with the object of facilitating the exercise by inventors and IP owners of their rights, of increasing their security and of simplifying procedure or formalities.

In pursuance of this aim, **FICPI** strives to offer well balanced opinions on proposed international, regional and national legislation based on its members' experience with a great diversity of clients having a wide range of different levels of knowledge, experience and business needs of the IP system.

**FICPI** is pleased to have the opportunity to provide this written statement for case G 1/21 in accordance with Article 10 of the Rules of Procedure of the Enlarged Board of Appeal.

### I. Case G 1/21

The following question has been referred to the Enlarged Board of Appeal in case T 1807/15:

*Is the conduct of oral proceedings in the form of a videoconference compatible with the right to oral proceedings as enshrined in Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference?*

### II. FICPI's comments

FICPI believes that oral proceedings in the form of a videoconference are compatible with the right to oral proceedings as enshrined in Article 116(1) EPC.

However, as already explained in FICPI's opinion on new Article 15a of the Rules of Procedure of the Boards of Appeal, *"a party's right to an in-person oral hearing is a fundamental principle of any judicial system. Once the Covid emergency is over, therefore, parties should always have the right to attend oral proceedings in person, at*

*least in inter partes proceedings, even if oral proceedings by videoconference become a standard option for conducting oral proceedings in the future. In this connection, FICPI notes that proceedings before the Boards are last instance proceedings and it is very important that parties are seen to have full access to justice.”*

Therefore, parties should always have the right to request (well in advance) and obtain to attend oral proceedings in person, at the presence of the members of the Division or Board in question, except during periods where extraordinary circumstances, such as public health emergencies or security reasons, makes this impossible.

At any rate, the public and other parties, if any, should equally have the right to attend by videoconference, e.g., to avoid unnecessary travels, oral proceedings which are held in person.

In order to improve the form of the videoconference, it is suggested that each participant should use a headset and a camera arranged at close distance from his/her face, so that he/she can clearly hear and see all other participants at the same time, as they were in the same room.

### III. Suggested answer to the referred question

In view of the above, FICPI suggests answering the question referred to the Enlarged Board of Appeal as follows:

**Yes, as long as attendance at the presence of the members of the Division or Board in question is offered to the parties, except when extraordinary circumstances, such as public health emergencies or security reasons, makes attendance in person impossible.**



**IMPORTANT NOTE:**

The views set forth in this paper have been provisionally approved by the Bureau of FICPI and are subject to final approval by the Executive Committee (ExCo). The content of the paper may therefore change following review by the ExCo.

The International Federation of Intellectual Property Attorneys (FICPI) is the global representative body for intellectual property attorneys in private practice. FICPI's opinions are based on its members' experiences with a great diversity of clients having a wide range of different levels of knowledge, experience and business needs of the IP system.

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The Australian Federation of Intellectual Property Attorneys, FICPI Canada, Association of Danish Intellectual Property Attorneys (ADIPA), Suomen Patenttiasiamiesyhdistys ry, Association de Conseils en Propriété Industrielle (ACPI), Patentanwaltskammer, Collegio Italiano dei Consulenti in Proprietà Industriale, Japanese Association of FICPI, Norske Patentingeniørers Forening (NPF), Associação Portuguesa dos Consultores em Propriedade Industrial (ACPI), F.I.C.P.I South Africa, the International Federation of Intellectual Property Attorneys – Swedish Association, Verband Schweizerischer Patent und Markenanwälte (VSP) and the British Association of the International Federation of Intellectual Property Attorneys are members of FICPI.

FICPI has national sections in Argentina, Austria, Belgium, Brazil, Chile, China, Czech Republic, Greece, Hungary, India, Ireland, Israel, Malaysia, Mexico, Netherlands, New Zealand, Romania, Russia, Singapore, South Korea, Spain, Turkey and the United States of America, a regional section covering for the Andean States (Bolivia, Colombia, Ecuador, Perú and Venezuela), a provisional national section in Poland and individual members in a further 41 countries and regions.

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