

Enlarged Board of Appeal Referral G 1/21



IP INCLUSIVE

Working for diversity and inclusion in IP

IP Ability's submissions

a. 1 Introduction

IP Inclusive is a collection of UK-based individuals and organisations in the intellectual property (IP) sector, who have come together to make our community more inclusive, diverse, open and fair. IP Ability is the IP Inclusive community for disabled people, carers and their allies working within the IP professions in the UK. We aim to provide a supportive and informative network focusing on issues relating to disability, neurodiversity and health conditions of all kinds, be they mental or physical, visible or invisible, permanent or temporary, sudden onset or progressive.

b. 2 Potential Problems

IP Ability recognise that oral proceedings held via videoconference will often suit disabled representatives, disabled applicants, disabled inventors and disabled witnesses better than oral proceedings held in person where the disability causes difficulty travelling. However, we are concerned that the perceived benefits of videoconferencing to many will obscure the difficulties faced by other disabled people whose disabilities do not necessarily impair their ability to travel, but may impact their ability to participate fully in oral proceedings held via videoconference. For example, oral proceedings held via videoconference may disadvantage representatives, applicants, inventors and witnesses who have visual impairments and/or hearing impairments. In addition, oral proceedings held via videoconference may disadvantage representatives, applicants, inventors and witnesses who are neurodiverse (i.e., with conditions such as dyslexia, dyspraxia, ADHD, and/or autism). It is our view that disadvantaging such people would violate both their right to be heard and their right to a fair trial.

c. 3 Proposed solution

We urge the Enlarged Board to decide that *consent* to the form of proceedings *is relevant*, but with the requirement that parties who do not consent to oral proceedings being held via videoconference provide an explanation as to why (in their particular case) oral proceedings held in person would ensure their right to be heard and their right to a fair trial would be met but that oral proceedings held via videoconference would not. This would allow disabled representatives or disabled applicants to explain why it was important for them to attend oral proceedings in person, and allow non-disabled representatives or applicants to explain why it was important for their disabled inventors and/or disabled witnesses to attend oral proceedings in person.

Representatives and applicants could be required to submit their explanation as to why (in their particular case) oral proceedings should be held in person in a letter separate from any other case related correspondence or using a specifically-designed form. The separate letter or form would not be uploaded to the EPO Register and would not be publicly accessible (as with a PACE Request or EPO Form 1005) thereby ensuring that the sensitive information contained within the explanation would not be made public.

The EPO or Boards of Appeal would then take account of the explanation provided before deciding whether the oral proceedings ought to take place via video conference or in person. Regardless of their decision, the EPO or Boards of Appeal would also work with the disabled individuals (who understand their circumstances better than anyone else) to accommodate their needs whilst ensuring that all parties were treated equitably.

d. 4 Summary

IP Ability urge the Enlarged Board, in its decision on G 1/21, not to overlook the needs of disabled people. We urge the Enlarged Board to require the EPO and the Boards of Appeal to implement our suggested safeguards, which should ensure that no individual is denied the right – whether as a representative, applicant, inventor or witness – to be heard and the right to a fair trial.