

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

To the attention of Mr Nicolas Michaleczek, Registrar

By email at: EBAamicuscuriae@epo.org

20 April 2021

Object: Medicines for Europe Amicus Curiae Brief on referral G 1/21 – Oral proceedings by videoconference

Dear Mr Michaleczek,

Medicines for Europe represents the European generic, biosimilar and value added pharmaceutical industries.

The Covid-19 pandemic has drastically changed the day-by-day work, and this applies also to EPO proceedings, which for obvious reasons could not be attended in person. We welcome the efforts put in place by the EPO and the Board of Appeal to switch to virtual hearings for all the proceedings. Medicines for Europe stressed on several occasions over the past few months that postponing oral hearings just to the wish of one of the parties would disrupt fair competition and hinder access to the market for essential generic and biosimilar medicines. In this regard, the EPO and the Board of Appeal launched specific consultations on the topic, which showed a strong interest from stakeholders to apply virtual hearings by default.

Notwithstanding the results of the consultation, the **Case G 1/21** referred to the Enlarged Board of Appeal on 28 May 2021 addresses this specific point. Medicines for Europe would like to express its strong concern about the lack of legal certainty that any deviation from the default virtual procedure may imply, as companies have been planning for oral hearings for some time, including oppositions and appeals, and their deferment to undetermined dates in the future just because one of the parties disagrees with the virtual meeting could be extremely detrimental for predictability, efficiency and legal certainty.

Holding oral proceedings via videoconference without the consent of the parties is perfectly in line with the right to oral proceedings as enshrined in Article 116(1) EPC. Moreover, allowing one party to refuse and therefore postpone hearings creates unnecessary delays and uncertainty in the system. These delays have a concrete impact on market access of generic and biosimilar pharmaceuticals, and eventually on prices, healthcare budgets and patient access. In fact, these procedural delays facilitate injunctions on the part of the holders of those patents, pending the resolution of the disputes.

Oral proceedings are fundamental pillars of a balanced patent system. Therefore, effective procedures and appropriate means aimed at ensuring that intellectual property rights do not become barriers to legitimate trade are incumbent parts upon which patent systems are founded.

Unnecessary postponements of proceedings to undefined future dates would very likely create a considerable bottleneck, would unnecessarily delay determinations on the granting of patents and would trigger potential damages on industry, patients and the entire healthcare system. Therefore, we urge the Enlarged Board of

Appeal to confirm that the conduct of oral proceedings in the form of a videoconference is compatible with the right to oral proceedings as enshrined in Article 116(1) EPC, in order to avoid unjustifiable postponements or the possibility to a single party of opting-out unless there is an imperative reason.

Adrian van den Hoven,



Director General,
Medicines for Europe