

SUMMARY OF RESPONSES TO ONLINE USER CONSULTATION ON PROPOSED NEW ARTICLE 15a RPBA

1. Background information

The online user consultation on the proposed amendment of the Rules of Procedure of the Boards of Appeal as last revised in 2019 (RPBA 2020) took place between 13 and 27 November 2020. Users had the opportunity to comment on an initial English version of proposed new Article 15a. This additional provision clarifies that the Boards of Appeal may hold any oral proceedings pursuant to Article 116 EPC by videoconference.

The consultation attracted 162 responses from user associations, users from industry, patent attorneys and private individuals. They are summarised below. Following careful consideration of these submissions, a modified version of proposed new Article 15a RPBA 2020 was adopted by the Boards of Appeal Committee on 11 December 2020 (available [here](#)). Subject to approval by the Administrative Council, it is envisaged that the new provision will enter into force on 1 April 2021.

2. Summary of responses

General

Responses to the user consultation covered a full spectrum of views, from full support for all three paragraphs of Article 15a as initially drafted, to even outright rejection of the proposed new provision in a few cases.

Overall, users broadly welcomed the proposed insertion of Article 15a, given past and present restrictions on travel due to the COVID-19 pandemic and the overarching need for the Boards of Appeal to complete pending cases. Close to all submissions emphasised that decisions on the format in which oral proceedings will be conducted must ensure fairness and equal treatment between the parties. Many responses suggested that Article 15a should apply for a limited time only and/or requested more details of the criteria applicable for deciding when the use of videoconferencing means is appropriate. Among other general comments, some insisted that the public nature of oral proceedings before the Boards of Appeal must be preserved, while others called for an evaluation of the new provision some time after its entry into force.

Article 15a(1)

While expressing appreciation for the EPO's recent rapid adoption of videoconferencing means for conducting business (including oral proceedings before the Boards of Appeal), a significant number of responses stressed that the parties' preference should be a major factor in determining the appropriate format for oral proceedings. In addition, the need for high-quality and reliable videoconferencing equipment was often highlighted.

Some users drew parallels with proceedings in national courts, where the decision to conduct hearings remotely usually lies within the judges' control.

Article 15a(2), 1st sentence

Little controversy surrounded this proposal. A great majority of respondents supported parties, their representatives or accompanying persons being allowed, upon request, to attend in-person oral proceedings via videoconference. Some responses pointed out that this option can be cost-effective for parties, thereby widening access to justice in the European patent system.

Article 15a(2), 2nd sentence

The user community strongly rejected the proposed powers of Board of Appeal Chairs to compel individual parties, representatives or accompanying persons to remotely attend oral proceedings scheduled to be held in person.

Article 15a(3)

There were relatively few responses specifically on this paragraph. Some users said that for oral proceedings scheduled to take place on the premises, the board members should normally be expected to convene in person. Some also observed more generally that the use of videoconferencing should not be permitted to detract from the solemn character of oral proceedings before the Boards of Appeal.