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Patentamt

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Patent Office

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Opposition oral proceedings by videoconference - pilot project

One year progress report | July 2021

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1. Introduction

Since the outbreak of the coronavirus pandemic in 2020, the EPO has been facilitating videoconference (VICO) for oral proceedings in opposition to protect the health of users and staff alike, while ensuring business continuity. Initial uptake of VICO was low, given expectations amongst some that the measures against travel and meetings would be short-lived and due to certain reservations against VICO oral proceedings. However, it became clear that pandemic countermeasures would persist for longer and that a low uptake of VICO oral proceedings in opposition would have severe negative consequences for access to justice and procedural duration. So since January 2021 party consent ceased to be a limiting condition for conducting opposition oral proceedings by VICO. Consequently the positive potential for VICO has been realised effectively in the last six months. More than 2 100 oral proceedings have been held by VICO in opposition alone, with a significant beneficial impact on access to justice for parties and the public, the timeliness of oppositions and hence legal certainty for all stakeholders. User feedback shows that these positive developments have been facilitated by a combination of factors: improvements in the technical infrastructure and conduct of oral proceedings by VICO, extensive training and information provided to users by the EPO, as well as the revised pilot conditions since January 2021. Most importantly the support of users, their increasing familiarity with VICO's advantages and hence their acceptance of VICO for oral proceedings have contributed to the project's success.

In May 2021, when the coronavirus pandemic continued to impose restrictions on travel and health risks for all in-person meetings, the EPO decided to further extend the pilot project for oral proceedings by VICO before opposition divisions to 31 January 2022 (from previously 15 September 2021). The future approach to the conduct of oral proceedings in opposition will be based on the experience gained during the pilot phase, both by users and by the EPO, with what is expected to reach around 4 000 oral proceedings in opposition held by VICO by the end of 2021.

The EPO intends to approach the transition from the pilot in three stages. In view of the one-year anniversary of the pilot project, this second progress report explains the developments and achievements since November 2020 until June 2021 and outlines the next steps towards the final assessment of the pilot. To ensure full transparency, it provides current facts and figures about opposition oral proceedings by VICO. Thereby, it is intended to form a sound basis for a subsequent user consultation, which will be conducted in September. Information on the consultation together with a feedback questionnaire will be made available on the EPO website in due time. The EPO will carefully analyse the feedback received, along with the results of the pilot, to decide about the further approach before the end of this year.

The EPO trusts readers will find this report informative and encourages everyone to share their experiences with and their hopes regarding this important topic in the forthcoming user consultation.

2. Achievements in 2021

In view of the coronavirus pandemic, from the end of March 2020 all in-person oral proceedings were cancelled and only 333 could be concluded by VICO within the framework of the initial pilot project. This led to a steady increase of the opposition stock, which reached 6 523 files at the end of December, compared to just 4 861 twelve months earlier.

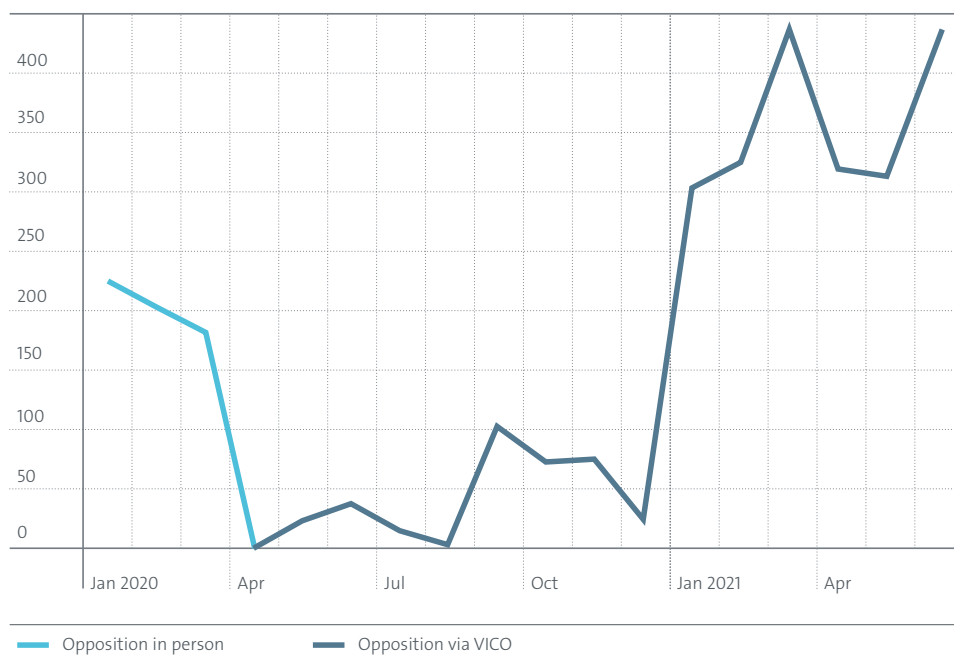
Starting in January 2021, the conditions under which the pilot project allows oral proceedings before opposition divisions to be conducted by VICO were changed and oral proceedings by VICO could be conducted without agreement of the parties.

Since then, an average of more than 80 opposition oral proceedings have been held each week, with local fluctuations during holiday weeks.

By end of June, 2 125 opposition VICOs have been carried out in 2021, corresponding to about 350 per month, in line with the Office's Medium Term Business Plan (MTBP).

Figure 1

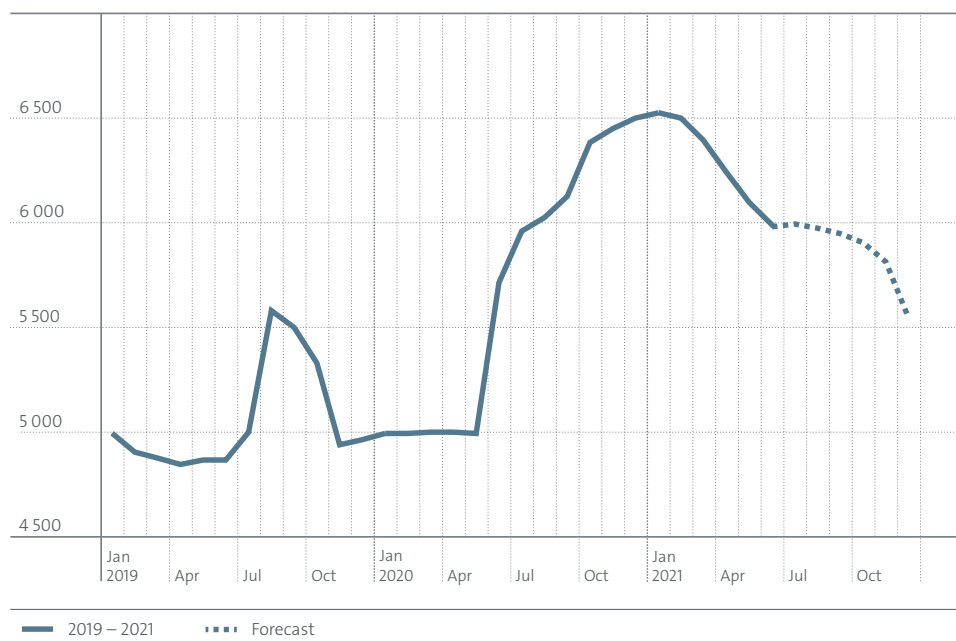
Oral proceedings in opposition (monthly)



As a consequence, since January the opposition stock has been constantly reduced and by end of June it amounted to 5 986. The plan is to get rid of the backlog and reach usual stock levels by end of 2022, or possibly earlier. The positive results of these first six months gives confidence that this objective can be achieved.

Figure 2

Oral proceedings in opposition pending (monthly stock)



3. Access for all

With parties coming from across Europe and beyond, the EPO has always been willing to support oral proceedings with simultaneous interpretation. The difficulty in providing reliable interpretation services in the early days of the pilot was seen to be one of the factors causing reluctance by parties to use VICO. The move to Zoom, with its multiple audio channels, has made a dramatic improvement, such that around a third of all opposition oral proceedings in 2021 have enjoyed simultaneous interpretation (over 670 to end of June). This service has been provided remotely, i.e. with individual interpreters located either at newly installed remote interpreting offices on EPO premises or elsewhere. Demand has been high, with up to ten different opposition proceedings per day successfully supported.

Intensive resource management and coordination have enabled the EPO to support even the most complex cases, for example:

- oral proceeding conducted over 5 consecutive days;
- up to 11 opponents in the same oral proceeding;
- up to 6 witnesses heard in a single oral proceeding;
- oral proceeding with up to 44 participants;
- oral proceeding with over 60 members of the public.

4. Attendance by the public

Between January and June 2021, the Office received 1 370 requests from members of the public to attend opposition oral proceedings. For each single request and VICO link provided, there may often have been multiple persons watching the oral proceeding live. For example, a two-day oral proceeding in March was watched by about 80 members of the public. By comparison, prior to the pandemic, “public” attendance on-site for opposition oral proceedings was occasional, and mostly limited to local attorneys (or examiners) in training and estimated at around 100 such observers per year. This means that the introduction of VICO for opposition oral proceedings has significantly increased the number of persons following them as members of the public, as well as their geographical spread, thereby providing greater transparency for our patent system.

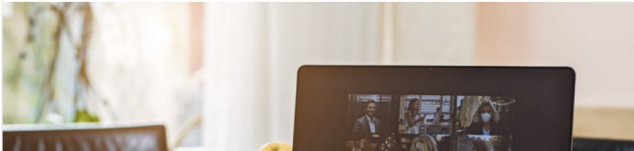
Alexander Korenberg · 3rd+
Partner / European Patent Attorney at Kilburn & Strode LLP
4mo · 🌐

+ Follow ...

Just had one of these today (oppo ViCo, not quite as massive though) and it went super smoothly. The future indeed!

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A marathon 9-party opposition hearing over 4 days proves our VICO facilities are up to the challenge. The technology hosted 19 participants, 5 public observers, opposition division & interpreters all connecting remotely. Thanks to all for their trust in our platform!



Takeshi Sakaki · 3rd+
Technical Advisor
3mo (edited) ...

Good Job !

Walters Ngwa · 3rd+
Manager in PE Operations @ European Patent Office
3mo (edited) ...


Wow. Who would have dreamt of this 3 years ago? This is clear proof to me that we are sitting on untapped innovations that would improve our lives in ways we cannot yet imagine if only we have the courage to embrace change. These are some of the good sides of COVID.

Sebastian Schiller · 3rd+
German and European Patent Attorney | Partner @ HOEFER & PARTNER
3mo (edited) ...


Well done. Our experiences with VICO proceedings have been very positive.

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In the interests of maintaining access to justice and legal certainty, the President of the EPO decides that oral proceedings by VICO will continue pending Referral G1/21. Read more: <https://lnkd.in/e84i298>



EPO continues oral proceedings by videoconference in examination and opposition during pendency of referral G 1/21
epo.org · 2 min read

 Robert Schneckenhühl
good decision - and it is the future anyway 😊
Like Reply | 2 Likes

Screenshot 2021-06-23, 21:19 hrs, edited by Visual Communications, EPO

5. Technology and data protection

The Office introduced the Zoom technical platform in September 2020 with a special focus on ensuring the stability and security for oral proceedings. The increased number of opposition oral proceedings held by VICO since January 2021 confirmed the initial impression about the use of Zoom, namely that it provides a stable and reliable environment for VICO. No particular issues or outages have been experienced centrally, and any occasional connection difficulties for attendees have been due to local network or hardware issues at the participants' end.

In terms of security, the Office has kept the installation up to date with the latest versions, in order to ensure that any vulnerability is remedied. The support agreement with Zoom Inc has also been leveraged to research any doubtful situation that may have been flagged by participants, which to date has not identified any underlying technical concern. No data leaks have been detected during the period.

Opposition divisions are now fully equipped to carry out oral proceedings in a distributed way with high-quality headsets with microphones, individual webcams, and an ergonomic workplace either in Office premises or at home. High-quality audio is crucial in proceedings where simultaneous interpretation is used, and in order to promote it among parties, the Office has also provided information and support.

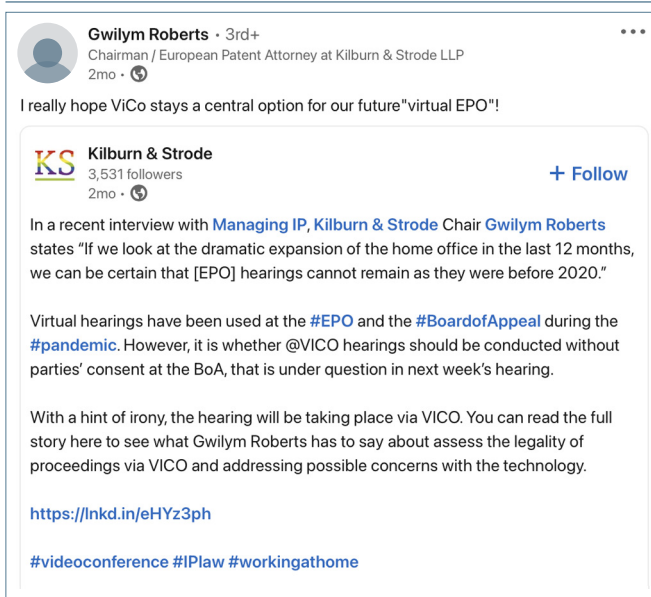
The technical support line for oral proceedings has been enhanced, with a dedicated contact number which ensures the fastest possible reaction times. This ensures that in case of any technical issues affecting a member of the Opposition Division or a party, the Office is able to assist remotely and minimise the impact on the oral proceeding.

A new version of the oral proceedings calendar was launched in January 2021, allowing easier access for the public to identify and request attendance to a specific oral proceeding. This new calendar was developed in response to the increasing number of oral proceedings in 2021 and 2022, in a simple, easy interface.

Because some hearings have the potential to attract interest from hundreds or thousands of public observers we have added streaming capabilities to the technical platform.

Feedback concerning the technical aspects has been positive overall and Zoom remains the preferred platform because it allows for multi-channel audio to support simultaneous interpretation, the easy creation of breakout rooms for the opposition division to deliberate in, and is at the same time free to use and supports attendance by the public. With the extension of the same platform to oral proceedings in examination the Office will consolidate the experience gained during this pilot.

Of course, the Office will continue to monitor the improvements introduced by the vendor, so as to ensure that we can leverage any new features that may contribute to a better user experience during oral proceedings, including support for higher video resolution, a wish which has been expressed by some users.



Gwilym Roberts · 3rd+
Chairman / European Patent Attorney at Kilburn & Strode LLP
2mo · 🌐

I really hope ViCo stays a central option for our future "virtual EPO"!

Kilburn & Strode
3,531 followers
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In a recent interview with [Managing IP](#), Kilburn & Strode Chair [Gwilym Roberts](#) states "If we look at the dramatic expansion of the home office in the last 12 months, we can be certain that [EPO] hearings cannot remain as they were before 2020."

Virtual hearings have been used at the [#EPO](#) and the [#BoardofAppeal](#) during the [#pandemic](#). However, it is whether [@VICO](#) hearings should be conducted without parties' consent at the BoA, that is under question in next week's hearing.

With a hint of irony, the hearing will be taking place via VICO. You can read the full story here to see what Gwilym Roberts has to say about assess the legality of proceedings via VICO and addressing possible concerns with the technology.

<https://lnkd.in/eHYz3ph>

[#videoconference](#) [#IPLaw](#) [#workingathome](#)

6. Taking of evidence by VICO

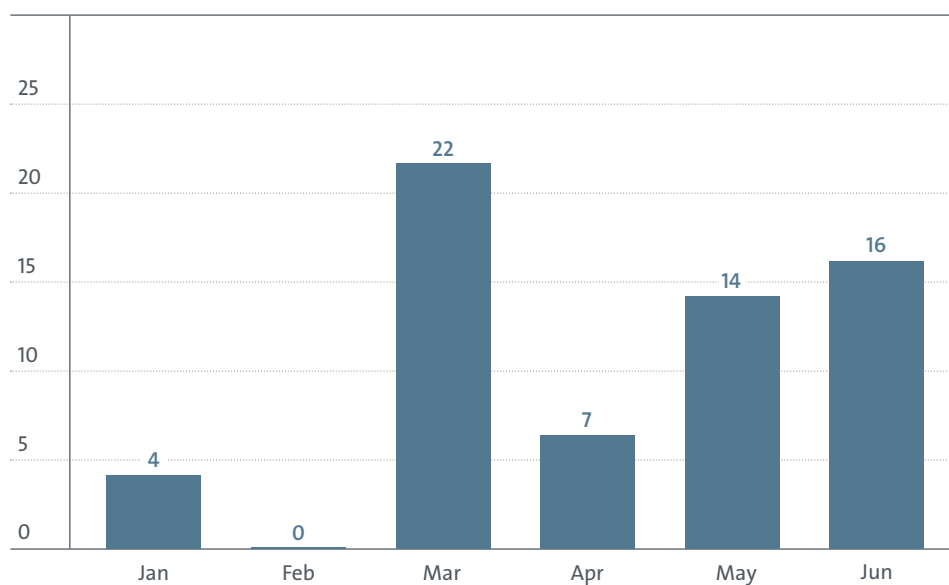
In the early days of the pilot project, oral proceedings before opposition divisions were not allowed by VICO if the proceedings required the taking of evidence. However, as already anticipated in the progress report of November 2020, this hurdle has now been removed by an amendment to the Implementing Regulations. Approved by the Administrative Council in December 2020, revised Rules 117 and 118 EPC entered into force on 1 January 2021. The amendments allow evidence to be taken by VICO in proceedings before the EPO. Consequently, proceedings involving taking of evidence are no longer excluded from the pilot. Evidence can be taken by VICO regardless of whether the oral proceedings are held by VICO or on the EPO premises. Yet if oral proceedings are held by VICO, evidence is taken by VICO as well.

Under the new Rules, it is possible for the examining and opposition divisions to order a taking of evidence by VICO either by hearing a party, witness or expert, or by inspection. Parties, witnesses and experts summoned to give oral evidence may connect to the VICO using their own equipment from a location of their choice. Inspection may be ordered and carried out with respect to any object, provided that the object can be made available on the premises of the EPO and its relevant features can be properly demonstrated on camera.

During the first five months of 2021, the EPO has effectively conducted 63 witness or party hearings in 30 oral proceedings by VICO. Furthermore the first inspections have also been successfully carried out.

Figure 3

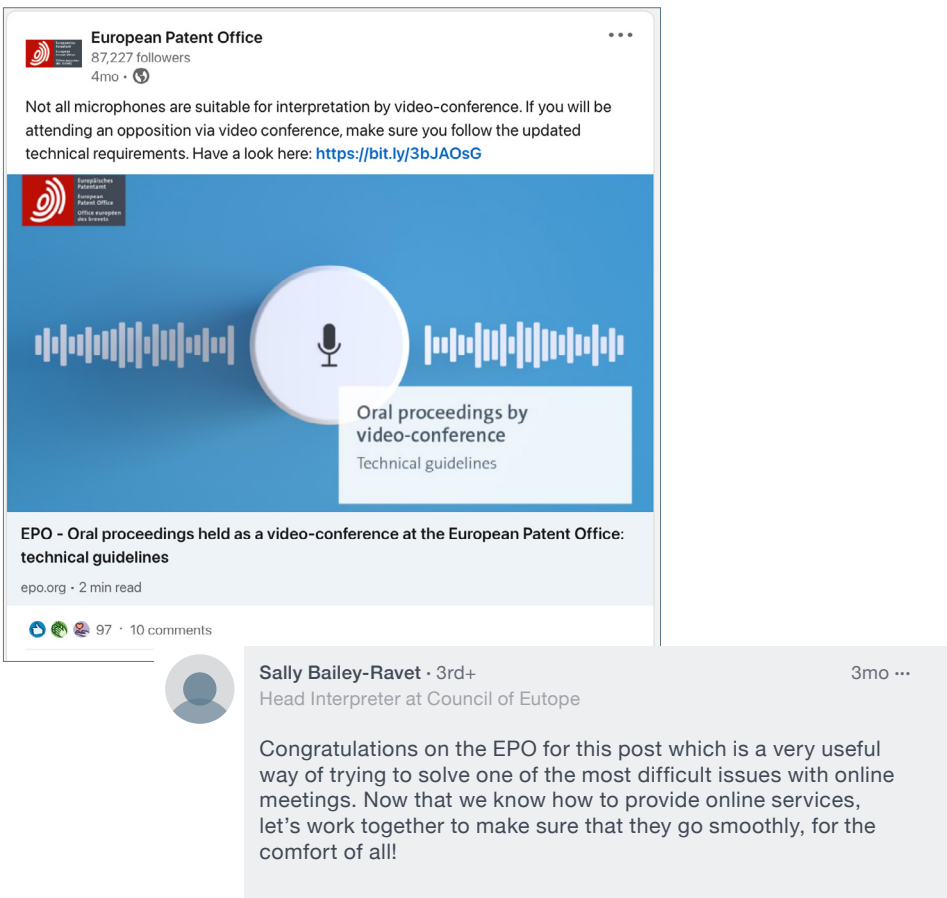
Witnesses/parties heard by VICO in 2021



● Witnesses / parties by VICO 2021

7. Internal training

In order to prepare opposition divisions to conduct oral proceedings via Zoom at the level of quality expected by the users, training materials and instructor-led workshops were offered from the start of the pilot. The training offer consists of three independent modules addressing general aspects of the Zoom oral proceedings relevant to all division members, a second module specific for chairs and a third module addressing the particular situation of taking of evidence by hearing of witnesses and inspection. Over the last 10 months, nearly 2 000 examiners and 20 legal members have followed at least one of the more than 150 training sessions organised.



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Not all microphones are suitable for interpretation by video-conference. If you will be attending an opposition via video conference, make sure you follow the updated technical requirements. Have a look here: <https://bit.ly/3bJA0sG>

Oral proceedings by video-conference
Technical guidelines

EPO - Oral proceedings held as a video-conference at the European Patent Office: technical guidelines
epo.org · 2 min read
🌐 🌐 🌐 97 · 10 comments

Sally Bailey-Ravet · 3rd+
Head Interpreter at Council of Europe
3mo ...

Congratulations on the EPO for this post which is a very useful way of trying to solve one of the most difficult issues with online meetings. Now that we know how to provide online services, let's work together to make sure that they go smoothly, for the comfort of all!

Screenshot 2021-06-27, 22.23 hrs, edited by Visual Communications, EPO

8. External training and informing users


The pandemic has changed many aspects of how the Office and the profession conduct their work. The EPO has been quick to respond with many new training materials to help the patent community adjust and adapt. In particular, a virtual course room on oral proceedings by videoconference before opposition divisions was first published on the Academy's e-learning centre in May 2020 and has received over 3,000 pageviews to date. The course contains various videos explaining the use of the Zoom platform, legal aspects as well as the technical set-up and "netiquette" related to oral proceedings by VICO. A mock oral proceedings to help parties understand what to expect has had 800 pageviews to date.

The Academy organises quarterly lectures on opposition proceedings via VICO. The last three lectures were fully booked, each attracting around 300 participants, many of whom gave very positive feedback. The next lecture is planned for October. In addition, the recent edition of Opposition Matters (22-23 April 2021) addressed, in various sessions, the topic of oral proceedings by VICO, including more complex aspects, such as the hearing of witnesses by VICO or interpretation. Furthermore, the upcoming edition of Opposition Matters in November 2021 will also include sessions on inspection of evidence by VICO, soft skills in oral proceedings by VICO and a panel discussion on the challenges of the new normal.

Finally, conducting oral proceedings online not only means adapting to a new technological set-up but also learning how to present a case in the most effective way in this new environment. This important aspect has been addressed in a lecture on advocating online before the EPO, which is now available on the Academy's e-learning centre.

In addition to expanding our training offer, the EPO has kept the patent community informed through frequent updates to the advice on our website, in the section summarising all measures taken in response to the COVID-19 pandemic, as well as in our dedicated FAQs and in our Technical Guidelines. In particular we have strengthened our guidance on the most suitable audio set-up as we transitioned to Zoom and hosted many more hearings that involved interpreters.

Since January 2021 we have published five news items in relation to oral proceedings by VICO, many social media postings shared by the community of stakeholders, and even a podcast in February featuring patent attorneys from Munich, Paris and London discussing the impact of opposition by VICO.



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New on **#TalkInnovation**: In a lively debate three experienced patent attorneys critically assess "Opposition by VICO" at the EPO. What do they think about the EPO's VICO's services? What has gone well & what do they suggest for improvements? Listen here: <https://lnkd.in/eyJvQhQ>

Oral proceedings by videoconference
The attorneys' view, with Gwilym Roberts, Cyra Nargolwalla and Joachim Renken

TALK INNOVATION
The EPO podcast

9. User experience and feedback

Since February 2021 the Office invites participants to the oral proceedings to fill out a short survey to provide feedback on their experience. So far we received some 150 responses and the level of satisfaction is consistently high (averaging at 4.6 on a range of 1 to 5). In the free-text comment filed on the feedback survey the majority of respondents express their praise for the Office and/or the corresponding opposition division. Furthermore, the number of objections made by parties to the EPO in relation to oral proceedings by VICO has dropped from 73 in December 2020 to just 11 in April 2021.

“The system is excellent and I wholly support its continued use. Thank you for making it available to us.”

– Opponent, May 2021

“Könnte ich aussuchen, würde ich Online Meeting jederzeit vorziehen, weil ich sehr viel Reisezeit und Kosten spare.”

– Proprietor, February 2021

“I know that I requested to not conduct the hearing of evidence by video conference for this opposition, but now that the hearing is over I must confess that I found the whole proceedings very efficient and this experience has certainly changed my opinion about oral proceedings by VICO.”

– Representative of the opponent, June 2021

“Ich bin sehr zufrieden mit der technischen Umsetzung und möchte mich hierfür beim EPA bedanken!”

– Opponent, April 2021

“Diese Form der Verhandlung sollte auch in Post-Corona-Zeiten allen beteiligten Angeboten werden und bei einstimmiger Zustimmung durchgeführt werden.”

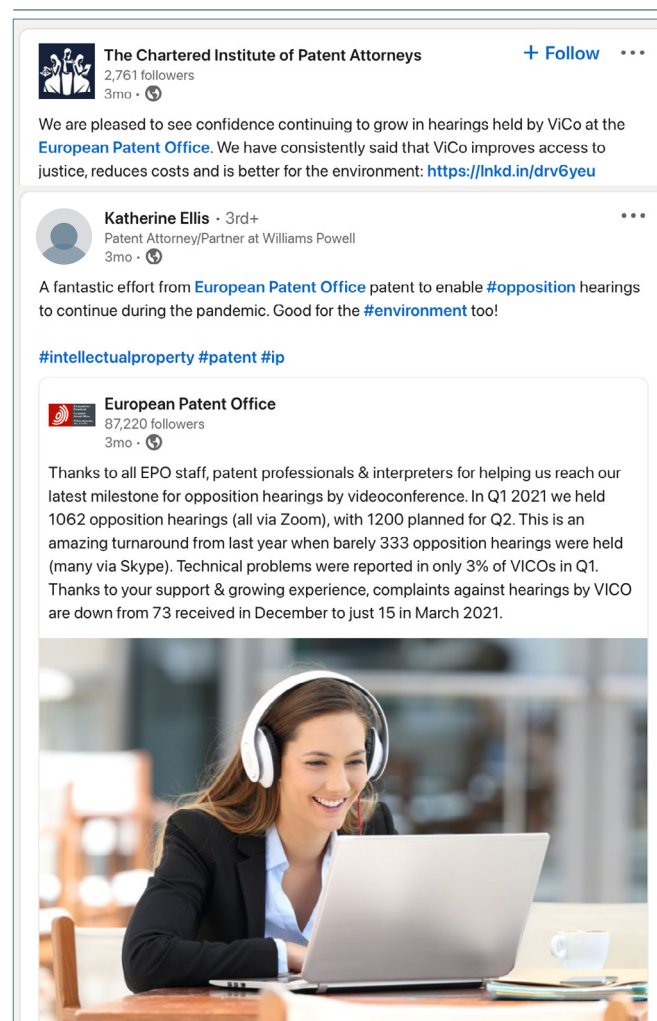
– Opponent, March 2021

“I was at first concerned about having oral proceedings via video. Having had now a few (oral proceedings) via video, I say it is a good alternative to a personal hearing.”

– Representative of the proprietor, March 2021

10. Extension of the pilot project and next steps

As the pandemic continues, the EPO is closely monitoring the situation and constantly evaluating the measures required to protect the health of users and staff alike, while also ensuring business continuity and allowing the EPO to play its part in mitigating the spread of the virus. Against this background the EPO decided in May 2021 to further extend the pilot project for conducting opposition hearings by VICO until 31 January 2022 (OJ EPO 2021, A41). The conditions of the pilot remain unchanged compared to the situation implemented since January 2021. Particularly, agreement of the parties to the conduct of oral proceeding by VICO continues not to be required. Where there are serious reasons preventing the use of VICO in opposition, oral proceedings will be postponed until after 31 January 2022.



Screenshot 2021-06-27, 22:23 hrs, edited by Visual Communications, EPO

The further extension of the pilot project will broaden the basis for its final assessment which is foreseen to be conducted in the autumn of 2021. By this time, the EPO expects to have conducted around 4 000 oral proceedings in opposition by VICO and many users will have been involved in one or more such proceedings. The apparent success of Zoom for oral proceedings in opposition is leading the Office to implement the same platform for the conduct of oral proceedings in examination as well, with effect from the autumn of 2021.

User experiences and suggestions continue to play an important role in the context of the pilot evaluation. To gather user feedback which is as comprehensive as possible, the EPO will run a user consultation throughout the month of September 2021. Information about the consultation together with a feedback questionnaire will be made available on the EPO website in due time. All users are warmly invited to use this opportunity to express their experiences with, and hopes for, oral proceedings in opposition by VICO. The EPO will carefully analyse the feedback received, along with the results of the pilot, in order to decide about the further approach well in advance of the expiry of the extended pilot.

The extension of the pilot project also gives the EPO the chance to take into account decision of the Enlarged Board of Appeal in G1/21. The referral concerns the question whether 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](#) if not all of the parties have given their consent to the conduct in the form of a videoconference. Following a careful weighing up of the impact for legal certainty and access to justice, the President of the EPO decided in March 2021 that during pendency of the referral oral proceedings before examining and opposition divisions will continue to be held by VICO as under current practice, i.e. without requiring explicit agreement of the parties ([OJ EPO 2021, A30](#)). At the time this report was published, the referral was still pending before the Enlarged Board. Public oral proceedings before the Enlarged Board were held on 2 July 2021 and their decision is awaited. Once issued, the EPO will implement its findings in the further conduct of the pilot and its final assessment.