

Oral proceedings in opposition by videoconference

Pilot project final report

November 2022



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1. Introduction

The EPO embarked on an ambitious series of reforms to its patent granting process in 2019, as the President's far-reaching [Strategic Plan 2023](#) got underway. Amongst other initiatives, the plan foresaw major changes to the EPO's IT systems and working practices, but no-one could foresee the urgency with which some of the projects would be implemented in response to the coronavirus pandemic which struck early the following year. The pandemic has been the single biggest catalyst for change in business that many of us will ever know, whether in the EPO, the patent profession or applicant community.

The immediate priority in March 2020 – to protect the health and wellbeing of staff and visitors – soon raised questions for business continuity if the EPO was to remain closed for in-person oral proceedings for more than just a few weeks. Conducting oral proceedings in examination by videoconference (VICO) had already been possible for years, although used only on a limited scale.

Its widespread deployment for examination since April 2020 represented a major shift in culture and competence. In the early months of the pandemic uncertainty led users to adopt VICO for opposition hearings at first reluctantly, which led to a rapidly growing backlog. This turned around from the start of 2021, with greater familiarity and acceptance, sometimes even enthusiasm. By early 2022 the number of pending oppositions was already back at pre-pandemic levels and, as this year has progressed, the timeliness for the resolution of oppositions has gradually improved even further.

This short report provides a review of the pilot project for the conduct of oral proceedings in opposition by VICO in relation to 2022. It can be read together with the earlier reports from [November 2020](#), [July 2021](#) and [November 2021](#) to chart the many milestones of this transformation in the EPO's patent granting process.

2. Achievements of the pilot project

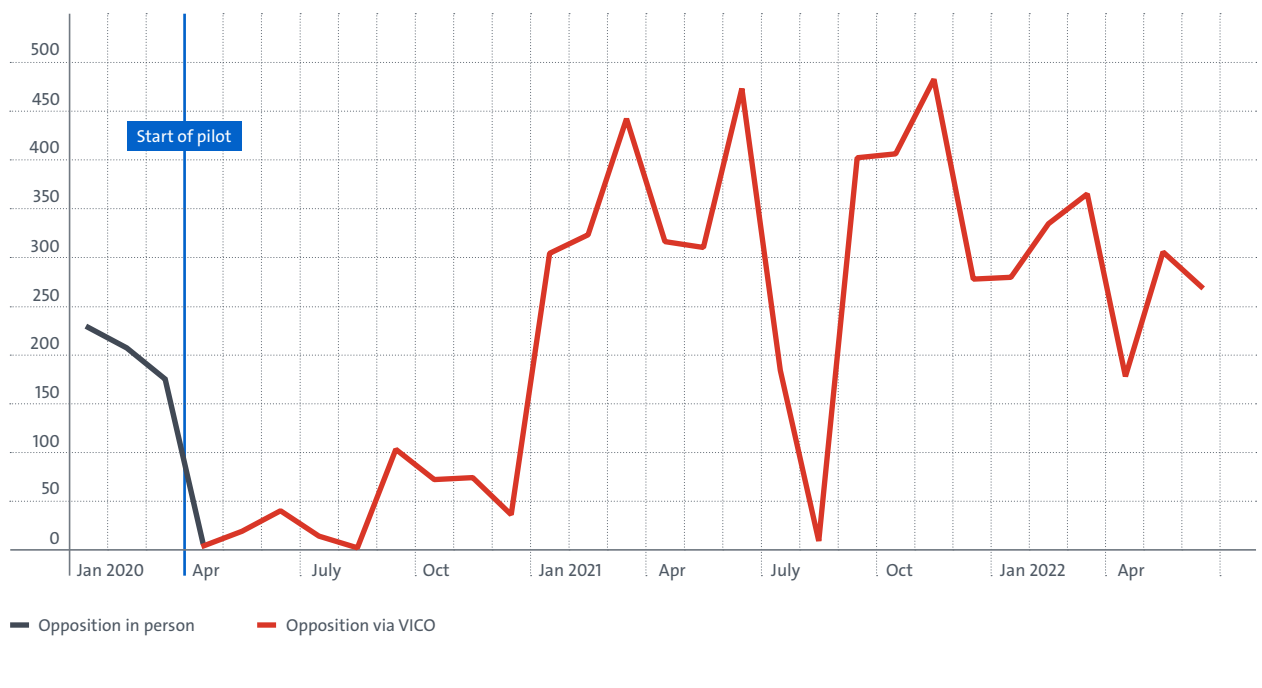
Since the consent of parties ceased to be a limiting factor for oral proceedings in opposition by VICO at the start of 2021 there were 3 920 such oral proceedings last year and a similar number will be conducted in 2022. This has resulted in a reduction in the number of pending cases from the peak of 6 523 at the end of 2020 to under 5 000 in September 2022. This is comparable to levels before the pandemic, and the plan is to maintain the number of pending oppositions below this threshold so as to

continue to further improve opposition timeliness such that, by the end of 2023, some 70% of files are resolved within 18 months.

The busiest single day seen so far was 1 February 2022 when 34 separate oral proceedings in opposition were conducted by VICO, requiring an interpretation effort of 88 person days.

Figure 1

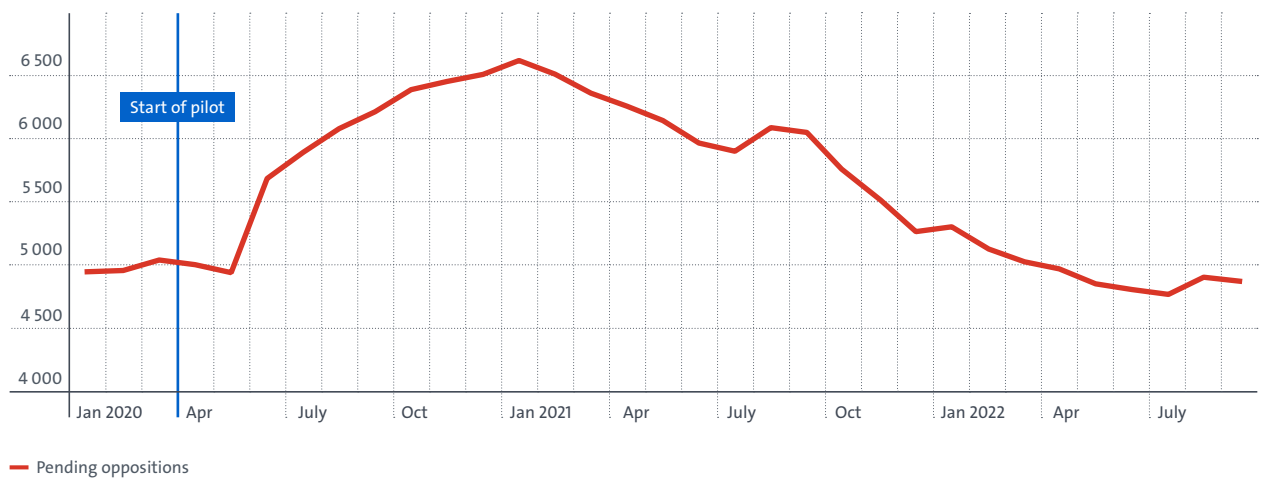
Oral proceedings in opposition (per month)



The monthly average for oral proceedings held by VICO was 327 in 2021 and 288 in 2022 so far (January to June), although this figure should increase slightly in the last quarter of the year. This volume corresponds to a steady state sufficient to keep the volume of opposition cases under control.

Figure 2

Pending oral proceedings in opposition (monthly stock)



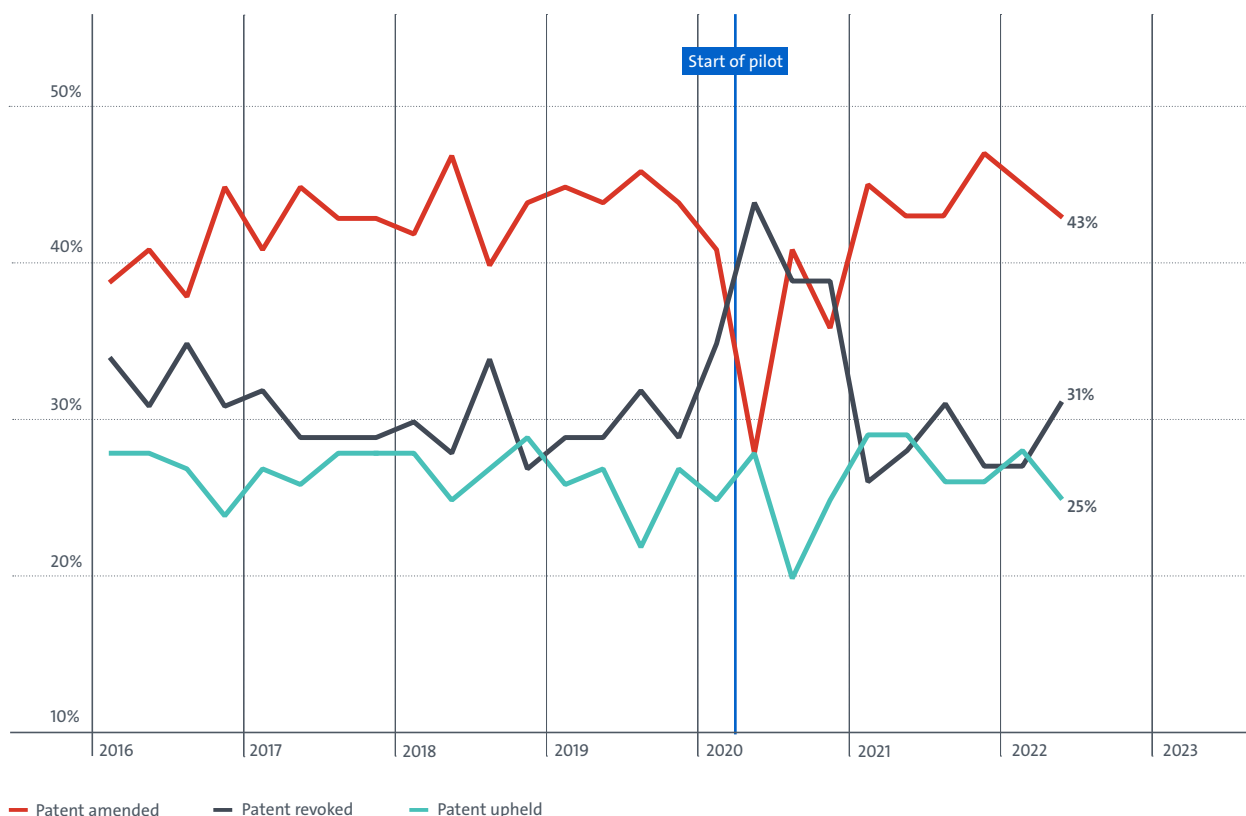
Outcomes of proceedings

A clear concern for all parties was that a move away from in-person oral proceedings would have an impact on the outcome of oral proceedings in opposition. The historical trend shows that there has always been some variety in the proportion of patents revoked, amended or upheld (roughly one-third each), and this can be seen

from report [CA/F 5](#) published by the Administrative Council every autumn. Variations seen from one quarter to the next appear to depend on the strategies pursued by the parties in such proceedings rather than resulting from the format of proceedings or the quality of the examination. How the strategies of parties impacted outcomes in 2020 was discussed in the [report of November 2021](#).

Figure 3

Outcomes of opposition proceedings (January 2016 to June 2022)



Access for all – increased participation and transparency

Given the costs in time and money to send highly qualified professionals across Europe for oral proceedings in person, parties were often kept attendance small. However, thanks to VICO there has been an increased participation by parties. Now technical experts, inventors and colleagues have been able to join in support – perhaps only for an hour as necessary – at marginal cost.

Attendance by the public to oral proceedings in opposition by VICO has continued at a very high level (with around 1 200 requests in the first half of 2022). These figures continue to far exceed (by at least twentyfold) attendance in person prior to the pandemic when we averaged barely 100 public observers per year.

This shows how VICO is providing far greater transparency and visibility of EPO procedures at unprecedented levels, which would have been unthinkable before. Many trainee attorneys in particular have enjoyed direct access to real oral proceedings when preparing for their qualifying examinations or their own cases. EPO registration tools have made it easier for the public to request to attend by VICO, and further improvements to the online calendar will soon make searching for specific cases more efficient.

Feedback from the recent user satisfaction survey (see section 8, below) show that the greater transparency afforded by VICO, wherein the public, including applicants, trainee attorneys and other interested parties can attend as observers, is welcomed by the vast majority of users with only 11% disagreeing that this is an improvement.

Sustainability – reducing travel and carbon emissions

VICO has enabled parties to oral proceedings in opposition to avoid travelling and thereby reduce their contribution to carbon emissions from cars, trains or aircraft. In the table below we estimate the actual journeys made by parties to in-person proceedings held in 2019, held in relation to 3 944 hearings. This is our benchmark. For 2020, oral proceedings in opposition were still being heard in person in January and February, and then only 333 were held by VICO later in the year, so this is not representative because of the hiatus before the pilot project got fully underway. However, 2021 and 2022 (first half year) saw a high number of oral proceedings (by VICO) from which we can estimate the number of journeys saved.

- Distance is broadly divided into two categories, assuming that a party would use road or rail if the journey time would be under four hours (“short”) but would fly if it would take longer than four hours (“medium”).

For the sake of comparison and context, the EPO estimates that the business travel of its staff between EPO sites or otherwise within Europe in 2019 (for training or meetings, often between Munich and The Hague) comprised approximately 5 000 flights emitting 700 tonnes of CO₂. From these figures for EPO staff, and knowing that the travel profile for parties flying to oral proceedings in e.g. Munich or The Hague would be similar, we can make a conservative estimate that using VICO for oral proceedings in opposition saved parties over 1 000 tonnes of CO₂ in 2021 alone. This would be equivalent to the annual emissions

	2019	2021 (Jan-Dec)	2022 (Jan-Jun)
Estimated Travel	Party journeys that took place	Party journeys saved	
Medium distance > 4 hours – assume flight	3 600	6 900	4 300
Short distance < 4 hours – assume road or rail	900	1 500	900

This travel estimate is based upon the following assumptions:

- This estimate only relates to oral proceedings in opposition (either in-person in 2019 – the benchmark, or by VICO in 2021 and 2022).
- The number of parties per oral proceeding was derived from the file information.
- Only one traveller per party was assumed (this is therefore a very conservative estimate).
- Distances were measured between the location of the opposition division (e.g. Munich or The Hague) and the business location of the party, where available.

from the electricity consumption of 329 households in the Netherlands (according to the conversion factors defined in the [EPO Environmental Report](#)).

It is worth noting that the typical number of oral proceedings in examination is roughly equal to those in opposition, although fewer parties are involved. Therefore the use of VICO for oral proceedings in examination also contributes to significant reductions in carbon emissions by parties spared from travelling.

"It is great for the climate. That should be the overriding argument for everyone! That also goes for Munich/Haag based attorneys who should not force their colleagues to fly to their local area at the cost of the planet, just because they prefer to stroll down to the EPO for physical proceedings".

3. Technology and data protection

Since the introduction of Zoom in September 2020, as the single platform for oral proceedings in both examination and opposition, it has provided numerous clear benefits. The stability of the platform allows users to rely on a more predictable experience, and its scalability has afforded greater flexibility in managing demand and making more efficient use of resources. Hosting oral proceedings of all types on a single VICO platform was the preference of users, thereby streamlining technical requirements and training efforts for all concerned.

From the beginning of the pilot, stability and scalability were the foundation for offering a reliable service to all users, irrespective of their place of business. In response to feedback and experience, further improvements have been introduced during 2022:

- Online digital whiteboards were introduced, where it is possible to share, in real time, annotations, sketches and structures, etc., which can be easily magnified (zoomed into). Screen-sharing allows parties to display e.g. PowerPoint slides in support of their arguments. This constitutes a better equivalent to the four-colour hand-written notes on a flip chart that could be achieved in physical proceedings.
- Private breakout rooms were introduced, where colleagues may deliberate in confidence. Given that it is easier to attend oral proceedings by VICO, this means that parties can confer more often, and include

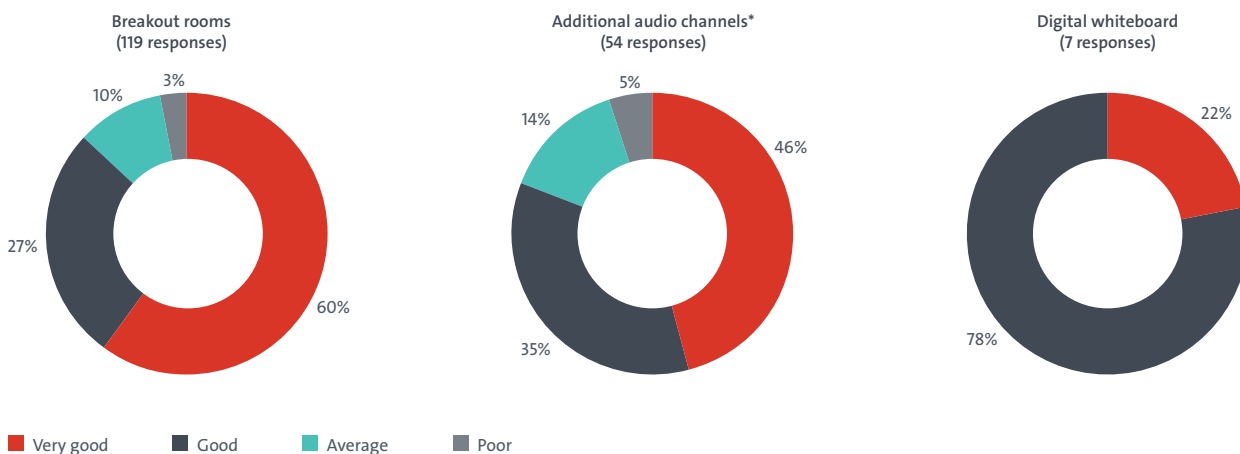
international clients or colleagues who would not have attended the proceedings in person. Contrary to physical deliberation rooms, where a person may walk in inadvertently, in Zoom attendees are pre-assigned to specific deliberation rooms, making it impossible for one party to intrude into another's private conversation.

- Additional audio channels were provided so as to extend the simultaneous interpretation service, at the request of a party, into non-EPO languages. Prior to the pilot this was not possible in physical proceedings, where the room's audio system and interpretation booths were designed only for the three EPO languages.
- The chat function, which is an extra feature in VICO, has been improved with a more intuitive interface. It allows small written exchanges which can be useful for clarifications without interrupting the flow of the oral conversation, resulting in a clearer exchange between the parties and the opposition division.
- Video feeds have also been improved, with the ability to pin several specific people and, by doing this, be able to focus on the body language and facial expressions of several people at the same time, something which is not possible in face-to-face oral proceedings.

In the recent user satisfaction survey (see section 8) some questions related to oral proceedings in opposition by VICO. Users have responded very positively to these new technical features enabled by Zoom since April 2022.

Figure 4a

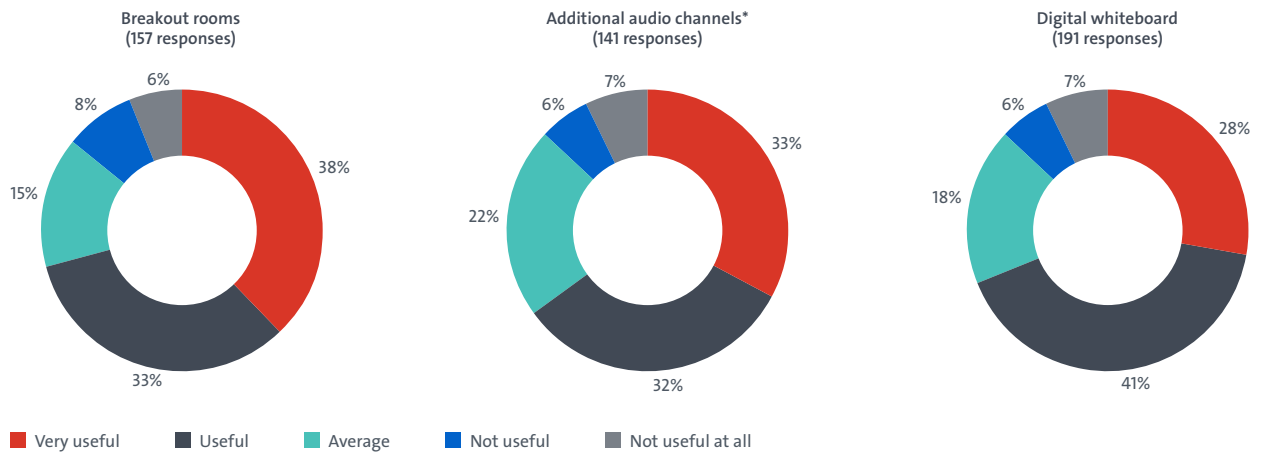
VICO features introduced in April 2022 - How do you rate?



*Additional audio channels to support parties' interpretation into admissible non-EPO languages

Figure 4b

VICO features introduced in April 2022 - How useful do you find?



*Additional audio channels to support parties' interpretation into admissible non-EPO languages

We have been able to streamline the process to keep Zoom updated with the latest versions, so that improvements are introduced swiftly, keeping the highest standards of security and compatibility with users' environments.

User support and test calls

We have continued to provide trained support agents who are immediately reachable by the division chairperson and interpreters, and we monitor the platform constantly to identify any degradation that may occur. Test calls offered to external participants and attorneys have also been improved following the feedback received.

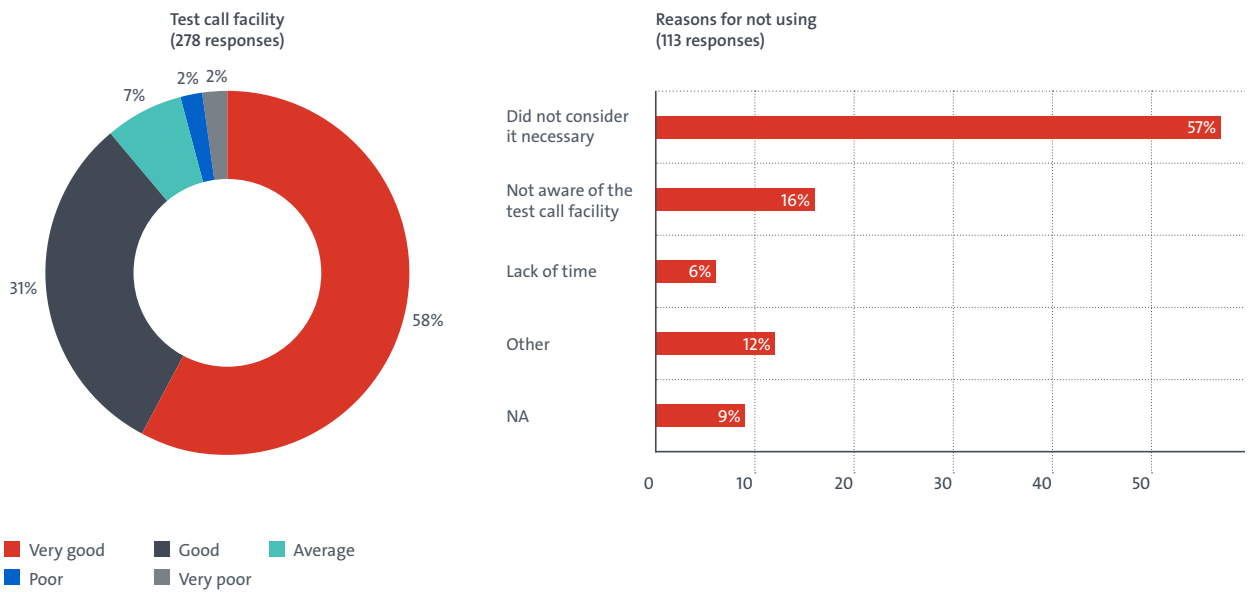
Each piece of equipment, including video cameras and audio devices, and connectivity are checked, and we now also include a short training session covering all functions of the platform which will be used during the proceedings, so that all users may benefit from the extra features that VICO offers. The test call has a flexible duration and is concluded only when the participants confirm their readiness. Nearly 1 000 oral proceedings were preceded by a test call in the first half of 2022.

"Das Verfahren per Videokonferenz bewerte ich insgesamt als sehr positive Entwicklung für die Verfahrensbeteiligten. Aus eigener Erfahrung kann ich berichten, dass selbst Zeugenbefragungen sehr überzeugend durchgeführt wurden und keine negative Abweichung im Vergleich zu Präsenzverhandlungen festgestellt werden konnte."

From the recent user satisfaction survey (see section 8) we learned that only some users were still availing themselves of the test call facility prior to oral proceedings – but for those who do their response has been overwhelmingly positive.

Figure 5

Test call facility / reasons for not using



If used the test call facility.
Question: How do you rate test call facility offered by the EPO prior to oral proceedings by VICO?

If have not used the test call facility prior to oral proceeding.
Question: Why have you not used the test call facility offered by the EPO prior to oral proceedings by VICO?

"Ich bevorzuge mündlicher Verhandlungen in Präsenz. Dieses desinteressierte, stumpfe "in die Kamera blicken" der Beisitzer habe ich in Präsenzverhandlungen vorher nicht erlebt. Die Technik der Videokonferenz ist für mich zweitrangig, so lange die Qualität der Akteure stimmt."

4. Interpretation

Providing simultaneous interpretation online has become the new normal. Since the large-scale expansion of the pilot project between 2021 and June 2022, more than 2 400 oral proceedings have been interpreted remotely. This includes successfully handling peak days with up to 20 separate opposition proceedings with interpretation.

Microphones, speakers and cameras – do's and don't's



High audio quality from all parties is a prerequisite for allowing simultaneous interpreting as interpreters need to listen and speak at the same time. In January 2021, only 30% of proceedings had good sound from all participants right from the start. Today some 85% of proceedings have high quality audio from their outset. A key factor in this success was the engagement and continuous feedback from interpreters and the efficient collaboration of all EPO units involved in the project. The EPO is working on improving the sound quality even further, e.g. by promoting a greater take-up of test calls and compliance with the [Technical Guidelines](#), for the benefit of all participants.

Remote interpreting has the added benefit of reducing the carbon footprint as a result of less travel (approximately 93% fewer flights last year) and of paperless working. Interpreting at the EPO has become much greener thanks to the pilot.

The shift to working remotely happened in parallel with a 26% increase in proceedings being interpreted last year. The EPO's interpreters have risen to the challenge of online proceedings and are now proficient in the new ways of working via web-based platforms. Furthermore, by expanding the onboarding programme for new interpreters, the EPO now has access to an increased pool of talent. All of these measures together were essential to ensure business continuity and to prepare for the future.

In view of all the aspects mentioned above, it is clear that the VICO format has enabled the EPO to surpass any service and performance ever achieved in an in-person setting. Access to competent interpreters has increased dramatically, flexibility and scalability in response to demand has increased, and access to interpreted audio channels has been guaranteed for all participants and members of the public.

5. Taking of evidence by VICO

Since 1 January 2021, revised [Rule 117](#) and [Rule 118](#) EPC allow the EPO to take evidence by means of VICO. Thanks to these rule amendments, oral proceedings can also generally be conducted by VICO when there is a need to take evidence by hearing witnesses or by inspection. Only in rare cases, when the evidence can exceptionally not be taken by means of VICO, will the taking of evidence and hence the oral proceedings take place on the EPO premises. An example of a serious reason for this is the need to take evidence by inspection of an object the relevant features of which cannot be properly transmitted by VICO. Even if the oral proceedings exceptionally take place on the EPO premises, the opposition divisions may still decide to hear witnesses by VICO. However, if oral proceedings are held by VICO, witnesses will be heard by VICO as well.

In 2021, the EPO carried out 133 witness or party hearings in 65 oral proceedings by VICO. The respective numbers for the first six months of 2022 were 62 hearings in 33 oral proceedings. Since January 2021, at least a dozen inspections have been successfully conducted by VICO. Experience proves that VICO is a suitable way to take evidence. Only a handful of inspections could not

take place because the essential features of the object concerned could not be properly demonstrated on camera. Due to the decision of the EPO not to conduct oral proceedings in person during the pilot, such cases have been postponed to a later date.

Direct feedback from participants on the taking of evidence has been very positive. While in some cases a party may have initially been concerned about, for example, an inspection being carried out by VICO, the actual conduct of the inspection and the use of high-definition camera equipment left them with no doubt that their right to be heard was respected. In particular, they were pleasantly surprised about the high-quality image close-up capability offered by the VICO inspection and the possibility of ascertaining every relevant detail of the object in question, in a fashion which is clearly equal to any live inspection. Given that witnesses summoned to give oral evidence may connect to the VICO using their own equipment from a location of their choice, VICO offers the parties a more flexible and less costly possibility to rely on witness evidence.

"Ich finde die Praxis der Durchführung mündlicher Verhandlungen per Videokonferenz im bestehenden Format sehr gut geeignet. Es spart viel Zeit, ist ökologisch sinnvoll und es geht eigentlich nichts gegenüber einer Live-Verhandlung verloren. Ganz im Gegenteil ist das Einreichen weiterer Dokumente und der Zugriff auf Dokumente während der Verhandlung eher einfacher geworden. Verbesserungsvorschläge habe ich keine."

"Please only when absolutely needed and when all parties agree. Face to face should be the norm, not VICO ... Humans need other humans, not more computer screens."

6. Internal training

Developing the skills of examiners working in opposition divisions, and in particular of chairpersons, has always been a top priority for the EPO. The advent of VICO has further changed the skill profiles required and hence the training needs. To ensure the conduct oral proceedings by VICO at the quality expected by the users, training material was developed and three instructor-led modules were offered from the very start of the pilot. This practical training addressed: (i) general aspects of oral proceedings by Zoom relevant to all legal or opposition division members; (ii) specific procedures for chairpersons; and (iii) taking of evidence and hearing of witnesses. Prior to conducting their first oral proceedings by VICO, division members were obliged to attend the relevant training session. This represented a significant logistical challenge when demand for conducting oral proceedings by VICO surged at the start of 2021. Up to June 2022, nearly 1 900 examiners and legal members dealing with opposition attended at least one of the modules. In addition to these online classroom sessions, opposition chairpersons were supported by an experienced colleague at the start of their first oral proceedings via Zoom. This training effort represents an investment of nearly 450 examiner days, almost two full-time examiners for one year. The training material was recently updated to reflect the improved functionality of Zoom and the new procedures for conducting the oral proceedings effectively, e.g. use of breakout rooms for parties,

the sharing of documents, and soft skills, as well as guidance for chairpersons on time management and regular rest breaks during proceedings. Information sessions on these improvements were organised for the nearly 600 examiners acting as first members and chairpersons in opposition. Feedback from users is further helping the EPO to develop training in which opposition division members gain insights into the needs of parties when hearings are conducted by VICO.

The EPO is a knowledge-based organisation, and its experts continually share best practices, tips and insights with colleagues. So, in addition to the formal training, a variety of informal peer-to-peer initiatives contribute to supporting opposition members in mastering Zoom, its features and the procedural aspects of oral proceedings conducted via videoconference.

These include:

- experienced experts being assigned to each oral proceeding where the chairperson was holding their first VICO
- hotline established for VICO-related problems and queries
- best practice webinars and knowledge sharing sessions for both formalities officers and examiners
- short summaries (“1-pagers”) on relevant topics as well as extended articles in dedicated internal newsletters

"Per Videokonferenz sind Diskussionen wesentlich weniger tiefgehend und intensiv als in Präsenz vor der Einspruchsabteilung. Die Einspruchsabteilung ist bei Videokonferenz wesentlich kürzer angebunden als bei Präsenz und versucht, die mündliche Verhandlung möglichst schnell zu beenden. Videokonferenzen sind klar schlechter als Präsenz."

"Très utile pour réduire les coûts pour les PME et permettre à des parties situées à l'étranger de participer facilement (comme public), sans déplacement."

7. External training and informing users

The pandemic has changed many aspects of how the EPO and the profession conduct their work. To enable this transition the EPO has provided many new training materials to help the patent community. In particular, a virtual course 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 4 500 pageviews to date. The course contains various videos explaining the use of the Zoom platform and legal aspects as well as the technical set-up and "netiquette" related to oral proceedings by VICO. [Mock oral proceedings](#) to help parties understand what to expect have had 800 pageviews to date.

During 2022, the Academy has continued to organise lectures on the latest updates to the relevant procedures. The online lecture "Oral proceedings via videoconference" was given on 16 February 2022 and attended by around 200 people. It was updated and repeated on 21 September 2022 for 120 participants. With the support of the European Patent Institute (epi), the course "Oral proceedings by VICO" (May 2022) gave users the chance to interact

directly with experienced division members and participate in mock oral proceedings. The epi supported a second course focused on developing the soft skills required when arguing before a division ("Advocating online at the EPO", April 2022). This practical course enabled participants to receive feedback from an actress, an experienced patent attorney and an EPO senior expert. Content from these trainings can be found in [the online courses](#) of the European Patent Academy.

In addition to expanding its training offer, the EPO has kept the patent community informed through frequent updates to the advice on its website, in [dedicated FAQs](#) and in the [Technical Guidelines](#). In particular, guidance has been strengthened on the most suitable audio set-up following the transition to Zoom and the fact that many more hearings involve interpreters. In the near future a range of improvements will be made to the calendar of oral proceedings (in both opposition and appeal) to make it easier to search for particular cases or criteria (e.g. names of parties or representatives) and to filter results.

"Oral proceedings by VICO are important - they allow trainees and young attorneys to watch which improves training; they provide equal opportunities for all attorneys/applicants to attend (i.e. no restrictions because of difficulties in travelling); and for large party hearings, it allows fairness where all parties have their time on the screen, rather than being positioned in a room one behind the other, which can make presenting difficult."

"I tend to prefer VICO in application phase but I would rather have face-to-face oral proceedings in opposition and appeal cases".

8. User satisfaction survey (September 2022) and other user feedback

The biennial user satisfaction survey (USS) is commissioned by the EPO with a large, random sample of our applicants and the patent professionals representing them. This in-depth survey is conducted by telephone and webform on behalf of the EPO by *Berent Deutschland GmbH* according to an established methodology to facilitate comparisons with previous surveys. For the latest USS (1 September to 5 October 2022) with 504 interviewees, some 396 responded to the questions specific to oral proceedings in opposition by VICO. The interviewees were an equal mix of proprietors, opponents and their respective attorneys from around the world. The findings of this part of the survey are summarised in this chapter or reported in the earlier chapters according to topic.

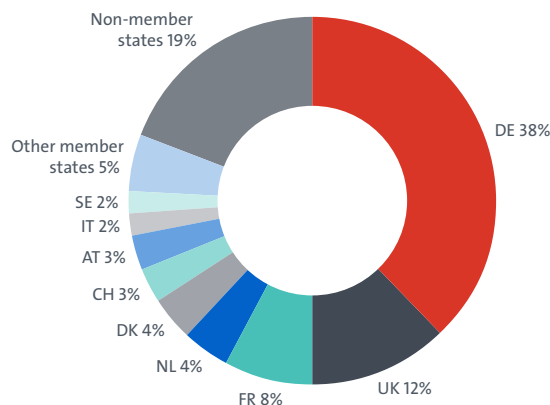
In addition to answering specific questions, some respondents provided comments, a selection of which have been reproduced throughout this report.

Composition of the interviewees

Nearly half of the European interviewees were based in Germany. Approximately one-fifth of respondents came from outside of the EPO member states.

Figure 6

Country of the interviewees



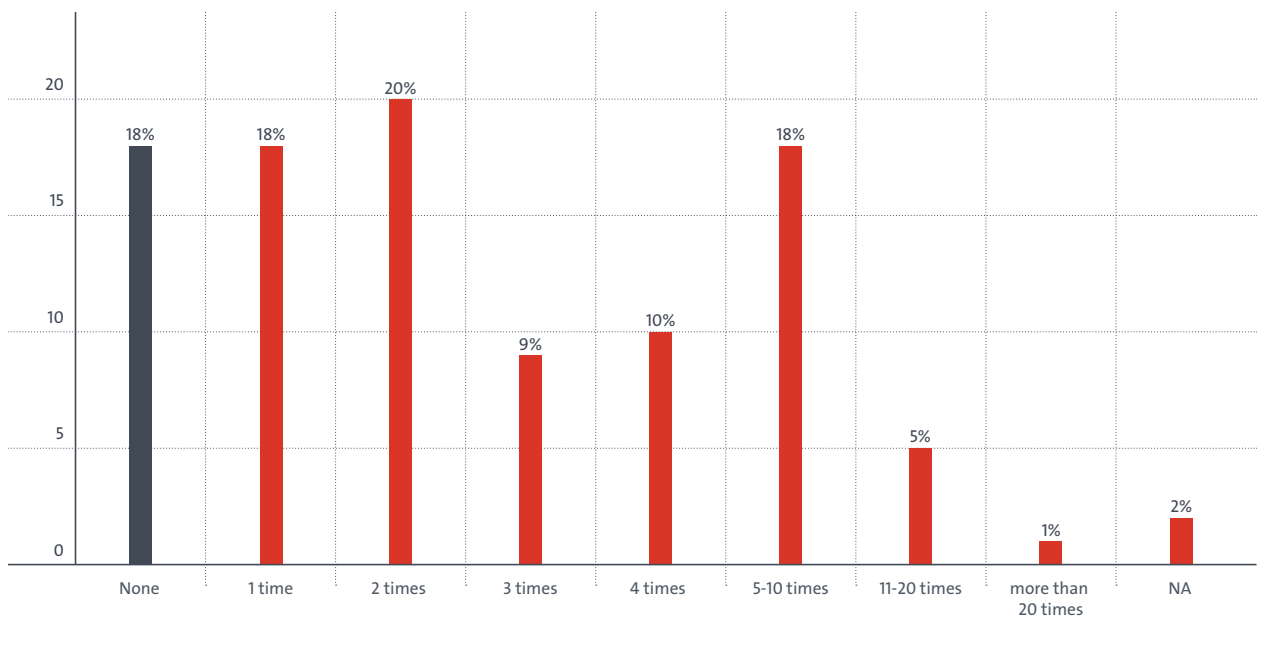
"I much, much prefer them to proceedings in person. They eliminate unnecessary travel and the associated emissions and loss of time, and make it much easier for people to attend. They eliminate the time taken for parties to file in and out of the rooms at a hearing, and make it much easier to have confidential discussions in the breaks. The Chairs are generally very good at encouraging screen breaks. I would prefer for VICO to become the permanent mode for hearings (though understand there may occasionally have to be exceptions). I am generally impressed with how well the VICO hearings are run".

Many interviewees are well established in their careers, with some 79% of professional representatives having over ten years in their role, some 97% having over six years. Amongst the interviewees who were proprietors or opponents some 47% stated they have over ten years in their role and 63% have over six years.

Amongst the 504 interviewees there was a broad range of experience with oral proceedings in opposition by VICO, but for the 18% who have conducted no such hearings in the last 12 months no further questions were asked on this topic (grey bar in Figure 7, below).

Figure 7

Times participated in oral proceedings in opposition conducted by VICO in the last 12 months



"Bitte weiter so. Videokonferenzen sind positiv, vermeiden Reisen, insb. Flüge, Autofahrten etc. und schonen damit die Umwelt und das Klima."

"The EPO should return to proceedings in person by default as soon as possible."

Main findings

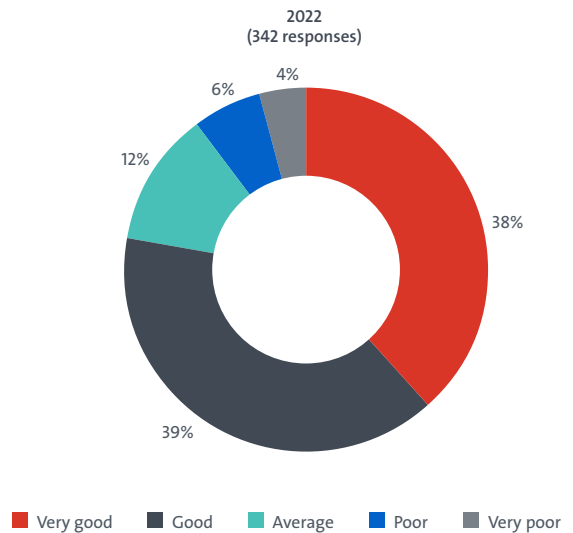
Over 77% of respondents found oral proceedings by VICO to be “good” or “very good” – this being a further increase in comparison to the consultation conducted in September 2021 (and as reported last November).

A majority of users (57%) also declared that their most recent experience of oral proceedings by VICO was better than in the past, or at least the same (36%).

Users have been very appreciative of the new practice to allow submissions by email to the opposition division (86% think this “good” or “very good”, 357 responses).

Figure 8

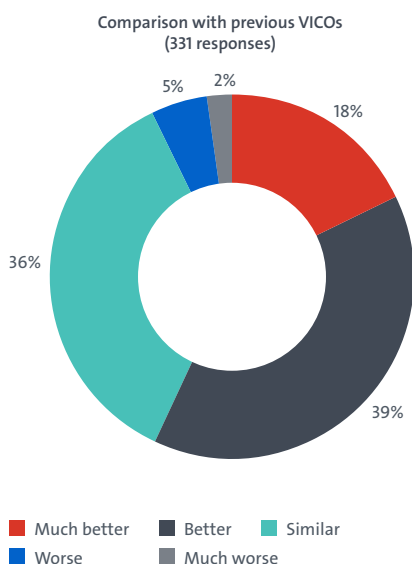
Overall satisfaction with oral proceedings by VICO



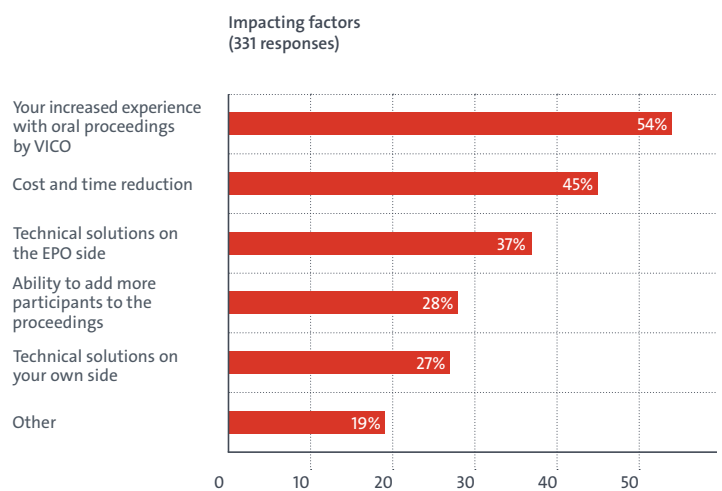
If attended oral proceedings by VICO for the specific opposition procedure.
Question: How would you rate the oral proceedings in general?

Figure 9

Comparison with previous VICOs and impacting factors



If attended more oral proceedings by VICO in the last 12 months.
Question: How do you rate your most recent oral proceedings in opposition by VICO, as compared with VICOs in the past?

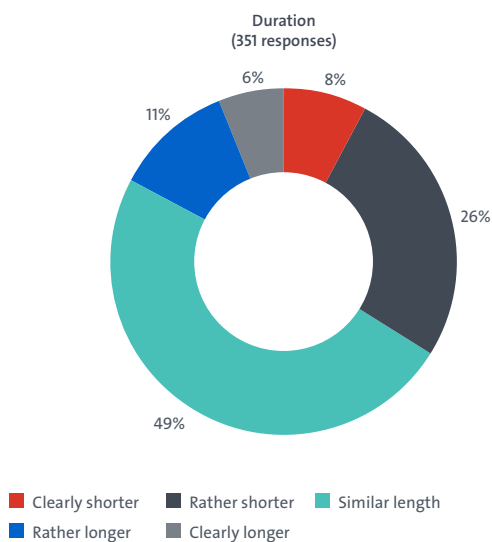


If rated recent oral proceedings by VICO vs. those conducted in the past.
Question: Which of the following factors has impacted your rating of your most recent oral proceedings in opposition by VICO, as compared with VICOs in the past?

The perception that oral proceedings by VICO are longer than in-person proceedings was not reflected in the responses to the USS. Only a small minority of users (17%) perceived that oral proceedings by VICO take longer than in-person oral proceedings whereas a third find them to be shorter e.g. because they are “more focused”.

Figure 10

Duration of oral proceedings by VICO vs. in-person



If attended more oral proceedings in opposition by VICO in the last 12 months.
 Question: How would you rate the overall length of oral proceedings by VICO, as compared with in-person ones?

Feedback forms

At the end of every oral proceeding in opposition by VICO, the opposition division, parties and interpreters have an opportunity to complete a feedback form. The results are collated and analysed, often raising awareness of issues which can be easily remedied.

Between November 2020 and June 2022 some 2 118 feedback forms were submitted, the majority of which came from interpreters (1 753), with some 360 from proprietors, opponents or their representatives. Across all respondents the satisfaction rating was 4.4 out of 5. The overall feeling expressed in the feedback was appreciation, even praise, for the format and fairness of oral proceedings by VICO. Users have welcomed the greater provision of breaks during long hearings – this was a response to earlier feedback leading to training and new guidance issued to the opposition divisions. Users also appreciated the virtual breakout rooms and other collaborative tools, and continuing feedback has inspired more improvements to be developed over the coming months.

Formal objections to the use of VICO

In the early days of the pilot a number of objections to the use of VICO were submitted to the EPO. These peaked at 73 in December 2020 but diminished in subsequent months as more oral proceedings took place, as tools and procedures developed and as experience increased. Since the summer of 2021 the monthly number of objections has been at or close to zero.

“A very welcome format, which sets all IP law firms on equal grounds, when considering representation at the EPO. Digital world is the future and an equalizer, whether the IP law firms in Munich like it or not.”

Comparison of the different aspects of oral proceedings: in-person and by videoconference

Clearly in many aspects both formats are equivalent. This table focuses on where the two differ.

Aspect	In-person	VICO
Physical presence	YES	NO
Communication without technical intermediary	YES	NO
Greater transparency; easier public participation	NO	YES
Easy access to back office / more participants	NO	YES
Cost reductions for parties (travel, hotels etc.)	NO	YES
Participation notwithstanding personal or family limitations	NO	YES
Positive environmental impact	NO	YES

"Oral Proceedings by VICO are efficient and effective. They are a great improvement over in-person oral proceedings as they save time and eliminate travelling costs. They are also more effective than in-person proceedings as they help to focus on the issues."

"Können nützlich sein, dürfen aber nicht Standard werden. Bei einer Teilnahme vor Ort ist der Austausch unmittelbarer. Bei wichtigen Fällen muss es die Möglichkeit geben, eine Videokonferenz abzulehnen."

9. Conclusions of the pilot project

By the end of December 2022, the pilot will have been running for more than two and a half years. Given the scale of the changes at the technological, practical and legal levels, as well as the constraints imposed by the pandemic, the length of the pilot has proven to be appropriate to gain experience, implement technology and clarify procedures. Our conclusions relate to the following three domains:

- Experience and feedback: through more than 6 000 oral proceedings in opposition conducted by VICO, a majority of examiners and parties have not only become familiar with VICO, but also come to regard VICO as their preferred format. The high number of oral proceedings in opposition (certainly higher in 2021 than in 2019), as well as the wealth of internal and external training measures offered during the pilot, have enabled all those involved to gain more experience and confidence. Central to the success of this learning curve has been the EPO's constant dialogue with users to gather feedback, to learn, and to implement improvements. For example, some users have asked the EPO to improve the guidance to chairpersons and to make procedures more efficient, so these will be the subject of future improvements.
- Technological advancements: the way oral proceedings in opposition are conducted today clearly differs from how they were done before the pilot and, in some important details, even from how they were done last year. The state-of-the-art technological platform, the digital tools available for examiners and parties, the way evidence is taken, improvements in remote interpretation, the mastering of the technology by chairpersons, division members and other participants, and the greatly increased access for the public are among the most important features and developments that make this format in many aspects superior to in-person proceedings.

- Evolving legal and procedural framework: over the course of the pilot the legal framework has been enriched with decisions of the EPO President and notices issued by the EPO, an amendment of the EPC Implementing Regulations concerning the taking of evidence by VICO ([Rules 117, 118 EPC](#)) as well as additions to the Guidelines. For oral proceedings on appeal by VICO, a specific provision was added to the [Rules of Procedure of the Boards of Appeal](#) (Art. 15a). Most importantly, in [decision G 1/21](#) the EPO's highest judicial authority, the Enlarged Board of Appeal, confirmed that oral proceedings in the form of a VICO are oral proceedings within the meaning of [Article 116 EPC](#), that the rules and practices applicable to oral proceedings also apply to them, and that oral proceedings by VICO comply with the principles of fairness of proceedings and the right to be heard. As of today, more than 20 appeal decisions have applied the teachings of [decision G 1/21](#) in individual cases where oral proceedings in appeal were held by video conference adding important considerations such as, for example, that neither a high number of documents (including experimental data), nor a high number of parties, nor its long duration would make a hearing unsuitable for being held by VICO.

The purpose of any pilot is to test viability, explore options, gain experience and gather evidence, so as to reach sound and justifiable conclusions. Together with users, through their participation in over 6 000 oral proceedings in opposition by VICO, continuous feedback, dialogue, benchmarking and training, it has been possible to reach this point. The achievements made over the past thirty months enable the EPO to conclude the pilot and take the next step with confidence.

The disruption caused by COVID-19 may have been a trigger for the massive adoption of VICO, but the many advantages have long been decoupled from any pandemic emergency. The availability of back-office services; the easier participation of parties and witnesses; the savings in time, money, paper and carbon emissions; as well as the far greater transparency through easier public access are just the main advantages worth repeating. The feasibility of oral proceedings by VICO has been proven beyond doubt, including in cases involving high numbers of opponents, the taking of evidence from witnesses or by inspection, simultaneous interpretation or multiple hearing days. Taking into account the case law of the Enlarged Board of Appeal and the Boards of Appeal, extensive user feedback, as well as the continuous improvements to the technology and facilities, VICO is better than in-person hearings in many aspects, and is perceived as such by majority of participants. Altogether, this has enabled the EPO to establish VICO as the optimal format for conducting oral proceedings in opposition.

All these conclusions drawn from the pilot call for the continuation of the current approach – “VICO by default” – on a permanent basis. The option of on-site oral proceedings should continue only in the case of serious reasons (see [OJ EPO 2020, A122](#), paragraph 7) as has been the practice during the pilot.

We know that improvement is not a destination but a journey. The achievements of the last two and a half years are not the end of this story. Rather, as the demands of the user community develop, as technology changes and as practice evolves, the EPO will continue to challenge the status quo. We will gather opinions, learn lessons and invest in our staff and new technologies so that VICO remains fit for purpose into the future.

*"Oral proceedings by VICO are effective, fair and significantly reduce costs and travelling time.
Their regular use has been a fantastic improvement at the EPO."*

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