

# ARTICLE

## OP IN VICO FOR OPPO: GO! THE AGREEMENT OF THE PARTIES WILL NO LONGER BE REQUIRED TO CLOSE THE OPPOSITION TO A EUROPEAN PATENT BY A VIDEOCONFERENCE HEARING.

Patent Law | 13/11/20 | François Pochart Lionel Martin

The recent decision of November 10, 2020 of the President of the European Patent Office[1] (EPO), takes into account the health constraints imposed by the coronavirus over time, at the moment of the rise of its second European wave. In practical terms, this decision implies that for any oral proceedings in opposition scheduled from January 4, 2020 to September 15, 2021, it will be conducted by videoconference without seeking the agreement of the parties[2]. This decision thus systematizes the holding of oral proceedings in opposition by videoconference.

This is a significant change relative to the previous regime of oral proceedings by videoconference in opposition proceedings.

With the first European wave of the coronavirus, the EPO had begun to generalize the use of videoconferencing for oral proceedings which close proceedings before the examination or opposition divisions of the office. Notably, oral proceedings in examination of a European patent application were held as of rule by videoconference from April 1st 2020, regardless of the applicant's opinion[3].

However, for oral proceedings in opposition, videoconferencing was only possible under the following[4] conditions:

- i. the agreement of all parties to the opposition proceedings;
- ii. the absence of a decision on taking evidence (such as the hearing of a witness);
- iii. the absence of serious reasons against videoconferencing.

Furthermore, in practice, oral procedures in videoconferencing should also satisfy:

- iv. the absence of interpreters to meet the needs of simultaneous translation for the benefit of the parties.

It was only since the middle of September that oral proceedings requiring the participation of interpreters (or of a large number of opponents) could be conducted by videoconference with the Zoom platform tests[5]. With the recent decision of November 10, 2020, it is also the conditions i. and ii. above that disappear.

Thus, parties before an opposition division can only object to videoconferencing on serious grounds, but this request can be refused without the possibility of a separate appeal against this refusal[6]. It is no longer even certain that the mere circumstance of a decision on taking evidence (which is already rare and difficult to obtain) is sufficient to avoid for an oral proceedings to be held by videoconference.

This decision is based on a recent EPO report[7]. This report evaluated the accumulated experience of videoconferences in opposition (just under 250 oral proceedings at the date of the report in October[8]) and notably of some tests of videoconferences via the Zoom platform [9](29 oral proceedings). This report made the following observations:

- a positive feedback of the oral proceedings in opposition voluntarily held by videoconference[10],
- a too weak voluntary adoption of these procedures by videoconference (about 4% of the opposition stock in 6 months[11]),
- a substantial delay in opposition cases due to the refusal of oral proceedings by videoconference, while reminding the objective of conducting the opposition procedure in 15 months.

This report recommended exactly the measures now adopted by the above-mentioned November 10 decision to make videoconferencing[12] more systematic.

For the time being, the Boards of Appeal of the EPO, which examine appeals on examination and on opposition, still allow the parties to refuse to hold oral proceedings by videoconference[13].

Will the general pressure to reduce the stock of cases and the specific productivity objective for 2023 to process appeals in 30 months[14] also have the effect of switching the Boards of Appeal to videoconferencing even without the agreement of the parties?

This may be an indicator of the recently reinforced independence of the Boards of Appeal from the Office.

[1] <https://www.epo.org/law-practice/legal-texts/official-journal/president-notice/archive/20201110.html>

[2] Article 1 and Article 10 of the above-mentioned decision

[3] <https://www.epo.org/law-practice/legal-texts/official-journal/2020/04/a39.html>





[4] <https://www.epo.org/law-practice/legal-texts/official-journal/2020/04/a41/2020-a41.pdf>, Article 2, paragraphs (1) and (3)

[5] <https://www.epo.org/news-events/news/2020/20200914.html>

[6] Article 2, paragraph (2) of the above-mentioned Decision of November 10, 2020

[7] <https://www.epo.org/law-practice/case-law-appeals/communications/2020/20201019.html>

[8] Part 4.3, p.11 of the above-mentioned report

[9] Part 4.5, p.12 of the above-mentioned report

[10] Part 4.8, p.13 of the above-mentioned report

[11] Part 1, p.3 of the above-mentioned report

[12] Part 4.10, p.14 of the above-mentioned report

[13] Last communication of the Boards of Appeal on this subject dated October 19, 2020 <https://www.epo.org/law-practice/case-law-appeals/communications/2020/20201019.html>

[14] As reminded in particular in the Boards of Appeal Report for 2019, Part 3, p.5, [http://documents.epo.org/projects/babylon/eponet.nsf/0/D731BDF55CCE7256C1258598004C439C/\\$FILE/Annual\\_Report\\_of\\_the\\_Boards\\_of\\_Appeal\\_2019\\_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/D731BDF55CCE7256C1258598004C439C/$FILE/Annual_Report_of_the_Boards_of_Appeal_2019_en.pdf)

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