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Response by CIPA to the User Consultation on amendment of a15aRPBA

The Chartered Institute of Patent Attorneys (CIPA) is the professional and examining body for patent attorneys in the UK, representing virtually all the 2,500 registered patent attorneys in the UK, whether in industry or in private practice. Total membership is over 4,000 and includes judges, barristers, trainee patent attorneys and other professionals with an interest in intellectual property. CIPA represents the views of the profession to policy makers at national, European and international level, with representatives sitting on a range of influential policy bodies and working groups in the UK and overseas.

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Introductory comments

CIPA believes that Videoconferencing (ViCo) is inevitable in the long term for all oral proceedings at the EPO. This is subject only to the underlying systems being fit for purpose but, as has already been demonstrated, ViCo is suited to the technical focus of patent proceedings (see for example “Opposition oral proceedings by videoconference in the context of COVID-19 – Progress Report”) and to the distributed nature of the EPO and its users. During the pandemic, to ensure access to justice, the Boards of Appeal should adopt the same rules relating to ViCo as have been implemented at first instance. This period can be used to allow fine tuning of the technology, as proposed in the Progress Report.

Specific comments on proposed new Article 15a RPBA

a15a(1)

CIPA believes that equivalent wording should be adopted to that in the Decision of the President of the EPO dated 10 November 2020 (Decision 10.11.20) a2(1), for example:

“Oral proceedings pursuant to Article 116 EPC before the Board are held by videoconference.”

This is simple, clear and, importantly, removes the risk of procedural manoeuvring by parties using arguments on forum, which in turn will enhance access to justice and ensure that appeals are dealt with in an effective and timely manner. This approach should be adopted urgently during the pandemic. More generally, there seems to be no reason to defer adoption of attendance by ViCo.

a15a(2)

CIPA is concerned about the risk of maintaining prejudice against ViCo with the proposed default. The Boards can mould best practice by adopting the same approach as at first instance, and consistency will bring clarity for users. CIPA would suggest provision for in person attendance only in the event of “serious reasons” (Decision 10.11.20 a2(2)) and with equivalent explanatory remarks (Notice from the EPO dated 10 November 2020 concerning oral proceedings... point 7). CIPA strongly opposes so-called “hybrid proceedings”, that is a mix of in person and ViCo attendance, as being inherently unbalanced. The principles of fair proceedings referred to by the BOAC – fair conduct, right to be heard, right of access – all support the approach of ViCo for all.

a15(3)

CIPA fully supports ViCo being available to all participants in oral proceedings.

Concluding comments

The EPO and Boards of Appeal have shown leadership during the pandemic, and now have the opportunity to shape the future of the patent system in the EPC Contracting States. The next generation of users of the system will expect a remote, distributed and technology-based process as a matter of course and, as indicated by the Progress Report, the technology supports adoption of ViCo now. The widely discussed benefits of efficiency, accessibility to users and reduced environmental impact, and the inclusion of all available talent regardless of location confirm this as the correct course of action. We hope that the Boards of Appeal will lead the way.



Richard Mair
President

¹ At the time of writing, the UK Government still advises against all but essential international travel.
<https://www.gov.uk/guidance/travel-advice-novel-coronavirus>

Furthermore, even if UK representatives are able to enter Germany or The Netherlands, they are now obliged to self-isolate at home for 14 days on their return.
<https://www.gov.uk/uk-border-control>

It is uncertain when that will change, or whether special arrangements will be made in due course for travellers returning from lower risk countries.

² We draw attention to the UK Intellectual Property Office's helpful promise – even for normal written examination matters – that it will provide a minimum of 2 weeks' notice before ending its "interrupted days" period.
<https://www.gov.uk/government/news/coronavirus-important-update-on-ipo-services>