

Skype Meeting between FICPI International Federation of National IP Associations and the Boards of Appeal of the European Patent Office

Experiences with the revised RPBA 2020 – Oral proceedings by video conference –
Unity of invention – 3D printing

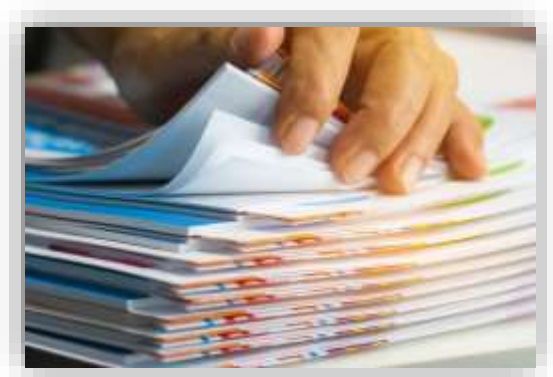


Boards
of Appeal

Overview

- **Revised RPBA 2020**
 - Annual publication of list of cases
 - Acceleration of appeal proceedings
 - Mandatory communication by Board in preparation for OP
 - New rule on remittal to department of first instance
- **Oral proceedings by video conference**
 - Current status
 - Next steps
- **Unity of invention**
- **3D printing**

Publication of list of cases



- Publication of **list of cases** likely to be dealt with in following year – Article 1(2) RPBA 2020
- Cases in which Board likely to hold **oral proceedings**, issue a **communication**, or issue **decision in written proceedings**

▶ **Aims:**

- greater **efficiency** through advance planning of expected workload
- Boards' work is made more **transparent and predictable**

Publication of list of cases

- First list of cases for the year 2020 published in October 2019
- HTML format and as downloadable xls file
- List of cases for the year 2021 will be published in October 2020



The screenshot shows the UK Intellectual Property Office website. The main heading is "Annual list of cases". Below the heading, there is a "Download" button and a link to "Annual list of cases 2020 (XLS, 113 KB)". The page also includes a "Select the board of appeal" section with a table of cases for the year 2020. The table has four columns: Case number, Application number, Case number, and Application number. The cases are listed under various boards of appeal, including Technical Board of Appeal, Legal Board of Appeal, Disciplinary Board of Appeal, President, Business distribution scheme, Annual list of cases, Communications, and Publications.

Board of Appeal	Case number	Application number	Case number	Application number
Technical Board of Appeal	3.2.01	3.2.02	3.2.03	3.2.04
Legal Board of Appeal	3.2.05	3.2.06	3.2.07	3.2.08
Disciplinary Board of Appeal	3.3.01	3.3.02	3.3.03	3.3.04
President	3.3.05	3.3.06	3.3.07	3.3.08
Business distribution scheme	3.3.09	3.3.10	3.4.01	3.4.02
Annual list of cases	3.4.03	3.5.01	3.5.02	3.5.03
Communications	3.5.04	3.5.05	3.5.06	3.5.07
Publications				

Acceleration of appeal proceedings

- **Acceleration** of proceedings – Article 10(3) to (6) RPBA 2020
- **Parties** and **courts** can request acceleration; Board will **inform** whether request has been granted
- **Parties** need **valid reason** justifying acceleration, e.g. pending infringement proceedings



▶ **Aim:** to put “acceleration” on statutory basis with **clear criteria**

Acceleration of appeal proceedings

- How many requests for acceleration were received?

- January to August **2019**: 3
- January to August **2020**: 13

- But to be taken with caution because of impact of Corona pandemic...



Mandatory communication

- **Mandatory communication** by Board in preparation for oral proceedings – Article 15(1) RPBA 2020
 - Communication
 - is based on **thorough analysis** of case
 - draws attention to matters of **particular significance** for decision
 - may also include **preliminary opinion**
- ▶ **Aims:** predictability and more **efficient** conduct of **oral proceedings**



Mandatory communication



- All Boards send out Article 15(1) communication; many include clear opinion on main issues on the basis of the file
- Clear reference to Article 13 RPBA 2020 – change of appeal case
- Clear reference to new options under Rule 103 EPC – withdrawal of appeal and withdrawal of request for oral proceedings (standard clause)

=> Goal is to make options known to representative and to party

Remittal to department of first instance



- New rule on **remittal** to department of first instance – Article 11 RPBA 2020
- Boards **shall not** remit case to department of first instance, **unless special reasons** present themselves

▶ **Aims:**

- to reduce **likelihood of a "ping-pong"** effect between Boards and departments of first instance
- to reduce **undue prolongation of entire proceedings** before the EPO

Remittal to department of first instance

- Because of the low number of decisions due to the Corona pandemic, it is yet unclear whether there will be fewer remittals
- However: Boards have to justify non-remittal and can no longer remit without giving reasons
- Much will depend also on practice of first-instance departments
- Examples: **T 1531/16**, **T 3247/19**, **T1089/17**, **T 32/16**



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Oral proceedings by video conference

Current status



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HansOLG Hamburg

- 40 oral proceedings using VICO in appeal procedure have been taken place from their introduction in May until end of August and 29 oral proceedings are scheduled until the end of the year 2020.
- After starting with *ex parte* only, oral proceedings using VICO are now also allowed for *inter partes* cases with two parties and without interpretation (see internet announcement of 29 July 2020).

Oral proceedings by video conference

- Until now, the standard configuration is the following:



*Bild: Silke Tüxen, Photography,
HansOLG Hamburg*

- The members of the Board are co-located in an OP room in Haar
- Members of the public are joining from a room made available to them in the public area (preferably after prior registration)
- Accompanying persons of the representative may join remotely
- In a few exceptional cases, a member was able to join remotely after agreement of the Board Chair (Board partially distributed).

Oral proceedings by video conference

Next steps



Bild: Silke Tüxen, Photography,
HansOLG Hamburg

- Following discussions on the possible evolution of the Covid-19 situation, the OP configurations are continuously reviewed *i.a.* concerning
- **hybrid on-site/VICO OPs**
 - Enabling parties joining remotely to view at the same time the Board members and the other party requires specific equipment.
- The President of the Boards of Appeal has set up a working group to assess the legal and practical implications of alternative OP configurations.

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Unity of invention – Article 82 EPC

In the last five years there have been only a few decisions addressing the issue of unity:

T 1414/18 of 15.7.2020	T 2824/18 of 11.9.2019	T 1520/14 of 14.6.2019
T 2368/13 of 11.2.2019	T 2029/13 of 3.4.2019	T 1798/12 of 14.11.2018
T 2482/12 of 21.9.2018	T 2225/13 of 7.6.2018	T 2526/17 of 16.4.2018
T 1951/16 of 12.12.2017	T 1679/10 of 28.1.2016	T 1126/11 8.1.2016
T 2443/11 of 25.9.2015	T 2248/12 of 29.10.2015	T 0680/12 of 7.7.2015
T 0755/14 of 21.5.2015		
T 2291/12 of 21.6.2017	T 0736/14 of 25.2.2016	T 0034/12 of 8.7.2015

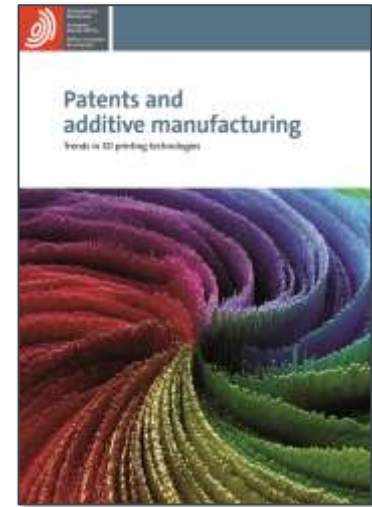
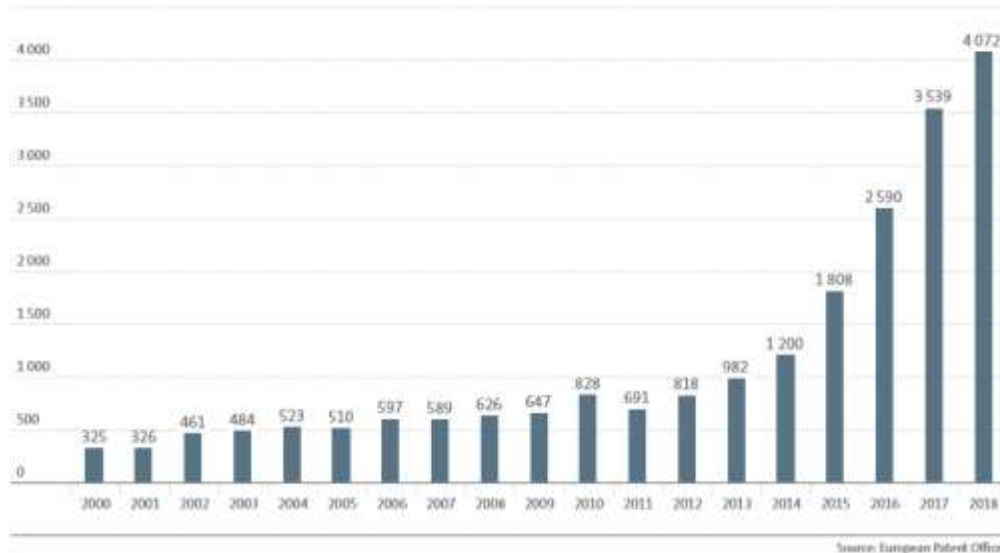
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3D printing / additive manufacturing technology

- So far no appeal cases, but the Boards of Appeal are prepared to deal with B33 cases in TBA 3.2.07

Patent applications in AM technologies at the EPO, 2000-2018





Thank you very much for your attention!

- Internet: <http://www.epo.org/law-practice/case-law-appeals.html>
- Case Law of the Boards of Appeal of the EPO, 9th edition 2019
- OJ EPO Supplementary publications:
“Information from the Boards of Appeal”, “Annual Report of the Boards of Appeal”
“EPO Board of Appeal Case Law”, “Case Law from the Contracting States to the EPC”