

# Legality of video proceedings at the EPO questioned

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Jakob Pade Frederiksen April 22, 2021



## Jakob Pade Frederiksen of Inspicos P/S assesses the legitimacy of the EPO's adaptation of video conferencing solutions in proceedings

As of January 2021, the holding of oral proceedings by video-conference (VICO) has been mandatory in first-instance opposition proceedings, and requests for oral proceedings in person, at the premises of the EPO, are only being granted in exceptional circumstances. In regard to appeal proceedings, new Article 15a of the Rules of Procedure of the Boards of Appeal, which entered into force on April 1

2021, allows the Boards to hold oral proceedings by VICO whenever the Board considers it appropriate to do so.

Despite the evident need for avoiding a growing backlog of cases during the COVID-19 pandemic and for guaranteeing access to justice, the move to mandatory VICO oral proceedings has been criticised by some for not being compatible with the right to oral proceedings. By decision T 1807/15 of March 12 2021, a Technical Board of Appeal of the EPO has referred the question to the Enlarged Board of Appeal (EBA). This asks if oral proceedings, in the form of a VICO, is compatible with Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the hearing being held by VICO.

The case before the EBA is pending as G 1/21, and the oral proceedings before the EBA are scheduled to take place – by VICO - on May 28 2021. Third parties are invited to submit amicus curiae briefs by April 28 2021.

Meanwhile, oral proceedings before the examining and opposition divisions continue by VICO, without requiring the agreement of the parties. To the present author's knowledge, the Boards of Appeal have not issued any statement about the consequences of parties not consenting to oral proceedings by VICO in appeal proceedings while G 1/21 is pending. One likely scenario is that in such cases oral proceedings will not take place by VICO.

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