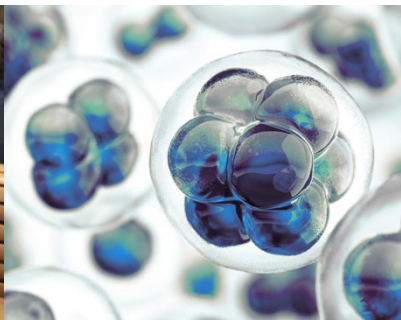




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Oral Proceedings by Videoconference in Opposition



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11 March 2021

Oral proceedings by Videoconference in Opposition

Content

- Scope of the pilot and its legal basis
- Introduction to Zoom
- How does it work?
- Practical tips for attorneys

Scope of the Pilot

- Oral proceedings in opposition may be held by videoconference (ViCo)
- **Decision of the President** of the European Patent Office (EPO) dated **14.04.2020** on the pilot project on oral proceedings by ViCo before opposition divisions (ODs)

Progress report

- [Opposition oral proceedings by videoconference in the context of COVID-19 Progress report November 2020](#)
- To bring the opposition stock and timeliness under control, around 360 opposition decisions are needed each month. At this level of production, timeliness would be expected to regain the levels recorded at the beginning of 2020 by the end of 2022, meaning no further delays in access to justice.

Decision of the President 10 November 2020

- Decision of the President of the European Patent Office dated [10 November 2020](#) concerning the modification and extension of the pilot project for oral proceedings by videoconference before opposition divisions
- This decision entered into force on **4 January 2021**. It applies to all oral proceedings before opposition divisions scheduled to take place on or after that date and for the duration of the pilot

Pilot project extended

- The European Patent Office has been conducting a pilot project for oral proceedings by videoconference before opposition divisions in accordance with the decision of the President of the European Patent Office dated 14 April 2020 ([OJ EPO 2020, A41](#)). This pilot project is now extended to run until **15 September 2021** in accordance with the present decision.

ViCo in Opposition

- Where there are serious reasons preventing the use of VICO in opposition, oral proceedings will be postponed until after 15 September 2021.
- applicable for multiparty hearings with/without interpretation and with/without taking evidence (amended [Rules 117 & 118 EPC](#))

Legal Status of the Pilot

- [Oral Proceedings held by ViCo](#) are not excluded by the EPC and **fulfil the requirements for holding oral proceedings within the meaning of Article 116 EPC**. The EPC only requires that the [public character](#) of the proceedings be ensured (Article 116(4) EPC). The form in which the parties present orally their arguments - with or without physical presence - is not predetermined by Article 116 EPC

Safeguarding the Right to be Heard

- In case the **technical problems** would prevent the oral proceedings by ViCo from being conducted in accordance with the parties' rights under Articles 113 and 116 EPC, and which could not be overcome during the ViCo, the OD will issue **new summons** to oral proceedings

Art. 113(1) EPC

Zoom

Zoom is

- broadly accepted, easy to use and stable platform,
- with low IT requirements,
- not needing acquisition of licences by users
- allows simultaneous interpretation, also for public
- allows up to 49 videos, which even can be rearranged and enlarged
- [EPO data protection](#) guidance provides information

Guidelines for Zoom

- [Technical information](#) is available on the EPO website
- Mock trial of oral proceedings by ViCo (see [e-learning centre](#), EPO website)
- In case of interpretation, **desktop app** needs to be installed
- Headset with **microphone** is strongly recommended
- It is **not advisable** to use a tablet or smartphone

Oral Proceedings – how does it work?

- When you activate the ViCo (by clicking on the received link) wait in the lobby until the chairperson lets you in
- In the lobby you see the file number, so you are sure to be in the right oral proceedings
- **Before the start of the oral proceedings the chairperson will give an introduction to the parties**
- Via the chat box you will be able to enter short messages like the wish for a break or raise hand because of connection issues

Communication with the OD

- The chat box will remain active, also during the time the OD is in deliberation
- In case you need to reach the OD during deliberation, you can use the chat box. Vice versa, the chairperson can leave you a message, that deliberation will take more/less time

Filing Submissions

- **All submissions**, including authorization, have to be sent **via email** to the **OD** as attachment in PDF format and must comply with the WIPO Standard for Filing and Processing in Electronic Form
- Where filed documents require signature, this signature may be applied to the attached document or to the text of the accompanying email

Deliberation of the OD

- The chairperson will announce a break of the oral proceedings and the complete OD will change to their non-public deliberation room
- All other participants will remain in the virtual oral proceedings room and are invited to mute their microphones and to switch off their cameras
- **Please do not disconnect the video conference link**

Connection Issues

- In case of connection issues or disconnection, please inform the chairperson immediately. In case of disconnection, please sign off and activate the link again

Practical tips

- **Test call** is crucial
- Ensure that **contact information** is sent to EPO
- Check for **receipt of ViCo** connection details
- In multi-opponent cases a separate, own connection with the other opponents might be useful

Practical tips

- **Practise** on the platform
- Consider attending as member of public
- **Check**
 - bandwidth,
 - webcam quality and whether movable
 - audio set-up (headset with **microphone** is highly recommended)
 - screen quality and size

Setting your scene

Ideal setting:

- Headset with microphone
- Computer/laptop
- 2 screens (the bigger the better and on the table in front of you)
- Your own (adjustable) camera
- Check the light source (avoid too dark/too bright light, e.g. sitting with the back to a window)

Practical tips

- **Virtual background:**

- allowed, but be aware exceptions

- **ID check**

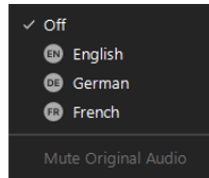
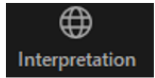
- If applicable, have your EPO ID badge at hand
- or ID card/passport (can be send via online filing before the day of the oral proceedings; For data protection, all sensitive data is to be blackened on the copy, except for the photo and the name of the to be identified person. Please use the non-public filing option of the online filing tool)

Practical tips

- Each party must confirm receipt of the email with the contact details of the OD before proceedings can start
- Submissions are sent via email to the OD
- Submissions then forwarded by OD to the parties
- Make sure you have the technology to generate the submissions

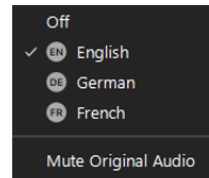
Practical tips

Interpretation: how does it look & work ?



original audio

OR



interpretation to English

Further links

- [FQA – Oral proceedings held by videoconference](#)
- [Coronavirus – continually updated information \(including all information regarding oral proceedings\)](#)
- [Information about access to oral proceedings by videoconference before opposition divisions](#)

▪ **THANK YOU FOR YOUR ATTENTION!**

Official Journal April 2020



- 2020

- 4 - April

Article 41

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Citation: A41
 Online publication date: 30.4.2020

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EUROPEAN PATENT OFFICE

Information from the EPO

Decision of the President of the European Patent Office dated 14 April 2020 concerning the pilot project for oral proceedings by videoconference before opposition divisions

The President of the European Patent Office, having regard to [Articles 10\(2\)\(a\) and 116 of the European Patent Convention](#) (EPC), has decided as follows:

Article 1

Scope of the pilot project

(1) The European Patent Office will conduct a pilot project for oral proceedings by videoconference before opposition divisions.

(2) The pilot project will extend to all oral proceedings before opposition divisions that are scheduled to take place after the entry into force of the present decision.

(3) The pilot project will start on the date on which this decision enters into force and will run until 30 April 2021.

Article 2

Oral proceedings by videoconference before opposition divisions

(1) Oral proceedings before opposition divisions may be held by videoconference at the discretion of the opposition division and with the agreement of all parties.

(2) Oral proceedings by videoconference are equivalent to oral proceedings held on the premises of the European Patent Office.

(3) Oral proceedings may not be held by videoconference if

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- 2015 (a) the opposition division has decided to take evidence ([Rule 117 EPC](#)) or
- 2014 (b) there are other serious reasons for not doing so.
- 2013
- 2012 **Article 3**
Remote participation of the members of an opposition division in oral proceedings by videoconference
- 2011 (1) In the event that oral proceedings are held by videoconference, the members of
- 2010 the opposition division may connect to the oral proceedings remotely from different
- 2009 locations. In such cases, the members of the division will deliberate and vote among
- 2008 themselves by separate videoconference.
- 2007 (2) The parties will be informed of the remote participation of members of the
- Archive (3) The venue of the oral proceedings will be deemed to be the location where the
- opposition division is set up.

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Article 4

Participation of parties and accompanying persons

The opposition division may allow the parties, their representatives and any persons accompanying the parties or representatives to connect to the videoconference from different locations, if so requested by the final date for making written submissions set in accordance with [Rule 116 EPC](#), and on condition that the number of additional participants does not impair the efficient conduct of the proceedings.

Article 5

Admission of the public

Oral proceedings before the opposition divisions are public. Members of the public can follow oral proceedings held by videoconference either remotely upon giving prior notice or on the premises of the European Patent Office in the location where the opposition division is set up, as determined by the European Patent Office.

Article 6

Submissions and their transmission during oral proceedings by videoconference

(1) Where oral proceedings before an opposition division are held by videoconference, documents are to be filed by means of electronic communication in accordance with the substantive provisions of the relevant decision of the President of the European Patent Office. Where those provisions refer to proceedings before an examining division, they apply *mutatis mutandis*.

(2) Where oral proceedings before an opposition division are held by videoconference, documents submitted by one of the parties in accordance with paragraph 1 will be transmitted to the other parties by email to the email address specified by each of those parties during the videoconference.

(3) If the opposition division consents, a party may present its screen for illustrative purposes; an item displayed in that way will not be considered to constitute a document submitted by that party.

Article 7

Evidence

(1) No evidence may be taken during oral proceedings by videoconference.

(2) If the opposition division decides to take evidence during oral proceedings by videoconference, those oral proceedings will be adjourned and the parties will be summoned to oral proceedings on the premises of the European Patent Office.

Article 8

Technical problems

If technical problems preventing the oral proceedings by videoconference from being conducted in accordance with the parties' rights under [Articles 113](#) and [116 EPC](#) cannot be overcome during the videoconference, the opposition division will issue a new summons to oral proceedings.

Article 9

Non-attendance at oral proceedings by videoconference

If a party fails to connect to the oral proceedings by videoconference for reasons other than technical problems, the proceedings may continue in accordance with [Rule 115\(2\) EPC](#).

Article 10

Entry into force

This decision enters into force on 4 May 2020.

Done at Munich, 14 April 2020

António CAMPINOS

President

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Last updated: 30.4.2020