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**Case number:**

**G1/21**

**Appeal case number:**

**T1807/15 – 3.5.02**

**Patent Number:**

**EP04758381.0 / 1609239**

**Title:**

**DOHERTY AMPLIFIER WITH OUTPUT HYBRID  
COUPLER**

**Applicant:**

**Andrew AG**

**Opponent:**

**Rohde & Schwarz GmbH & Co. KG**

This is in response to the Summons to oral proceedings pursuant to  
Rule 115(1) EPC dated March 17, 2021.

Herewith we take over representation of the Opponent/Appellant

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A corresponding authorization is enclosed herewith.

**PATENT- UND  
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The present case G1/21 is based on the interlocutory decision T 1807/15 wherein the Technical Board of Appeal 3.5.02 referred the following question to the Enlarged Board of Appeal:

*Is the conduct of oral proceedings in the form of a videoconference compatible with the right to oral proceedings as enshrined in Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference?*

### Summary

- In accordance with Article 24(3) EPC the Chairman of the Enlarged Board of Appeal, Mr. C. Josefsson is objected to as suspected of partiality, and we kindly request the Enlarged Board of Appeal to initiate proceedings according to Article 24(4) EPC.
- In accordance with Article 24(3) EPC further members of the present Enlarged Board of Appeal, which were members of the Presidium of the Boards of Appeal, at the relevant time, G. Eliasson (SE) and A. Ritzka (DE), are objected to as suspected of partiality, and we kindly request the Enlarged Board of Appeal to initiate proceedings according to Article 24(4) EPC.
- The question, referred to the Enlarged Board of Appeal shall be answered in the **negative**, i.e. the conduct of oral proceedings in the form of a videoconference is **not** compatible with the right to oral proceedings as enshrined in Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference.

## I. On the subject-matter of the Referral

The present case G1/21 is based on the interlocutory decision T 1807/15 wherein the Technical Board of Appeal 3.5.02 referred the following question to the Enlarged Board of Appeal:

*Is the conduct of oral proceedings in the form of a videoconference compatible with the right to oral proceedings as enshrined in Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference?*

Before going into the details with regard to the question referred to the Enlarged Board of Appeal, we would like to emphasize the following:

Our client Rohde & Schwarz is an international electronics group, a reliable partner for shaping the future of communications, information and security. Rohde & Schwarz highly appreciates the efforts taken by the Boards of Appeal in view of the pandemic to ensure the proper and seamless functioning of the Boards of Appeal as a judicial body of final instance.

Our client fully supports video conferences at the EPO and the Boards of Appeal during the COVID crisis in order to ensure access to justice and welcomes the additional possibilities offered by the EPO and the Boards of Appeal to use videoconferencing technology, in particular also in *inter partes* proceedings, and the associated easier access to justice and further advantages of modern videoconferencing technology, even after the COVID-19 pandemic.

The conduct of oral proceedings in the form of a videoconference has been introduced in both national and international jurisdictions.

A more modern legislation, such as the Agreement on a Unified Patent Court, provides for oral proceedings by videoconference, as does a law with its beginnings in the 19th century like the Code of Civil Procedure in Germany (*Zivilprozessordnung, (ZPO)*).

The Agreement on a Unified Patent Court provides in Article 44 for electronic procedures, including video conferencing. In the corresponding Rules of Procedure of the Unified Patent Court, Rule 105 dealing with the interim conference, provides that 1. said interim conference should, where practicable, be held by telephone conference or by video conference. 2. On request by a party, subject to paragraph 1 and the approval of the judge-rapporteur, the interim conference may be held in Court [...]. Rule 264 establishes that where these Rules provide that a party shall or may be given an opportunity to be heard before the Court makes an order or takes some action, the Court shall or may (as the case may be) request the parties to provide written submissions within a specified period and/or shall or may invite the parties to an oral hearing on a fixed date by the Court. The Court may also order that a hearing takes place by telephone or video conference. Rules 105 and 106 shall apply *mutatis mutandis*.

Section 128a of the Code of Civil Procedure in Germany (*Zivilprozessordnung, (ZPO)*) provides that (1) The court may, on application or *ex officio*, permit the parties, their agents and advisers to be present at another place during oral proceedings and to perform procedural acts there. The proceedings shall be transmitted simultaneously in sound and vision to that place and to the courtroom. (2) The court may, on application, permit a witness, expert or party to be present at another place during a hearing. The hearing shall be transmitted simultaneously in sound and vision to that location and to the courtroom. If parties, authorized representatives and assistants have been permitted to be at another location in accordance with subsection 1 sentence 1, the hearing shall also be transmitted to that location. (3) The transmission shall not be recorded. Decisions under subsection (1) sentence 1 and subsection (2) sentence 1 shall be final.

Thus, in these examples of legislation, oral proceedings by videoconference are in general possible, however, a legal basis must be assured. In this regard we doubt that the European

Patent Convention provides a sufficient legal basis for oral proceedings by videoconference, as oral proceedings by videoconference constitute a restriction of the right to be heard (Art. 113 EPC) and a restriction of the right to oral proceedings (Art 116 EPC), two fundamental rights enshrined in the European Patent Convention.

As illustrated by the above cited examples, both the Agreement on a Unified Patent Court and the Code of Civil Procedure, provide such a legal basis for videoconferences in primary law.

The attempts of the Boards of Appeal to introduce - with new Rule 15a RPBA 2020 - secondary law to justify oral proceedings by videoconference is not sufficient to overcome the deficiencies in the primary law. A legally compliant justification of oral proceedings by videoconferences can only be established by primary law.

Concerns exist in particular regarding the conduct of oral proceedings by videoconference, without the consent of the parties. Such an approach is not compatible with the right to oral proceedings as enshrined in Article 116(1) EPC, as set forth in detail in the interlocutory decision T 1807/15. The referring Board provided in T 1807/15 a thorough analysis as to the different approaches for the construction of the term "oral proceedings" in Article 116 EPC, i.e. case law of the Boards of Appeal, literal and systematic interpretation, *Travaux préparatoires*, teleological interpretation, subsequent agreements and dynamic interpretation, none of which clearly support waiving the need for all parties to consent to holding oral proceedings by video conference.

Hence, the question referred to by the Technical Board of Appeal 3.5.02 shall be answered in the negative.

That is,

the conduct of oral proceedings in the form of a videoconference is not compatible with the right to oral proceedings as enshrined in Article 116(1) EPC if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference.

## II. Suspicion of partiality

### II.1 Suspicion of partiality of the Chairman of the Enlarged Board of Appeal

In accordance with Article 24(3) EPC the Chairman of the Enlarged Board of Appeal, Mr. C. Josefsson is objected to as suspected of partiality.

The Chairman of the Enlarged Board of Appeal in the present proceedings (in the following “the EBoA Chairman”) is the President of the Board of Appeal (in the following “the BoA President”).

The BoA President was involved in the drafting of new Article 15a of the Rules of Procedure of the Boards of Appeal (in the following “the RPBA 2020”). As will be explained in detail below, it is this involvement of the BoA President in the drafting of new Article 15a RPBA 2020 and his contribution in the process of amending the RPBA 2020 which give rise to a suspicion of partiality.

#### II.1.1 Legal basis and relevant case law

Article 24(3), first sentence, second alternative, EPC provides that members of the Enlarged Board of Appeal may be objected to by any party if suspected of partiality.

As outlined in further detail by the Enlarged Board in **G 2/08 of 15 June 2009** the grounds for objection under Article 24(3) EPC may be raised by any party to the proceedings if it suspects partiality (*judex suspectus*) of a member of the Enlarged Board of Appeal, since said party enjoys a personal and legitimate interest in the proceedings and is entitled to due process of law in respect of said interest (**G 2/08 of June 2009**, Reasons for the Decision 1.2).

According to the Enlarged Board in **G 1/05 of 7 December 2006** (OJ 2007, 362), the right to object to a judge for reasons of suspicion of partiality is meant to prevent judges from being influenced in their decision-making – be it deliberately or inadvertently – by extraneous considerations, prejudices and predilections, i.e. by considerations other than the arguments they consider factually and legally relevant for the case under consideration.

According to the established jurisprudence of the Boards of Appeal, if a party is to receive a fair hearing before a tribunal, such a party should have no reasonable ground (on an objective basis) to suspect that any member of the tribunal is partial or prejudiced in relation to deciding the case (cf. **G 5/91**, OJ 1992, 617; **G 1/05 of 7 December 2006**, OJ 2007, 362; **T 433/93**, OJ 1997, 509; **T 95/04**, **T 283/03**, **T 1193/02**).

In **G 5/91** (OJ 1992, 617) and **G 1/05 of 7 December 2006** the Enlarged Board underlined the importance of a very strict observance of the requirement of impartiality in proceedings before it in view of its judicial functions at final instance within the European patent granting system. It is a general principle of law that a member should not decide a case in which one may have good reason to assume or even suspect partiality (see also **G 2/08**; Reasons for the decision 3.3).

*Die Große Beschwerdekammer unterstrich in ihrer Entscheidung G 5/91 (ABl. EPA 1992, 617 - Beschwerdefähige Entscheidung/DISCOVISION, Nr. 3 der Entscheidungsgründe) die Bedeutung einer äußerst strengen Einhaltung des Gebots der Unparteilichkeit in den Verfahren vor den Beschwerdekammern und der Großen Beschwerdekammer im Hinblick auf ihre richterliche Funktion als oberste Instanz im europäischen Patentrechtssystem. So sei es als allgemeiner Rechtsgrundsatz anzusehen, dass niemand über eine Angelegenheit entscheiden darf, in der er von einem Beteiligten aus guten Gründen der Befangenheit verdächtigt werden kann (emphasis added; **G 1/05 of 7 December 2006**, Reasons for the Decision 5).*

It is thus the duty of a member of the Boards not to sit in proceedings in which his impartiality could be reasonably doubted, whatever his feelings might be.

Assessment of partiality of a member of the Enlarged Board

According to established jurisprudence, in order to assess the alleged partiality of a member of the Enlarged Board of Appeal under Article 24(3) and (4) EPC the deciding Board should apply a twofold test, namely:

- Firstly a "subjective" test "*in concreto*" requiring evidence of actual partiality of the member concerned
  
- Secondly an "objective" test "*in abstracto*" to determine if the circumstances of a case would allow a reasonable, objective and informed person to conclude that he might have good reason to suspect the partiality of the member concerned (see *inter alia* G 2/08, Reasons for the Decision 4).

As it will be explained in further detail in the following, the two tests are not cumulative.

In T 190/03 (OJ 2006, 502; see also R 8/13 of 20 March 2015; R 19/12 of 25 April 2014; T 283/03; T 572/03 of 18 March 2005; T 1193/02; T 1021/01 of 18 March 2005; T 281/03 of 18 March 2005 and T 281/03 of 30 March 2006) the board held that actual partiality was an internal characteristic of the member himself and its presence went against the principle of a fair trial. On the other hand, the board stated that the appearance of partiality involved external aspects and reflected, regardless of whether the member was actually biased or not, the confidence that the board inspired in the public; "Justice must not only be done; it must be seen to be done" (see also T 900/02, T 2291/08 and R 8/13 of 20 March 2015). The board held that this aspect of partiality did not need to be proved in the same way as actual partiality, but rather it had to be established whether the circumstances gave rise to an objectively justified fear of partiality (objective element). This essentially corresponded to the "objective" and "reasonable" grounds identified in the case law of the EPO. The board stated that the above was in line with generally acknowledged procedural principles in the contracting states, e.g. the jurisprudence of the European Court of Human Rights (ECtHR).



As stated by the Enlarged Board of Appeal in **G 1/05 of 7 December 2006** (OJ 2007, 362), for an objection under Art. 24(3), first sentence, EPC to be justified, it was not necessary that the Board member concerned actually be partial. It sufficed that there was a suspicion, i.e. an appearance, of partiality (called the "objective test" in the ECtHR jurisprudence since *Piersack v. Belgium* (1982) of 1 October 1982, No 8692/79, paragraph 30). There should be no risk that the courts would not ensure that justice was both done and perceived by the public to have been done. What was at stake was the confidence that the Boards of Appeal inspired in the public (see also **R 19/12 of 25 April 2014**, **T 190/03 of 18 March 2005**, OJ 2006, 502, ECtHR: *Puolitaival and Pirttiaho v. Finland* of 23 November 2004, No. 54857/00, paragraph 42).

The question was whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge had not or would not bring an impartial mind to bear on the adjudication of the case. It was thus necessary that a reasonable onlooker considering the circumstances of the case would conclude that the party might have good reasons to doubt the impartiality of the member objected to (see also **T 954/98 of 9 December 1999**, **T 1257/14 of 5 February 2018**).

#### II.1.2 The objection on the ground of suspected partiality is admissible

The filing of this brief is the first procedural step taken by the present party in the present proceedings G 1/21 before the Enlarged Board of Appeal.

Hence, the requirements with regard to admissibility as set out in Art. 24(3), second sentence, EPC, are fulfilled.

Furthermore, the present objection of suspicion of partiality is hereby raised at the earliest opportunity, without delay after the party had become aware of the reason for the objection, and in a timely manner, in particular considering that the Enlarged Board of Appeal has opened the present proceedings with several orders dated March 17, 2021 and issued on the

same day summons to oral proceedings scheduled on May 28, 2021, just in time to fulfill the two months' notice of the summons stipulated in Rule 115(1) EPC.

The precipitate way in which the Enlarged Board of Appeal handles this important case, which concerns fundamental rights according to Art. 116 EPC, puts the parties of the proceedings and third parties according to Article 10 of the Rules of Procedure of the Enlarged Board of Appeal (RPEBA) under unnecessary pressure in view of the complex legal issues.

### II.1.3 The objection on the ground of suspected partiality is reasoned and substantiated

The Chairman of the Enlarged Board of Appeal (EBoA) in the present proceedings (in the following "the EBoA Chairman") is the President of the Board of Appeal (in the following "the BoA President").

The BoA President manages the Boards of Appeal Unit using the functions and powers delegated to him by the President of the European Patent Office according to Rule 12a(2) EPC. With regard to the Boards, the BoA President thus exercises an executive, administrative and supervisory function.

The Boards of Appeal, which in their decisions are bound only by the EPC (Art. 23(3) EPC), are assigned the role of an independent judiciary and constitute the first and final judicial instance in the procedures before the European Patent Office (EPO). The EBoA Chairman holds an important position within the Enlarged Board of Appeal, which has as its main task to ensure the uniform application of the European Patent Convention (EPC) and decide on points of law of fundamental importance referred to it, e.g. - as in the present case - by a Board of Appeal (Article 112(1)(a) EPC).

The BoA President was involved in the drafting of new Article 15a of the Rules of Procedure of the Boards of Appeal (in the following "the RPBA 2020"). As explained in more detail below, it is this involvement of the BoA President in the drafting of new Article 15a

RPBA 2020 and his contribution in the process of amending the RPBA 2020 which gives rise to a suspicion of partiality.

According to Rule 12c(2) EPC *"On a proposal from the President of the Boards of Appeal and after the President of the European Patent Office has been given the opportunity to comment, the Committee set up under paragraph 1 shall adopt the Rules of Procedure of the Boards of Appeal and of the Enlarged Board of Appeal"*.

According to document BOAC/16/20<sup>1</sup>, attached to this brief as **Encl.1, the BoA president proposed** on December 10, 2020 to the Boards of Appeal Committee (in the following "the BOAC") to adopt an amendment to the RPBA 2020, which involves inserting new Article 15a in the RPBA 2020, which clarifies that the Boards of Appeal may hold oral proceedings pursuant to Article 116 EPC by videoconference, as indicated in the summary of BOAC/16/20.

#### SUMMARY

The President of the Boards of Appeal proposes that the Boards of Appeal Committee adopts the amendment to the Rules of Procedure of the Boards of Appeal set out in Part II of this document. The amendment involves inserting in the Rules of Procedure of the Boards of Appeal (RPBA 2020) new Article 15a, which clarifies that the Boards of Appeal may hold oral proceedings pursuant to Article 116 EPC by videoconference.

Furthermore, under point 20 of document BOAC/16/20, submitted by the BoA president, it is **suggested** that proposed new Article 15a RPBA 2020 enters into force on 1 April 2021, subject to its approval by the Administrative Council under Article 23(4), second sentence, EPC, and applies to all oral proceedings scheduled to take place on or after that date.

However, it is further suggested under point 20 of document BOAC/16/20, that the Boards of Appeal may adapt their practice before the date of entry into force and that **the Boards may summon parties to oral proceedings by videoconference for a date before 1 April 2021** and may convert oral proceedings scheduled to take place on the premises before that date to

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<sup>1</sup> Document BOAC/16/20 is publicly available at the following internet address (last accessed on April 26, 2021): [https://www.epo.org/modules/epoweb/acdocument/epoweb2/495/en/BOAC-16-20\\_en.pdf](https://www.epo.org/modules/epoweb/acdocument/epoweb2/495/en/BOAC-16-20_en.pdf)

oral proceedings by videoconference, even without requiring the parties' agreement to this format.

20. It is suggested that proposed new Article 15a RPBA enters into force on 1 April 2021, subject to its approval by the Administrative Council under Article 23(4), second sentence, EPC, and applies to all oral proceedings scheduled to take place on or after that date. As outlined above, proposed new Article 15a RPBA clarifies the practice of the Boards of Appeal since May 2020 of conducting oral proceedings by videoconference. Therefore, the Boards of Appeal may adapt their practice before the date of entry into force. The existing discretionary power of the Boards of Appeal to hold oral proceedings by videoconference remains unaffected. Accordingly, Boards may summon parties to oral proceedings by videoconference for a date before 1 April 2021 and may convert oral proceedings scheduled to take place on the premises before that date to oral proceedings by videoconference, even without requiring the parties' agreement to this format.

Hence, the BoA president proposed the adoption of new Rule 15a RPBA 2020 to the BOAC, i.e. **the legal basis forming the subject of the present proceedings G 1/21** and giving the Boards the power to summon oral proceedings by video conference, even without requiring the parties' agreement.

As noted above, the BoA President exercises an executive, administrative and supervisory function with regard to the Boards. Hence, considering the BoA president's proposal to the BOAC to introduce new Article 15a in the RPBA 2020, it appears that the **BoA president used his executive power to manage the Boards' operation and decided to propose an amendment of the Rules of Procedure to introduce a new legal provision which involves a significant change in the practice of the Boards with regard to the conduct of oral proceedings by videoconference, even without the consent of the parties.**

The proposal of the BoA president to introduce new Article 15a RPBA 2020 was noticed by the public and would therefore have been understood by a reasonable person to mean that the BoA President, in his management function under Rule 12a(2) EPC, had decided to steer the practice of the Boards in the direction of holding oral proceedings by videoconference, even if the parties do not agree to such a manner of conducting proceedings.

In addition, as noted above, the BoA president even suggested under point 20 of document BOAC/16/20, that the Boards of Appeal may adapt their practice before the date of entry into force and that **the Boards may summon parties to oral proceedings by videoconference for**

a date before 1 April 2021 and may convert oral proceedings scheduled to take place on the premises before that date to oral proceedings by videoconference, **even without requiring the parties' agreement.**

Thus, considering the circumstances it appears to a reasonable, objective and informed person that the BoA president has no legal reservations with regard to holding oral proceedings by videoconference, but rather considers conducting oral proceedings by videoconference in agreement with Art. 116 EPC even if not all parties have given their consent. Otherwise, the BoA president would not have suggested application of the new provision even before it entered in force, and before it was approved by the Administrative Council.

Hence, it appears to a reasonable, objective and informed person that the BoA president had no reservations, that the conduct of oral proceedings in the form of a videoconference is compatible with the right to oral proceedings as enshrined in Article 116(1) EPC, even if not all of the parties to the proceedings have given their consent to the conduct of oral proceedings in the form of a videoconference.

However, this exactly corresponds to the question that has been referred to the Enlarged Board in the present case, and it is apparent from the above discussed, that the BoA President appears to have a clear opinion on how the question should be answered.

Said conclusion is further confirmed by a further observation. The Boards of Appeal issued a Communication on 15 December 2020 regarding *oral proceedings before the Boards of Appeal – continuation of the measures adopted due to the coronavirus (COVID-19) pandemic and revised practice on oral proceedings by VICO*<sup>2</sup>, attached to this brief as **Encl.2**, which has been published on the same day on the Boards of Appeal web section<sup>3</sup> on the website of the European Patent Office (EPO).

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<sup>2</sup> Communication of the Boards of Appeal dated 15 December 2020 publicly available at the following internet address (last accessed on April 26, 2021):

<https://www.epo.org/law-practice/case-law-appeals/communications/2020/20201215.html>

<sup>3</sup> <https://www.epo.org/law-practice/case-law-appeals/communications.html>

In said Communication in the section headed “*Oral proceedings conducted by VICO*” the Boards announced that “*oral proceedings before the Boards of Appeal can also be conducted using VICO technology*”. Further, it has been announced that “**from 1 January 2021 boards may conduct oral proceedings by VICO even without the agreement of the parties concerned**, as has now been made clear in the new Article 15a RPBA adopted by the Boards of Appeal Committee. Since the new provision merely clarifies an existing possibility, **boards may adapt their practice as regards dispensing with the need to obtain the agreement of the parties concerned even before the date of its entry into force**. The parties will be sent a communication informing them in good time before the date of the oral proceedings of any change from an in-person to a VICO format”.

### Oral proceedings conducted by VICO

Oral proceedings before the Boards of Appeal can also be conducted using VICO technology. Oral proceedings to be conducted by VICO are also listed in the online oral proceedings calendar. From 1 January 2021 boards may conduct oral proceedings by VICO even without the agreement of the parties concerned, as has now been made clear in the new Article 15a RPBA adopted by the Boards of Appeal Committee. Since the new provision merely clarifies an existing possibility, boards may adapt their practice as regards dispensing with the need to obtain the agreement of the parties concerned even before the date of its entry into force. The parties will be sent a communication informing them in good time before the date of the oral proceedings of any change from an in-person to a VICO format.

That is, well before the entry into force of new Article 15a RPBA 2020 (1 April 2021) and even well before the approval of the amendment to the RPBA 2020 by the Administrative Council (see CA/D 3/21, attached to this brief as **Encl.3**)<sup>4</sup> the Boards already announced that that they may **conduct oral proceedings by VICO even without the agreement of the parties concerned**.

As noted above the BoA President exercises an executive, administrative and supervisory function with regard to the Boards. It would be assumed that said functions of the BoA President include any decision about an Official Communication issued by the Boards of Appeal and published on their website. Hence such a Communication would appear to be issued based on an instruction of the BoA president or at least with his consent. The fact, that

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<sup>4</sup> CA/D 3/21 [https://www.epo.org/modules/epoweb/acdocument/epoweb2/493/en/CA-D\\_3-21\\_en.pdf](https://www.epo.org/modules/epoweb/acdocument/epoweb2/493/en/CA-D_3-21_en.pdf) published in the Official Journal OJ 2021, A19 <https://www.epo.org/law-practice/legal-texts/official-journal/2021/03/a19/2021-a19.pdf>

this Communication was also published well before the entry into force of new Article 15a RPBA 2020, further confirms the appearance that the BoA president considered the practice to conduct oral proceedings by VICO even without the agreement of the parties to be in conformity with Art. 116 EPC.

A reasonable, objective and informed person considering the above discussed circumstances would conclude that he has good reasons to doubt the impartiality of the BoA president as EBoA Chairman in the present proceedings.

Hence, the objection to the present Chairman of the Enlarged Board of Appeal as suspected of partiality is reasoned and substantiated.

## II.2 Suspicion of partiality of further members of the Enlarged Board of Appeal

According to document BOAC/16/20, point 8, the Presidium advised the BoA President in accordance with Rule 12b(3)(c) EPC on the proposal for the amendment to the RPBA 2020.

8. In accordance with Rule 12b(3)(c) EPC, the Presidium advised the President of the Boards of Appeal on the proposal for the amendment to the RPBA 2020 on 30 October 2020 and 2 December 2020.

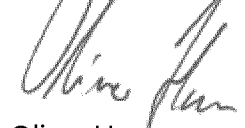
The fact that new Article 15a RPBA 2020 was presented for consultation to the Presidium of the Boards of Appeal (in the following “the Presidium”) and then presented to the BOAC and the Administrative Council for approval are evidence that the majority of the Presidium appeared to be in favor of the proposal. The composition of the Enlarged Board of Appeal in the present case G 1/21 includes members of the Presidium. It therefore appears that said members of the Presidium also have a bias in favor of considering oral proceedings by videoconference without the consent of the parties to be in agreement with Article 116 EPC, to the effect that a reasonable, objective and informed person would conclude that he has good reason to suspect the partiality of such members based on the arguments provided above with regard to the Chairman of the Board of appeal, which apply *mutatis mutandis*.

According to the Notice concerning the amendment of the composition of the Presidium of the Boards of Appeal for the years 2020/2021, amendment from 1 September 2020<sup>5</sup>, attached to this brief as **Encl.4**, the two members of Enlarged Board of Appeal in the present proceedings, G. Eliasson (SE), and A. Ritzka (DE), were also members of the Presidium pursuant to Rule 12b(1) EPC, at the relevant period – according to the Document BOAC/16/20, the Presidium advised the President of the Boards of Appeal on the proposal for the amendment to the RPBA 2020 on 30 October 2020 and 2 December 2020.

Hence, a reasonable, objective and informed person considering the above discussed circumstances would conclude that he has good reasons to doubt the impartiality of the EBoA members G. Eliasson (SE) and A. Ritzka (DE) in the present proceedings.

Hence, the objection to the present members of the Enlarged Board of Appeal, G. Eliasson (SE) and A. Ritzka (DE), as suspected of partiality, is reasoned and substantiated.

Respectfully,



Oliver Hassa  
Patent Attorney



Dr. Stephan Tatzel  
Patent Attorney

**Enclosure(s):**

Authorization

**Encl.1** BOAC/16/20

**Encl.2** Comm. regarding oral proceedings before the BoA dated 15 December 2020

**Encl.3** CA/D 3/21 (OJ 2021, A19)

**Encl.4** Notice concerning composition of the Presidium

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<sup>5</sup> Notice concerning the amendment of the composition of the Presidium of the Boards of Appeal  
[http://documents.epo.org/projects/babylon/eponet.nsf/0/C8760950A6BBF8D4C12585D600487583/\\$File/Presidium%202020%2001.09%20-%20PDF.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/C8760950A6BBF8D4C12585D600487583/$File/Presidium%202020%2001.09%20-%20PDF.pdf)