



Opposition Matters 2020

Online conference

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Oral proceedings by videoconference in opposition

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Art. 116 EPC
Oral Proceedings

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Oral proceedings by Videoconference in Opposition

Content

- Scope of the pilot and its legal basis
- Introduction to the platforms – Skype & Zoom
- How does it work?
- Practical tips for attorneys
- Summary, including advantages

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)
- The pilot project will run **until 30 April 2021**

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



Scope

- Oral proceedings before ODs **may be held** by ViCo at the discretion of the opposition division (OD) **and with the agreement of all parties** and are equivalent to oral proceedings held on the premises of the EPO

Scope

- Oral proceedings **may not be held** as ViCo if
- (a) the OD has decided to take evidence (Rule 117 EPC) or
- (b) there are other serious reasons for not doing so

- **Planning:** Taking evidence by witness hearing and inspection

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

Different Phases of the Pilot Project

- Started for straight forward opposition cases in May 2020 with **Skype for Business (SfB)**

- Since September 2020 oral proceedings requiring simultaneous interpretation are held via **Zoom**

Platforms in use

SfB and Zoom are

- broadly accepted and easy to use platforms,
 - with low IT requirements,
 - not needing acquisition of licences by users.
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- [EPO data protection](#) guidance provides information when using Zoom

Guidelines for SfB and Zoom

- [Technical information](#) is available on the EPO website
- Mock trial of oral proceedings by ViCo (see [e-learning centre](#), EPO website)
- Headset with **microphone** is strongly recommended
- For both it is not advisable to use a tablet or smartphone

Zoom

- Zoom is blocked by some companies for security reasons
- Where permitted, the simultaneous translation has been favourably reviewed
 - Channels for EN, FR, DE are easy to use
 - Available for all, including observers
- Opposition Division (OD) need to check translator has finished before continuing proceedings

Extracts from Summons

You are informed that the EPO supports the following video-conferencing technologies:

- Microsoft Skype for Business Clients and SfB Room Systems
- Browser-based Web Meeting via Skype for Business WebApp
- SIP/H.323 video-conferencing systems.

The EPO provides the proprietor and the opponent(s) or their representatives with the opportunity to test the video-conferencing system in advance of the oral proceedings. A test call can be arranged by contacting the EPO Serviceline on Mondays to Fridays (except days on which the EPO filing offices are closed) from 7:30 to 18:00 hrs CET, by telephone (+31) (0) 70 340 44 44 or by email serviceline@epo.org.

- **Note Skype for Business not Skype**

Consideration before a ViCo

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

Additional correspondence with EPO

■ Ensure that contact information is sent to EPO

Please supply the EPO as soon as possible with the following information concerning your video-conference studio:

- email address to be used by the EPO for communicating the connection details
- name of contact person with telephone number and email address
- type and name of video-conference equipment
- telephone and fax number (if any) of the studio including country and area code

■ Check for receipt of ViCo connection details

IMPORTANT:

Please inform the EPO without delay in the event that the detailed information about the video-conference connection has not been received at least ten days before the scheduled date of the oral proceedings to be held via video-conference.

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
- **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** 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

Exchanging documents/requests

- Each party must confirm receipt of an email before proceedings can commence
- Submissions are sent via email to the opposition division
- Submissions then forwarded by OD to the parties
- Make sure you have the technology to generate the submissions

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 during ViCo

- ViCo can be more tiring – consider **extra breaks**
- Organise the documents you need
- Make sure you have an additional channel for discussion within your team, including client
 - While in session
 - During OD deliberations
- Keep the chat box open for communications with OD as mentioned above

epi Position

- More testing is required for ViCo to gain acceptance in the profession
- Presenting comments in a face-to-face setting is much more efficient – judge body language - and guarantees full right to be heard
- Essential that all parties agree to participate in ViCo
- Making ViCo the default is not supported

EPO Commitment

- The Office remains committed to providing easy access to **transparent, fair and efficient proceedings in a low-cost, safe, effective and environmentally-friendly manner**, with a view to ensuring conclusion of all possible pending opposition cases within the shortest possible time

Questions?

