



# Opposition Matters 2020

Online conference

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# Hearing of witnesses by videoconference

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# Presenter



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# Hearing of witnesses by videoconference

## Following the COVID-19 outbreak

- No oral proceedings on the premises of the EPO since **March 2020**
- Oral proceedings before examination divisions are – as a rule – held by videoconference as from **2 April 2020**
- Oral proceedings before opposition divisions may be held by videoconference with the agreement of the division and all parties as from **4 May 2020**
- During oral proceedings held by videoconference, documents filed subsequently must be filed by email as from **14 May 2020**
- Simultaneous translation and/or participation of many parties is no hinderance for holding oral proceedings by videoconference as from **14 September 2020**

[Decision](#) of the President of the EPO dated 1 April 2020 concerning oral proceedings by videoconference before examining divisions

[Decision](#) of the President of the EPO dated 14 April 2020 concerning the pilot project for oral proceedings by videoconference before opposition divisions

[Decision](#) of the President of the EPO dated 13 May 2020 concerning the filing of documents during ... oral proceedings held by videoconference

[Testing](#) Zoom as second platform for oral proceedings in opposition

# Hearing of witnesses by videoconference

Taking of evidence remains to be a reason not to hold oral proceedings by videoconference up to now

- Taking of evidence is required in about 100 cases in opposition and examination per year

Advantages of hearing of witnesses by videoconference

- Providing a possibility for taking of evidence during the pandemic
- Reduction of travel time and travel costs for all parties involved
- Reduction of deposit amount for witness compensation and reimbursement of travel costs
- More flexibility in scheduling oral proceedings
- Environmental sustainability

# Hearing of witnesses by videoconference

## Legal and practical considerations

- Oral proceedings by videoconference are equivalent to oral proceedings held on the premises of the EPO in the presence of the parties
- Many EPC contracting states allow the taking of evidence by videoconference
  - Only some rely on express provisions in their national laws
- Witnesses need to be informed about the way in which they will be asked to provide their testimony
- Witnesses may connect remotely regardless of whether the proceedings are held by videoconference or on the premises of the EPO

➔ It is currently intended to ask the Administrative Council of the EPO to approve of a respective clarification in Rules 117 and 118 EPC

**T 1378/16** confirms that oral proceedings by videoconference fulfil the requirements of Art. 116 EPC

# Hearing of witnesses by videoconference

## Proposed changes to the Implementing Regulations of the EPC

- The EPO indicates in the order to take evidence whether the taking of evidence will take place by videoconference, and the witness to be heard is informed accordingly
- The party, witness or expert to be heard may request to be heard by videoconference even where the oral proceedings are held on the EPO's premises
- As of 1 January 2021

draft new Rules 117, 118(2)a) EPC

draft new Rule 118(2)c) EPC



**Questions?**