

Mock trial for oral proceedings by videoconference in opposition

Script for the oral proceedings by videoconference

- Starting the videoconference connection (distributed division and representatives of all three parties as well as a member of the public appear on the Zoom gallery)
- Chair asks if all parties can see and hear the complete division.
- The identity of the party representatives is checked. The presence of the member of the public is acknowledged.
- Chair explains video-specifics including
 - Distribution of the division
 - The fact of a second videoconference connection for the members of the division to deliberate
 - The chat icon and its function
 - Explains how to react in case of disconnection
 - How to file submissions
 - Exchanges of email addresses of the division via email
 - Establishes phone numbers to be used in case of disconnection
 - Asks if there are any questions
- Chair asks the parties whether they are ready to start and opens the proceedings by
 - Reminds all parties that recording is not allowed
 - Asks the parties for confirmation to have email addresses received for submitting/receiving submissions
 - Citing the European patent concerned. The title of the patent.
 - Introducing the Patent Proprietor
 - Introducing the Opponent I
 - Introducing the Opponent II
 - Introducing the Opposition Division
 - In case a further person is present with one of the parties the question in which capacity this person is here, will be raised
 - Chair asks the Parties to confirm their requests.
 - Patent Proprietor confirms his request for maintenance in amended form based on the new main request filed within the time limit set by Rule 116 EPC.
 - Opponent I confirms his request for revocation of the new main request in view of D1 based on Art. 100(a) EPC in conjunction with lack of inventive step.
 - Opponent II confirms his request for revocation of the patent and wishes to file a new document which is novelty destroying for the new main request.
- Patent Proprietor argues late filing and strategic intention that amounts to misuse of procedure and therefore the new document should not be admitted into the proceedings.
- Opponent II submits the new document D2 to the division.

- Chair asks the second member to forward D2 by e-mail to Patent Proprietor and Opponent I using the e-mail addresses indicated in the data sheets submitted in reply to the summons to oral proceedings by videoconference.
- Opponent I and Patent Proprietor confirm receipt of D2.
- Chair gives floor to Opponent II and asks him to explain why this document has been filed so late, why it should be introduced into the proceedings at this late stage and what its content is about.
- Opponent II admits late filing but justifies it by its relevance. D2 is clearly novelty destroying for the new main request. This document came to his knowledge only 2 days ago, related with another opposition case. In view of the extremely pertinent content it has to be admitted into the proceedings. D2 discloses all features of the new main request and Opponent II shortly refers to the relevant features in D2. In view of the new main request D1 cannot any longer be considered as a novelty destroying document as it does not refer to the hydrogel layer and therefore D2 becomes so relevant for the proceedings.
- Chair gives the floor to the Patent Proprietor who argues again that at this late stage the document should not be admitted into the proceedings. If the Opposition Division should come to the conclusion that D2 will be admitted into the proceedings he asks for a postponement of the oral proceedings.
- Chair asks Opponent II whether he has any comments in view of the request of postponement.
- Opponent II says that D2 is a short document and the Patent Proprietor should be able to react to this document and therefore a postponement should not be allowed.
- Chair asks whether Opponent I has any comments. Opponent I is in favour of the admittance of D2 and against a postponement.
- Chair asks other division members whether there are any comments. Other division members' answer in the negative.
- Chair announces a break of 10 minutes for deliberation of the division on the issue of admittance of D2 and the postponement if necessary, via the second videoconference connection reserved for the division. Chair also points out that the videoconference will be put on hold and encourages the parties to take a break from the screen for this time.

- Chair resumes the proceedings (including admitting the public to the oral proceedings) and
 - announces the conclusion that D2 is admitted into the proceedings as it is *prima facie* highly relevant for the proceedings and that
 - the request for postponement is not allowed.
- Chair asks the Patent Proprietor whether he would need some time to study D2.
- Patent Proprietor answers in the negative.
- Chair invites to the discussion of novelty and gives Opponent II the floor.
- Opponent II explains the relevant passages in D2 which disclose all features of the main request and thus D2 destroys the novelty of the main request.
- Opponent I is of the opinion that D2 is clearly novelty destroying for the subject-matter of the main request.
- Chair gives the floor to the Patent Proprietor who signals that he wants to contact his client.
- The Chairman asks the Patent Proprietor how much time he needs. The Patent Proprietor says that 15 minutes should be fine.
- Oral proceedings are interrupted for 15 minutes. Chair also points out that the videoconference will be put on hold and encourages the parties to take a break from the screen for this time.
- Chair resumes the proceedings (including admitting the public to the oral proceedings) and asks the Patent Proprietor how he wants to proceed.
- Patent Proprietor maintains his main request and has no further comments.
- Chair asks other division members whether there are comments. Other division members' answer in the negative.
- Chair announces a break of 15 minutes for deliberation of the division on the issue of novelty in view of D2 via the second videoconference connection reserved for the division. Chair also points out that the videoconference will be put on hold and encourages the parties to take a break from the screen for this time.
- Chair resumes the proceedings (including admitting the public to the oral proceedings) and
 - announces the conclusion that D2 is novelty destroying for the only claim 1 of the main request.
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- Chair asks Patent Proprietor how he would like to proceed.

- Patent Proprietor confirms that he has no further request.
- After having been given the floor by the Chair Opponent I and Opponent II confirm that they do not have any further request.
- Chair asks other division members whether there are comments or a need to deliberate. Other division members' answer in the negative.
- Chair asks parties whether the quality of the videoconference was acceptable to them so that a decision can be announced.
- All parties answer in the affirmative.
- Chair announces the decision of revocation of the patent in view of the amendments made during the proceedings based on Art. 101(3)b EPC without further deliberation of the division.
- Chair closes oral proceedings by stating that the minutes and the decision will be dispatched as soon as possible and that the Patent Proprietor has the right to appeal this decision within the time limit running from the date of notification of the written decision and thanks all participants to the proceedings. Thereafter the videoconference connection is switched off.