



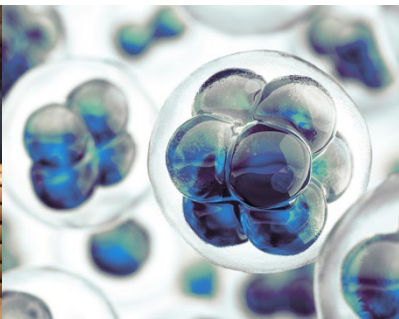
Europäisches  
Patentamt  
European  
Patent Office  
Office européen  
des brevets

# Guidelines2day 2022

## Oral proceedings



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16 March 2022

# Content

- Oral proceedings – especially by VICO
- Taking of evidence
- Change of date
- Identity checks
- Filings of documents
- Language of the oral proceedings
- Technical aspects
- Admission of the public

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# Question




Who has already participated in oral proceedings by videoconference?

RAISE HAND

yes

no

 = yes

# Oral proceedings – especially by VICO

- Right to oral proceedings
  - subject to some minor exceptions
  - Art. 116 not limited to a specific form (G 1/21)
- VICO as standard form in first instance proceedings since 2020/21
  - in examination since 1 April 2020
  - in opposition **as pilot** since 4 May 2020 (with party consent) and, as **extended pilot** (VICO by default), since January 2021
  - proceedings before the Legal Division and the Receiving Section since July 2021
- almost 8000 oral proceedings successfully conducted by VICO in 2021 alone

E-III, 11

Art. 116 EPC  
Oral proceedings

OJ 2020, A121 / OJ 2021, A93;  
OJ 2020, A134  
OJ 2021, A49  
OJ 2021, A50

# Oral proceedings – especially by VICO (2)

- Legal basis
  - decisions of the President
- Exceptions in case of **serious reasons**, e.g.
  - a proven visual impairment that prevents a representative from following oral proceedings on screen
  - the proceedings involve the demonstration or inspection of an object where the haptic features are essential
- in case of serious reasons: oral proceedings on EPO premises

Art. 10 EPC  
Management

Notice of 10 November 2020,  
OJ EPO 2020, A122

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# Taking of evidence

- Means of evidence
  - documents
  - witness / party testimony
  - inspection
  - sworn statements in writing
  - ...
- Taking of evidence, in particular by
  - hearing witnesses or experts
  - hearing parties
  - inspection
- Taking of evidence by VICO
  - expressly foreseen in Rules 117 and 118 EPC

GL, E-IV

Art. 117 EPC  
Means and taking of evidence

Rule 117 EPC  
Decision on taking of evidence



## Taking of evidence (2)

- Hearing witnesses by VICO
  - irrespective of the form of the oral proceedings
  - should be connecting independently from the party nominating it
  - stays in virtual “waiting room” of the videoconference, until admitted by the chairperson
  - detailed guidance sent to the witness with the summons
- Conducting inspections by VICO
  - normally with the assistance of a technician
  - object to be sent to the EPO sufficiently in advance
  - a separate, high quality camera transmits the images of the object being inspected to the VICO

GL, E-IV

Rule 117 EPC  
Decision on taking of evidence

Rule 118 EPC  
Summons to give evidence  
before the European Patent  
Office

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# Change of date

The party must provide serious reasons for change of date, e.g. previously notified summons to another oral proceedings

- for the same date
- for the preceding or following day
- for two preceding/following days only where the other oral proceedings take place on the premises of the EPO at a geographically distant location

GL, E-III, 7.1.1

► Change of date is allowed if another oral proceedings was scheduled for two preceding or following days only in case of face-to-face oral proceedings involving travelling

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# Simplified ID check

- In case of oral proceedings by VICO, copies of ID documents may be filed:
  - by online filing (no later than two days prior to the oral proceedings; documents put in the non-public part of the file)
  - by email (not included in the file, email deleted after the oral proceedings)
- Only full name and picture need to be visible. Other information may be hidden provided that it is possible to recognise that it is an official ID document.
- Divisions will only check ID documents of one representative per party. The ID documents of further representatives and accompanying persons are not checked.  
→ Oral confirmation of their identity by the relevant representative is sufficient

GL, E-III, 8.3.1

# Badges for professional representatives

- Production of EPO badges for professional representatives by pre-arranged video call
- Send an email to [support@epo.org](mailto:support@epo.org) comprising:
  - your full name
  - contact details (phone number, email address, postal address)
  - photo of yourself in jpeg format
- EPO security will invite you to a video call, where you will be asked to show proof of your identity (e.g. passport or national ID card).
- EPO badge will be sent to your address by registered post.

OJ EPO 2021, A79


GL, E-III, 8.3.1

▶ If the EPO badge is used, a private session for the ID check is not required.

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# Filings of documents during oral proceedings held by videoconference

- Documents (also authorisations) must be submitted by email
- Amended application/patent documents must be filed as attachments in PDF format (compliant with WIPO standard Annex F)
- Other documents may be sent in any format which can be opened by the EPO and reproduced in a legible form
- A required signature (Rule 50(3)) may be applied to:
  - an attached document (e.g. included in the PDF)
  - the text of the email
- The signature may take the form of
  - a facsimile signature 
  - a “*string of characters*”

Example: an email signature with the sender’s name and position

GL, E-III, 8.5.2

EPO OJ 2020, A71

Rule 50(3) EPC  
Documents filed subsequently



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# Language of the oral proceedings

- Language of the proceedings
- Use of another EPO official language
  - interpreting provided by EPO if announced sufficiently in advance
  - instead of the language of the proceedings, if all parties have indicated to use that other official language

GL E-III, 10.2;  
GL E-V

Rule 4 EPC  
Language in oral proceedings

▶ If you wish to use another official language, notice must be given to the EPO at least one month before the date of the oral proceedings.

# Question




The representative of the proprietor wishes to plead in English, the language of the proceedings, but requests interpretation into French for the benefit of some of the proprietor's employees.

Will the EPO provide for interpretation into French free of charge?

RAISE HAND

yes

no

 = yes  
Raise Hand

# Answer



- A party must be clear as to which official language it wishes to use.
- A party which elects to use a language which is not understood by one of its own representatives or employees cannot for that reason request a free translation. The EPO does not provide translation merely to suit the convenience of a party.

yes

**no**

GL E-V, 1

T 418/07

T 2696/16

## Language of the oral proceedings (2)

- Use of the official language of an EPC contracting state
  - if the interested party arranges for interpretation
- Minutes
  - in the language of proceedings
  - if different official language used, in that language if
    - deemed appropriate by the division, and
    - all parties agree
  - witness statements etc. in the official language used / interpreted to

GL E-III, 10.2; E-V, 2. E-V, 6

Rule 4 EPC  
Language in oral proceedings

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# Technical aspects

## Best practice / virtual meeting etiquette

- One camera per person or camera with pan/tilt/zoom function
- High-quality microphone connected by USB or Bluetooth USB connector (frequency response 125-15000 Hz and echo-cancelling)

Especially for VICOs involving interpreting, **please don't use:**

- Microphones built into a PC
  - Phone earbuds, even if wired
  - Standard VICO room equipment with omnidirectional micros
- 
- At least 2Mbps of free up- and download bandwidth, preferably cabled network connection
  - Ensure proper lighting (e.g. avoid being lit from behind)
  - Virtual backgrounds are allowed

Arrange a test session:

- Email to [EPOvicotest@epo.org](mailto:EPOvicotest@epo.org)
- Include preferred date, application number and contact details

[Technical guidelines for oral proceedings held as VICO](#)

[FAQ – Oral proceedings held by videoconference](#)

# Technical aspects (2)

## How to connect

- Parties and their representatives may connect to the oral proceedings from different locations (no request necessary)
  
- Standard platform is Zoom
- Supported systems:
  - Zoom desktop client
  - Zoom mobile app for iOS or Android
  - Zoom web client (**not suitable** for oral proceedings in **examination**)
  
- Technical guidelines:
  - Link included in Zoom invitation
  - Home > Applying for a patent > Online services > Calendar of oral proceedings > Technical guidelines

EPO OJ 2020, A121

EPO OJ 2020, A134

[Technical guidelines for oral proceedings held as VICO](#)

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# Technical aspects (3)

## Recording

- Recording by the parties is not permitted
- If the parties are informed, the EPO may make sound recordings in specific exceptional circumstances (e.g. witness testimony)
- The recording is kept until the end of any possible proceedings
- The recording is not be provided to the parties

GL, E-III, 10.1  
GL, E-III, 11.3  
GL, E-III, 11.4

EPO OJ 2020, A121  
EPO OJ 2020, A122  
EPO OJ 2020, A134

## Technical problems

- If technical problems occur such that the oral proceedings cannot be conducted openly and fairly (e.g. a total or partial breakdown in communication), the right to be heard may be violated.
- If such problems cannot be overcome, the oral proceedings are closed and new summons are issued.

## Technical aspects (4)

Further developments following user survey and internal input (planned for April 2022):

- 'Deliberation rooms' for parties
- Whiteboard
- Timer for chairs to ensure more appropriate breaks
- Extra audio channels for interpretation provided by parties under Rule 4(1) EPC
- VICO-bot applications, with a view to provide users with an automated evaluation of their VICO settings and practical recommendations for improvement

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# Question




Who has already attended oral proceedings as a member of the public?

RAISE HAND

yes

no

 = yes

# Admission of the public

- Oral proceedings in opposition are public
  - see the **calendar** of oral proceedings at **epo.org**:  
  
Home > Applying for a patent > Online services > Calendar of oral proceedings
- Remote access to oral proceedings
  - request by email to [support@epo.org](mailto:support@epo.org)
  - at least **three working** days in advance
  - mentioning **date of the oral proceedings**, **application number**, **requester's name** and **email address**
  - connection details are not to be shared

GL, E-III, 8.1

Art. 116 (4) EPC  
Oral proceedings

[Information about access to oral proceedings by videoconference before opposition divisions](#)

## Admission of the public (2)

- During oral proceedings
  - switch off microphone and camera
  - on request of the chair: temporarily switch on the camera
  - no identity check
  - pay attention to enter the name under which you will initially appear before joining the videoconference (preferably “PUBLIC”)

GL, E-III, 8.1

Art. 116 (4) EPC  
Oral proceedings

[Information about access to oral proceedings by videoconference before opposition divisions](#)