



Revision of the Rules of Procedure of the Boards of Appeal

First public draft – online user consultation

1 February 2018

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
Article 1 Business distribution and composition	Article 1 Business distribution and composition	
(1) The Presidium referred to in Rule 12, paragraph 4, EPC, shall before the beginning of each working year draw up a business distribution scheme for the distribution among the Boards of Appeal of all appeals that may be filed during the year, designating the members who may serve on each Board and their respective alternates. The scheme may be amended during the working year.	(1) The Presidium referred to in Rule 12 b , paragraph 4, EPC, shall before the beginning of each working year draw up a business distribution scheme for the distribution among the Boards of Appeal of all appeals that may be filed during the year, designating the members who may serve on each Board and their respective alternates. The scheme may be amended during the working year.	Change(s) for reasons of clarity/consistency.
(2) The Chairman of each Board of Appeal shall determine the composition of the Board for each particular case in accordance with the business distribution scheme.	(2) The Chairman of each Board of Appeal shall determine the composition of the Board for each particular case in accordance with the business distribution scheme. He shall designate himself or another technically or legally qualified member as Chairman in the particular appeal.	Change(s) for reasons of clarity/consistency.
Article 2 Replacement of members	Article 2 Replacement of members	
(1) Members shall be replaced by alternates if they are prevented from participating, particularly as a result of sickness, excessive workload, and commitments which cannot be avoided.	(1) Members shall be replaced by alternates if they are prevented from participating, particularly as a result of sickness, excessive workload, and/or commitments which cannot be avoided.	Change(s) for reasons of clarity/consistency.
(2) Any member requesting to be replaced by an alternate shall inform the Chairman of the Board concerned of his unavailability without delay.	(2) Any member requesting to be replaced by an alternate shall inform the Chairman of the Board concerned of his unavailability without delay.	Change(s) for reasons of clarity/consistency.
(3) The Chairman of the Board may designate another member of the Board to replace him or her as Chairman in a particular appeal in accordance with the business distribution scheme.	(3) The Chairman of the Board may designate another member of the Board to replace him or her as the Chairman in a particular appeal in accordance with the business distribution scheme.	Change(s) for reasons of clarity/consistency.
Article 3 Exclusion and objection	Article 3 Exclusion and objection	
(1) If a Board has knowledge of a possible reason for exclusion or objection which does not originate from a member himself or from any party to the proceedings, then the procedure of Article 24, paragraph 4, EPC shall be applied.	(1) If a Board has knowledge of a possible reason for exclusion or objection under Article 24 EPC which does not originate from the member himself concerned or from any a party to the proceedings , then the procedure of Article 24, paragraph 4, EPC shall be applied.	Change(s) for reasons of clarity/consistency.
(2) The member concerned shall be invited to present his comments as to whether there is a reason for exclusion.	(2) The member concerned shall be invited to present his comments as to whether there is a reason for exclusion or objection .	Change(s) for reasons of clarity/consistency.
(3) Before a decision is taken on the exclusion of the member, there shall be no further proceedings in the case.	(3) Before a decision is taken on the exclusion or objection of the member , there shall be no further proceedings in the case.	Change(s) for reasons of clarity/consistency.
Article 4 Procedural compliance	Article 4 Procedural compliance	
(1) The Chairman shall for each appeal designate a member of the Board or himself to consider the admissibility of the appeal.	(1) The Chairman of the Board shall for each appeal designate a member of the Board or himself to consider the admissibility of the appeal.	Change(s) for reasons of clarity/consistency.
(2) The Chairman or a member designated by him shall ensure that the parties comply with these Rules and with directions of the Board and shall propose action to be taken as appropriate.	(2) The Chairman in the particular appeal or a member designated by the Chairman of the Board shall ensure that the parties comply with these Rules of Procedure and with directions of the Board and shall propose action to be taken as appropriate.	Change(s) for reasons of clarity/consistency.
Article 5 Rapporteurs	Article 5 Rapporteurs	
(1) The Chairman of each Board shall for each appeal designate a member of his Board, or himself, as rapporteur. If appropriate in the light of the subject- matter of the case, the Chairman may designate an additional rapporteur.	(1) The Chairman of each the Board shall for each particular appeal designate a technically or legally qualified member of the Board in the composition responsible for deciding it, including its Chairman of himself , as rapporteur. If appropriate in the light of the subject-matter of the case, the Chairman of the Board may designate an additional rapporteur.	Change(s) for reasons of clarity/consistency.
(2) If an additional rapporteur is appointed, the steps referred to in paragraphs 3 to 5 shall be taken by the rapporteur and additional rapporteur jointly unless the Chairman directs otherwise.	(2) If an additional rapporteur is appointed, the steps referred to in paragraphs 3 to 5 shall be taken by the rapporteur and additional rapporteur jointly unless the Chairman in the particular appeal directs otherwise.	Change(s) for reasons of clarity/consistency.

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
(3) The rapporteur shall carry out a preliminary study of the appeal and may prepare communications to the parties subject to the direction of the Chairman of the Board. Communications shall be signed by the rapporteur on behalf of the Board.	(3) The rapporteur shall carry out a preliminary study of the appeal and may prepare communications to the parties subject to the direction of the Chairman of the Board <u>in the particular appeal</u> . Communications shall be signed by the rapporteur on behalf of the Board.	Change(s) for reasons of clarity/consistency.
(4) The rapporteur shall make the preparations for meetings of the Board and for oral proceedings.	(4) The rapporteur shall make the preparations for meetings of the Board and for oral proceedings.	
(5) The rapporteur shall draft decisions.	(5) The rapporteur shall draft decisions.	
(6) If a rapporteur or additional rapporteur considers that his knowledge of the language of the proceedings is insufficient for drafting communications or decisions, he may draft these in one of the other official languages. His drafts shall be translated by the European Patent Office into the language of the proceedings and the translations shall be checked by the rapporteur or by another member of the Board concerned.	(6) If a rapporteur or additional rapporteur considers that his knowledge of the language of the proceedings is insufficient for drafting communications or decisions, he may draft these in one of the other official languages. His drafts shall be translated by the European Patent Office into the language of the proceedings and the translations shall be checked by the rapporteur or by another member of the Board concerned .	Change(s) for reasons of clarity/consistency.
Article 6 Registries	Article 6 Registries	
(1) Registries shall be established for the Boards of Appeal. Registrars shall be responsible for the discharge of the functions of the Registries. One of the Registrars shall be designated Senior Registrar.	(1) Registries shall be established for the Boards of Appeal. Registrars shall be responsible for the discharge of the functions of the Registries. One of the Registrars shall be designated Senior Registrar.	
(2) The Presidium referred to in Rule 12, paragraph 1, EPC may entrust to the Registrars the execution of functions which involve no technical or legal difficulties, in particular in relation to arranging for inspection of files, issuing summonses to oral proceedings and notifications and granting requests for further processing of applications.	(2) The Presidium referred to in Rule 12 b , paragraph 1, EPC may entrust to the Registrars the execution of functions which involve no technical or legal difficulties, in particular in relation to arranging for inspection of files, issuing summonses to oral proceedings and notifications, <u>and</u> granting requests for further processing of applications.	Change(s) for reasons of clarity/consistency.
(3) The Registrar shall report to the Chairman of the Board concerned on the admissibility of each newly filed appeal.	(3) The Registrar shall report to the Chairman of the Board concerned on the admissibility of each newly filed appeal.	Change(s) for reasons of clarity/consistency.
(4) Minutes of oral proceedings and of the taking of evidence shall be drawn up by the Registrar or such other employee of the Office as the Chairman may designate.	(4) Minutes of oral proceedings and of the taking of evidence shall be drawn up by <u>any member of the Board designated by the Chairman in the particular appeal or, if the Chairman of the Board agrees, by</u> the Registrar.	Change(s) for reasons of clarity/consistency.
Article 7 Attendance of interpreters	Article 7 Attendance of interpreters	Change(s) for reasons of clarity/consistency.
If required, the Chairman of any Board shall make arrangements for interpretation during oral proceedings, the taking of evidence or the deliberations of his Board.	If required, the Chairman of any Board in a particular appeal shall make arrangements for interpretation during oral proceedings, the taking of evidence or the deliberations of his <u>the</u> Board.	Change(s) for reasons of clarity/consistency.
Article 8 Change in the composition of the Board	Article 8 Change in the composition of the Board	Change(s) for reasons of clarity/consistency.
(1) If the composition of a Board is changed after oral proceedings, the parties to the proceedings shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board in its new composition. Fresh oral proceedings shall also be held if so requested by the new member and if the other members of the Board concerned have given their agreement.	(1) If the composition of a Board is changed after oral proceedings, the parties to the proceedings shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board in its new composition. Fresh oral proceedings shall also be held if so requested by the new member and if the other members of the Board concerned have given their agreement.	Change(s) for reasons of clarity/consistency.
(2) Each new member shall be bound to the same extent as the other members by an interim decision which has already been taken.	(2) Each new member shall be bound to the same extent as the other members by an interim <u>interlocutory</u> decision which has already been taken.	Change(s) for reasons of clarity/consistency.
(3) If, when a Board has already reached a final decision, a member is unable to act, he shall not be replaced by an alternate. If the Chairman is unable to act, the member of the Board concerned having the longer or longest service on the Boards of Appeal or, in the case where members have the same length of service, the elder or eldest member, shall sign the decision on behalf of the Chairman.	(3) If, when a Board has already reached a final <u>on the appeal</u> decision, a member is unable to act, he shall not be replaced by an alternate. If the Chairman is unable to act, the member of the Board concerned having the longer or longest service on the Boards of Appeal or, in the case where members have the same length of service, the elder or eldest member, shall sign the decision on behalf of the Chairman.	Change(s) for reasons of clarity/consistency. For the term "decision on the appeal" see the explanatory remarks on proposed new Article 15(7).

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
<p>Article 9 Enlargement of a Board of Appeal</p> <p>If a Board of Appeal consisting of two technically qualified members and one legally qualified member considers that the nature of the appeal requires that the Board should consist of three technically qualified members and two legally qualified members, the decision to enlarge the Board shall be taken at the earliest possible stage in the examination of that appeal.</p>	<p>Article 9 Enlargement of a Board of Appeal</p> <p>If a Board of Appeal consisting of two technically qualified members and one legally qualified member considers that the nature of the appeal requires that the Board should consist of three technically qualified members and two legally qualified members, the decision to enlarge the Board shall be taken at the earliest possible stage in the examination of that appeal.</p>	
<p>Article 10 Consolidation of appeal proceedings</p> <p>(1) If several appeals are filed from a decision, these appeals shall be considered in the same proceedings.</p> <p>(2) If appeals are filed from separate decisions and all the appeals are designated to be examined by one Board in a common composition, that Board may deal with those appeals in consolidated proceedings with the consent of the parties.</p>	<p>Article 10 Consolidation <u>and acceleration</u> of appeal proceedings</p> <p>(1) If several appeals are filed from a decision, these appeals shall be considered<u>dealt with</u> in the same proceedings.</p> <p>(2) If appeals are filed from separate decisions and all the appeals are designated to be examined by one<u>a</u> Board in a common<u>the same</u> composition, that Board may deal with these appeals<u>them</u> in consolidated proceedings with the consent of the parties.</p> <p><u>(3) On request by a party, the Board may accelerate the appeal proceedings. The request shall contain objectively verifiable reasons why the appeal proceedings should be accelerated and shall, where appropriate, be supported by relevant documents. The request shall be filed as soon as the reasons become known to the party. The Board shall inform the parties whether the request has been granted.</u></p> <p><u>(4) If a court or other competent authority of the Contracting States requests acceleration of the appeal proceedings, the Board shall inform the court or authority and the parties whether the request has been granted.</u></p> <p><u>(5) The Board may accelerate the appeal proceedings of its own motion.</u></p> <p><u>(6) If the Board decides to accelerate the appeal proceedings, it shall give the appeal priority over other appeals. The Board may adopt a strict framework for the proceedings.</u></p>	<p>Change(s) for reasons of clarity/consistency.</p> <p>Change(s) for reasons of clarity/consistency.</p> <p>Change(s) for reasons of clarity/consistency.</p> <p>Proposed new paragraphs 3 to 6 of Article 10 replace the Notice from the Vice-President Directorate-General 3 dated 17 March 2008 concerning accelerated processing before the boards of appeal, OJ EPO 2008, 220.</p> <p>Proposed new paragraph 3 gives the Board the discretionary power to decide on a party's request for acceleration. The party must give objectively verifiable reasons to enable the Board to decide whether to accelerate or not. Typical reasons for acceleration are that infringement proceedings have been brought or are envisaged, or that the decision of potential licensees of the patent in suit hinges on the outcome of the appeal. A mere statement that there is such a situation is not sufficient; rather, in the case of a pending infringement action, for example, the requester should provide concrete indications such as a copy of the writ of summons indicating the case reference and the names of the parties. However, the party no longer needs to show a "legitimate interest" (requirement of the current Notice).</p> <p>A Board may also decide not to accelerate the appeal proceedings, even if the reason provided by the requester would in principle justify acceleration. For example, a Board may refuse a request for acceleration because of its general workload. Another reason could be that there are already several accelerated cases pending before it: the more such requests are accepted by a Board, the greater the risk that the treatment of non-accelerated cases is further delayed.</p> <p>Even if there is no request from a party, a Board may accelerate the appeal proceedings of its own motion, see proposed new paragraph 5.</p> <p>The party requesting acceleration may also apply to the Board to have the request excluded from file inspection (see Article 128(4) EPC, Rule 144(d) EPC and decision of the President of the EPO, Special edition No. 3, OJ EPO 2007, J.3.).</p> <p>Proposed new paragraph 4 allows a court to request acceleration. The term "court" is intended to include the UPC. A court does not need to provide a specific reason for requesting acceleration. Boards will normally grant a request for acceleration from a court of a Contracting State or the UPC.</p> <p>Proposed new paragraph 5 codifies the Boards' inherent power to accelerate their own proceedings. Contrary to the situations regulated by proposed new paragraphs 3 and 4, there is no need in this case to inform the parties. For example, a Board could accelerate the appeal if the case is highly likely to be remitted because of a fundamental deficiency in the proceedings at first instance (Article 11).</p> <p>Proposed new paragraph 6 lays down the twofold effects of accelerated processing: the case is given priority over other cases, and the Board may adopt a strict framework, subject always to the parties' right to be heard and the principle of fair proceedings. Thus the Board may, for example, give parties directions, set strict time limits for their submissions, and summon them at an early date. If parties do not adhere to this framework, the Board may decide to discontinue the acceleration.</p>

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
<p>Article 11 Remission to the department of first instance</p>	<p>Article 11 RemissionRemittal to the department of first instance</p>	<p>Change(s) for reasons of clarity/consistency.</p>
<p>A Board shall remit a case to the department of first instance if fundamental deficiencies are apparent in the first instance proceedings, unless special reasons present themselves for doing otherwise.</p>	<p>A Board shall remit a case to the department of first instance if fundamental deficiencies are apparent in the first instance proceedings, unless special reasons present themselves for <u>not</u> doing <u>otherwise</u>.</p>	<p>Change(s) for reasons of clarity/consistency.</p>
<p>Article 12 Basis of proceedings</p>	<p>Article 12 Basis of <u>appeal</u> proceedings</p>	<p>Change(s) for reasons of clarity/consistency.</p>
<p>(1) Appeal proceedings shall be based on</p>	<p>(1) Appeal proceedings shall be based on</p>	
	<p><u>(a) the decision under appeal and any minutes of oral proceedings before the department having issued that decision;</u></p>	<p>In view of the nature of the appeal proceedings as reflected in proposed new Article 12, paragraph 2 (i.e. judicial review of the impugned decision), new paragraph 1(a) clarifies that these documents are to be taken into account.</p>
<p>(a) the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC;</p>	<p><u>(ba)</u> the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC;</p>	<p>Renumbered.</p>
<p>(b) in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal;</p>	<p><u>(cb)</u> in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal;</p>	<p>Renumbered.</p>
<p>(c) any communication sent by the Board and any answer thereto filed pursuant to directions of the Board.</p>	<p><u>(de)</u> any communication sent by the Board and any answer thereto filed pursuant to directions of the Board;</p>	<p>Renumbered.</p>
	<p><u>(e) any minutes of a video or telephone conference with the party or parties sent by the Board.</u></p>	<p>According to proposed new paragraph 1(e), if an exchange of information between the party or parties and the Board via video or telephone conference takes place (e.g. for case management or settling minor issues) the Board's written minutes of the conference are the relevant part to be taken into account.</p>
	<p><u>(2) In view of the primary object of the appeal proceedings to judicially review the decision under appeal, a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based.</u></p>	<p>Proposed new paragraph 2 provides a general definition of the nature and the scope of the appeal proceedings in accordance with the established case law. Current paragraph 2 is amended and renumbered as paragraph 3.</p>
		<p>The term "requests" in this context is not limited to amended texts of patent applications or patents.</p>
		<p>The term "objection" in these Rules does not mean a ground of opposition but may be an attack made under a ground of opposition. Hence the Enlarged Board of Appeal's findings in the decision G 9/91 (OJ EPO 1993, 408) and the opinion G 10/91 (OJ EPO 1993, 420) continue to apply. However, the term "objection" does include e.g. what is sometimes referred to by Boards or parties as a "line of attack" or a "line of argument".</p>
<p>(2) The statement of grounds of appeal and the reply shall contain a party's complete case. They shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on. All documents referred to shall be</p>	<p><u>(32)</u> The statement of grounds of appeal and the reply shall contain a party's complete case <u>and, accordingly, they</u> shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the <u>requests, facts, objections,</u> arguments and evidence relied on. All documents referred to shall be</p>	<p>In proposed new paragraph 3 the terms "requests" and "objections" are added for reason of consistency with proposed new paragraphs 2 and 6.</p>
<p>(a) attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;</p>	<p>(a) attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;</p>	
<p>(b) filed in any event to the extent that the Board so directs in a particular case.</p>	<p>(b) filed in any event to the extent that the Board so directs in a particular case.</p>	
<p>(3) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit in (1)(b).</p>	<p><u>(3) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit in (1)(b).</u></p>	<p>Current paragraph 3 is moved, in slightly amended form, to paragraph 8.</p>

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
<p>(4) Without prejudice to the power of the Board to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings, everything presented by the parties under (1) shall be taken into account by the Board if and to the extent it relates to the case under appeal and meets the requirements in (2).</p>	<p><u>(4) Any part of a submission which does not meet the requirements in paragraph 2 is to be regarded as an amendment and may be admitted only at the discretion of the Board.</u> <u>The party shall clearly identify each amendment and provide reasons for submitting it in the appeal proceedings, and, in the case of an amendment to a patent application or patent, shall indicate the basis for the amendment in the application as filed as well as reasons why the amendment does not give rise to further objections.</u> <u>The Board shall exercise its discretion in view of inter alia the complexity of the amendments, the suitability of the amendments to solve the issues which led to the decision under appeal, and the need for procedural economy.</u></p>	<p>Convergent approach – first level At the outset of the appeal proceedings, reversing the approach of current Article 12, paragraph 4</p> <p>Proposed new paragraph 4 implements, at the outset of the appeal proceedings, the first level of the convergent approach applicable in these proceedings (for the second and third levels, see new Article 13(1) and (2), respectively). This new paragraph replaces current paragraph 4. Accordingly, not everything filed at the outset of the appeal proceedings is now automatically in the appeal proceedings. The admissibility of the appeal continues to be examined on the basis of all the documents filed by the appellant at this stage, even if they are not admitted under this paragraph for the purpose of examining the merits of the appeal.</p> <p>Parts of the statement of grounds of appeal or the respondent's reply which are not directed to facts, etc. on which the decision under appeal was based are considered to be an amendment to the case pursued by that party in the proceedings at first instance. Therefore, the party must clearly identify and justify such an amendment, which is to be regarded as the exception and as such is subject to the Board's discretion. In the case of a claim amendment, the applicant or patent proprietor must explain why the amended claim does not, for example, raise issues under Article 84 or 123(2) EPC.</p> <p>The non-exhaustive list of criteria that the Board can apply when exercising its discretion under proposed new paragraph 4 is based on the established case law and includes elements of current Article 13 RPBA.</p> <p>The term "part of a submission" can also include the complete submission.</p>
	<p><u>(5) The Board may exercise its discretion not to admit any part of a submission by a party which does not meet the requirements in paragraph 3.</u></p>	<p>Under proposed new paragraph 5, even if the statement of grounds of appeal or the reply contains a part which is not considered to be an amendment within the meaning of proposed new paragraph 4, the Board can nevertheless decide not to admit that part for not meeting the criteria mentioned in proposed new paragraph 3. It may be that a party's submission meets neither the requirements of proposed new paragraph 4 nor those of proposed new paragraph 3.</p> <p>The term "part of a submission" can also include the complete submission.</p>
	<p><u>(6) The Board shall not admit facts, objections, evidence and requests which were advanced in the proceedings leading to the decision under appeal but not admitted in those proceedings unless the decision not to admit them suffered from a manifest error in the use of discretion or unless the circumstances of the appeal case justify their admittance.</u> <u>The Board shall not admit facts, objections, evidence or requests which should have been presented, or which were withdrawn or no longer pursued, by the party concerned in the proceedings leading to the decision under appeal unless the circumstances of the appeal case justify their admittance.</u></p>	<p>Proposed new paragraph 6, first sentence, takes up the section of current paragraph 4 and the established case law which concern the admittance of facts, etc. which were not admitted in the proceedings at first instance. It still allows for their admittance in cases where the way in which the department of first instance exercised its discretion suffered from a manifest error; such a manifest error may be seen to have occurred, for example, if the department of first instance did not exercise its discretion at all, if, when exercising its discretion, it omitted a relevant factor, or if it exercised its discretion in an unreasonable way.</p> <p>Even if there was no such manifest error, a Board may nevertheless still admit facts, etc. because the circumstances have changed at the appeal stage. For example, where an opposition division correctly exercised its discretion not to admit a document for lack of relevance, a Board may still decide to admit this document because it has now become relevant in view of a claim amendment made at the appeal stage.</p> <p>Proposed new paragraph 6, second sentence, takes up the section of current paragraph 4 and the established case law which relate to facts, etc. that could and should have been filed during the proceedings at first instance, or were not pursued during those, thereby preventing the department of first instance from taking a decision on them. It still allows for their admittance because the circumstances have changed at the appeal stage.</p> <p>The provisions of proposed new paragraphs 4, 5 and 6 apply in parallel throughout the appeal proceedings (see also proposed new Article 13, paragraph 1, second sentence).</p>
<p>(5) Extension of time limits may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request.</p>	<p><u>(5) Periods specified by the Board Extension of time limits may exceptionally be allowed in extended at the Board's discretion following upon receipt of a written and reasoned request, presented before the expiry of such period. The period referred to in paragraph 1(c) may not be extended.</u></p>	<p>Proposed new paragraph 7, which adapts and replaces current paragraph 5, clarifies that only periods specified by the Board may be extended and thus not the duration of a period which is specified in a legal provision. The wording is aligned with Rules 100(2) and 132(2) EPC and the paragraph applies throughout the appeal proceedings. Extension of the period in proposed new paragraph (1)(c) is expressly excluded to stress equal treatment of the parties with regard to the respective time limits at the outset of the proceedings: four months for filing the statement of grounds of appeal (Article 108 EPC) and four months for the reply.</p> <p>It is to be noted that a reply to the statement of grounds of appeal filed by the respondent after expiry of said time limit would normally fall under the provisions of Article 13 below.</p>
	<p><u>(38) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit period in paragraph 1(c).</u></p>	<p>The provisions of proposed new paragraph 8 have been moved here from current paragraph 3 and amended for reasons of clarity/consistency.</p>

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
<p>Article 13 Amendment to a party's case</p>	<p>Article 13 Amendment to a party's <u>appeal</u> case</p>	<p>Change(s) for reasons of clarity/consistency.</p>
<p>(1) Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.</p>	<p>(1) Any amendment to a party's <u>appeal</u> case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion, is subject to the party's justification for its amendment and may be admitted only at the discretion of the Board. <u>The discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy.</u> <u>Article 12, paragraphs 4 to 6, shall apply mutatis mutandis.</u> <u>The party shall provide reasons for submitting the amendment at this stage of the appeal proceedings.</u> <u>The Board shall exercise its discretion in view of inter alia the current state of the proceedings and the suitability of the amendments to solve the issues which were admissibly raised by the other party or parties or which were raised by the Board. The Board must also be satisfied that the amendment enhances procedural economy.</u> <u>In the case of an amendment of a patent application or patent, it is for the party to satisfy the Board that any such amendment is prima facie allowable.</u></p>	<p>Convergent approach – second level Limitation on a party amending its appeal case after the initial stage of the proceedings, but before the period set in a communication has expired and/or the summons to oral proceedings has been notified</p> <p>Proposed new paragraph 1 implements the second level of the convergent approach applicable in appeal proceedings. It defines the conditions under which a party may amend its appeal case after the initial stage of the proceedings and before the period set in a communication has expired and/or the summons to oral proceedings has been issued (see also proposed new paragraph 2 below). The party must file a reasoned request for admittance of its amendment at this stage of the appeal proceedings. The admittance is subject to the Board's discretion alone. A non-exhaustive list of criteria for applying that discretion is given. By way of specific reference to proposed new paragraphs 4 to 6 of Article 12, it is clarified that the criteria set out in those provisions also apply to any submissions made at this stage.</p> <p>The term "prima facie allowable" follows the established case law, i.e. to be prima facie allowable an amendment must overcome all objections raised up to that point and must not give rise to new objections.</p>
<p>(2) Other parties shall be entitled to submit their observations on any amendment not held inadmissible by the Board ex officio.</p>	<p><u>(2) Any amendment to a party's case made after the expiry of a period specified by the Board in a communication or after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which need to be justified with cogent reasons by the party concerned.</u></p> <p><u>(3) Other parties shall be entitled to submit their observations on any amendment not held inadmissible by the Board ex officio.</u></p>	<p>Convergent approach – third level Ultimate limitation on a party amending its appeal case</p> <p>Proposed new paragraph 2 implements the third level of the convergent approach applicable in appeal proceedings. It imposes the most stringent limitations on a party wishing to amend its appeal case at an advanced stage of the proceedings, either after expiry of a period set in a communication of the Board or after the summons to oral proceedings has been issued. The basic principle is that amendments to a party's appeal case are not to be taken into consideration at a later stage. However, a limited exception is provided for: it requires a party to present compelling reasons which justify clearly why the circumstances leading to the amendment are indeed exceptional in the particular appeal ("cogent reasons"). For example, if a party submits that the Board raised an objection for the first time in a communication, it must explain precisely why this objection is new and does not fall under objections previously raised by the Board or a party.</p>
<p>(3) Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.</p>	<p>(3) Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.</p>	<p>Current paragraph 2 is renumbered as proposed new paragraph 3.</p> <p>The provisions of current paragraph 3 are replaced by proposed new paragraph 2 above.</p>
<p>Article 14 Interventions</p>	<p>Article 14 Interventions</p>	<p>Proposed revised Article 14 now stresses that, if a notice of intervention is filed in appeal proceedings, the extent to which proposed revised Articles 12 and 13 may be applied will fully depend on the circumstances of the individual appeal case.</p> <p>The intervener may, for example, present a new ground for opposition at the appeal stage (G 1/94, OJ EPO 1994, 787), meaning that the principle of proposed new Article 12, paragraph 2, is no longer pertinent. The case-by-case application of the rules is in line with Rule 79(4) EPC, applicable in appeal proceedings in view of Rule 100(1) EPC.</p>
<p>Articles 12 and 13 shall apply mutatis mutandis to interventions commenced while an appeal is pending.</p>	<p><u>Where, during a pending appeal, notice of intervention is filed, Articles 12 and 13 shall apply insofar as justified by the circumstances of the case.</u></p>	

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
<p>Article 15 Oral proceedings</p> <p>(1) If oral proceedings are to take place, the Board may send a communication drawing attention to matters which seem to be of special significance, or to the fact that questions appear no longer to be contentious, or containing other observations that may help concentration on essentials during the oral proceedings.</p> <p>(2) A change of date for oral proceedings may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request made as far in advance of the appointed date as possible.</p>	<p>Article 15 Oral proceedings <u>and issuing decisions</u></p> <p>(1) If oral proceedings are to take place, the Board may <u>shall</u> send a communication drawing attention to matters which seem to be of special significance, or to the fact that questions appear no longer to be contentious, or containing other observations that may help concentration on essentials during the oral proceedings.</p> <p><u>(2) A request of a party for a change of the date fixed for oral proceedings may be allowed if the party can put forward serious reasons which justify the fixing of a new date. If the party is represented, the serious reasons must relate to the representative, and not the party.</u></p> <p><u>(a) The request shall be filed in writing, reasoned and, where appropriate, supported by relevant documents. The request shall be filed as soon as possible after the summons to oral proceedings has been notified and the serious reasons in question have arisen. The request should include a list of dates on which the requesting party is not available for oral proceedings.</u></p> <p><u>(b) Serious reasons which may justify a change of the date for oral proceedings include:</u></p> <p><u>(i) notification of a summons to oral proceedings in other proceedings before the EPO or a national court received before notification of the summons to oral proceedings before the Board;</u> <u>(ii) serious illness;</u> <u>(iii) a death within the family;</u> <u>(iv) marriage or formation of a similar recognised partnership;</u> <u>(v) military service or other obligatory performance of civil duties;</u> <u>(vi) holidays or business trips which have been firmly booked before notification of the summons to oral proceedings.</u></p> <p><u>(c) Reasons which, as a rule, do not justify a change of the date of oral proceedings include:</u></p> <p><u>(i) filing of new requests, facts, evidence or arguments;</u> <u>(ii) excessive work pressure;</u> <u>(iii) unavailability of a duly represented party;</u> <u>(iv) unavailability of an accompanying person;</u> <u>(v) appointment of a new professional representative.</u></p> <p>(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.</p> <p>(4) The Chairman presides over the oral proceedings and ensures their fair, orderly and efficient conduct.</p> <p>(5) When a case is ready for decision during oral proceedings, the Chairman shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.</p> <p>(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chairman.</p>	<p>Change(s) for reasons of clarity/consistency.</p> <p>Proposed revised paragraph 1 provides that a communication is to be issued by the Board as the rule, with its content being dependent on the status of the file. To be noted is that in the communication a time limit (i.e. period) for response by the party/parties concerned can be set.</p> <p>Proposed new paragraph 2 deals with fixing the date for oral proceedings and the possibility of changing the date. It replaces current paragraph 2 and supersedes the Notice of the Vice-President of Directorate-General 3 of the EPO dated 16 July 2007 concerning oral proceedings before the boards of appeal of the EPO ("Notice"), OJ EPO 2007, Special Edition No. 3, 115.</p> <p>According to proposed new paragraph 2, it is within the Board's discretion to change the date at the request of a party. The party has to show "serious reasons". Where the party is represented, the reasons must relate to the representative. For the situation in which oral submissions by a party or an accompanying person are relevant for deciding the case, see explanatory remarks to proposed new paragraph 2(c) below.</p> <p>Proposed new paragraph 2(a) sets out the requirements for the request. If the requirements are not met, the Board may reject the request for this reason alone. In addition, the requester should (but is not obliged to) indicate already in the request dates on which he is not available. This will make it easier for the Board to find a suitable replacement date.</p> <p>Proposed new paragraph 2(b) sets out a non-exhaustive list of examples of serious reasons which may justify a change of date. These examples have been taken, with slight adaptations, from the Notice: in (i) the proposed new wording clarifies the term "previous notification" as used in the Notice; in (iv) mention is now made of both marriage and the formation of a similar recognised partnership; in (vi) business trips have been added to holidays.</p> <p>Proposed new paragraph 2(c) sets out a non-exhaustive list of examples of serious reasons which, as a rule, do not justify a change of date. However, it is within the Board's discretion to change the date of oral proceedings in these situations too, for example, if the Board considers that oral submissions by the party or an accompanying person, such as a technical expert, are particularly relevant for deciding the case.</p> <p>The obligation mentioned in the Notice to state in the request why another representative cannot stand in for the one prevented from attending has been dispensed with.</p>
<p>(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.</p> <p>(4) The Chairman presides over the oral proceedings and ensures their fair, orderly and efficient conduct.</p> <p>(5) When a case is ready for decision during oral proceedings, the Chairman shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.</p> <p>(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chairman.</p>	<p>(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.</p> <p>(4) The Chairman presides over the oral proceedings and ensures their fair, orderly and efficient conduct.</p> <p>(5) When a case is ready for decision during oral proceedings, the Chairman shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.</p> <p>(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chairman.</p>	<p>Change(s) for reasons of clarity/consistency.</p>

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
	<p>(7) Where the decision on the appeal has been announced orally in accordance with paragraph 6, the reasons for the decision may, with the explicit consent of the parties, be put in writing in abridged form. However, where it has been indicated to the Board that a third party or a court has, in the particular case, a legitimate interest in the reasons for the decision not being in abridged form, they shall not be abridged. Where appropriate, the reasons for the decision in abridged form may already be included in the minutes of the oral proceedings.</p>	<p>Proposed new paragraph 7 provides the Board with an option to issue a decision in which the reasons are given in abridged form.</p> <p>The provision applies to the decision on the appeal, meaning the decision which is taken in order to conclude the appeal proceedings, if it has been announced in the oral proceedings and provided that the parties give their consent.</p> <p>Following the summary of the facts (Rule 102(f) EPC), the reasons (Rule 102(g) EPC) may consist only of the bare essential findings on which the decision is based.</p> <p>However, if the Board has been made aware of a legitimate interest in the written decision containing the Board's full reasoning, the reasons will not be given in abridged form.</p> <p>In appropriate cases, the reasoning for the decision may already be included in the minutes of the oral proceedings, and then subsequently referred to in the abridged written decision (to meet the requirements of Rule 102 EPC).</p>
	<p>(8) If the Board agrees entirely with the decision under appeal, including the reasons given in that decision, the reasons for its decision may be in abridged form.</p>	<p>Proposed new paragraph 8 provides a further option for the reasons for the decision to be put in abridged form (see explanatory notes to proposed new paragraph 7, above). In contrast to proposed new paragraph 7, in this case the explicit consent of the parties is not required.</p> <p>However, if in this situation the statement of grounds of appeal contains submissions not presented before the department of first instance, the Board may normally be expected to address these in the reasons for its decision.</p>
	<p>(9) The Board shall issue the decision on the appeal in a timely manner.</p>	<p>Proposed new paragraph 9 regulates the issuing of the "decision on the appeal", meaning the decision which is taken in order to conclude the appeal proceedings. This excludes, for example, decisions which refer a question of law to the Enlarged Board, decisions to take evidence or decisions to postpone oral proceedings.</p> <p>Proposed new paragraph 9 sets out the general rule that all decisions on the appeal, including any issued in the course of the written proceedings, should be issued in a timely manner.</p>
	<p>(a) Where the Chairman announces the decision on the appeal orally in accordance with paragraph 6, the Board shall put the decision in writing and despatch it within three months of the date of the oral proceedings. If the Board is unable to do so, it shall inform the parties when the decision is to be despatched.</p>	<p>Proposed new paragraph 9(a) governs the usual case in which the decision on the appeal is announced at the oral proceedings. In such a case, "in a timely manner" for the purposes of proposed new paragraph 9 means that the decision will be issued within three months.</p> <p>However, if the Board is unable to do so, the parties will be informed of when it will be despatched. Typical cases in this regard are, for example, the sickness of a member, a particularly complex case, or a decision that is foreseen for publication in the EPO Official Journal.</p> <p>The Board does not have to inform the parties of the reasons why the issuing of its decision is delayed. The Board should however inform the parties of a delay as soon as possible after it becomes aware that the three-month period cannot be met and should normally do so before expiry of that period. Any further delay (that is, if the Board is unable to meet the later date communicated to the parties) would have to be communicated separately.</p> <p>No sanction is foreseen in the event that the Board does not issue its decision within the relevant period or by the relevant date, but the new provision nevertheless emphasises the ongoing commitment of the Boards to issuing their decisions in good time.</p>
	<p>(b) When a case is ready for decision during oral proceedings but the Chairman does not announce the decision on the appeal orally in accordance with paragraph 6, the Chairman shall indicate the date on which the decision on the appeal is to be despatched, which shall not be later than three months after the closure of the oral proceedings. If the Board is unable to despatch the decision on the appeal by that date, it shall inform the parties of a new date or, in exceptional circumstances, shall issue a communication specifying the further procedural steps that will be taken.</p>	<p>Proposed new paragraph 9(b) regulates the situation in which the Chairman does not announce the decision on the appeal at the oral proceedings, even though the case is essentially ready for decision. In such a case, the Chairman has to indicate when the complete written decision (order and reasons) concluding the appeal proceedings will be sent to the parties.</p> <p>The maximum period is again three months. If the Board realises after the oral proceedings that the case is not yet ready for a (final) decision, it has to send a communication informing the parties of how the proceedings will be continued (e.g. appointment of further oral proceedings or a referral to the Enlarged Board of Appeal).</p>

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
<p>Article 16 Costs</p> <p>(1) Subject to Article 104, paragraph 1, EPC, the Board may on request order a party to pay some or all of another party's costs which shall, without limiting the Board's discretion, include those incurred by any</p> <p>(a) amendment pursuant to Article 13 to a party's case as filed pursuant to Article 12, paragraph 1;</p> <p>(b) extension of a time limit;</p> <p>(c) acts or omissions prejudicing the timely and efficient conduct of oral proceedings;</p> <p>(d) failure to comply with a direction of the Board;</p> <p>(e) abuse of procedure.</p> <p>(2) The costs ordered to be paid may be all or part of those incurred by the receiving party and may inter alia be expressed as a percentage or as a specific sum. In the latter event, the Board's decision shall be a final decision for the purposes of Article 104, paragraph 3, EPC. The costs ordered may include costs charged to a party by its professional representative, costs incurred by a party itself whether or not acting through a professional representative, and the costs of witnesses or experts paid by a party but shall be limited to costs necessarily and reasonably incurred.</p>	<p>Article 16 Costs</p> <p>(1) Subject to Article 104, paragraph 1, EPC, the Board may on request order a party to pay some or all of another party's costs which shall, without limiting the Board's discretion, include those incurred by any</p> <p>(a) amendment to a party's case pursuant to Article 13 to a party's case as filed pursuant to Article 12, paragraph 1;</p> <p>(b) extension of a time limit period specified by the Board;</p> <p>(c) acts or omissions prejudicing the timely and efficient conduct of oral proceedings;</p> <p>(d) failure to comply with a direction of the Board;</p> <p>(e) abuse of procedure.</p> <p>(2) The costs ordered to be paid may be all or part of those incurred by the receiving party and may inter alia be expressed as a percentage or as a specific sum. In the latter event, the Board's decision shall be a final decision for the purposes of Article 104, paragraph 3, EPC. The costs ordered may include costs charged to a party by its professional representative, costs incurred by a party itself whether or not acting through a professional representative, and the costs of witnesses or experts paid by a party but shall be limited to costs necessarily and reasonably incurred.</p>	<p>Change(s) for reasons of clarity/consistency.</p> <p>Change(s) for reasons of clarity/consistency.</p>
<p>Article 17 Communications to the parties</p> <p>(1) In the written phase of proceedings, replies to requests and directions on matters of procedure shall be given by means of communications.</p> <p>(2) If a Board deems it expedient to communicate with the parties regarding a possible appreciation of substantive or legal matters, such communication shall be made in such a way as not to imply that the Board is in any way bound by it.</p>	<p>Article 17 Communications to the parties</p> <p>(1) In the written phase of proceedings, replies to requests and directions on matters of procedure shall be given by means of communications.</p> <p>(2) If a Board deems it expedient to communicate with the parties regarding a possible appreciation of substantive or legal matters, such communication shall be made in such a way as not to imply that the Board is in any way bound by it.</p>	
<p>Article 18 EPO President's right to comment</p> <p>The Board may, on its own initiative or at the written, reasoned request of the President of the European Patent Office, invite him to comment in writing or orally on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the President's comments.</p>	<p>Article 18 EPO President's right to comment</p> <p>The Board may, on its own initiative or at the written, reasoned request of the President of the European Patent Office, invite him to comment in writing or orally on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the President's comments.</p>	
<p>Article 19 Deliberation and voting</p> <p>(1) If the members of a Board are not all of the same opinion, the Board shall meet to deliberate regarding the decision to be taken. Only members of the Board shall participate in the deliberations; the Chairman may, however, authorise other officers to attend. Deliberations shall be secret.</p> <p>(2) During the deliberations between members of the Board, the opinion of the rapporteur shall be heard first, followed by that of the additional rapporteur if one has been appointed and, if the rapporteur is not the Chairman, the Chairman's last.</p> <p>(3) If voting is necessary, votes shall be taken in the same sequence; even if the Chairman is the rapporteur, he shall vote last. Abstentions shall not be permitted.</p>	<p>Article 19 Deliberation and voting</p> <p>(1) If the members of a Board are not all of the same opinion, the Board shall meet to deliberate regarding the decision to be taken. Only members of the Board shall participate in the deliberations; the Chairman may, however, authorise other officers to attend. The Deliberations shall be secret.</p> <p>(2) During the deliberations between members of the Board, the opinion of the rapporteur shall be heard first, followed by that of the additional rapporteur if one has been appointed and, if the rapporteur is not the Chairman, by that of the Chairman's last.</p> <p>(3) If voting is necessary, votes shall be taken in the same sequence; except whenever if the Chairman is the rapporteur, in which case he shall vote last. Abstentions shall not be permitted.</p>	<p>Change(s) for reasons of clarity/consistency.</p> <p>Change(s) for reasons of clarity/consistency.</p> <p>Change(s) for reasons of clarity/consistency.</p>

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
<p>Article 20 Deviations from an earlier decision of any Board or from the Guidelines</p>	<p>Article 20 Deviations from an earlier decision of any Board or from the Guidelines for Examination</p>	Change(s) for reasons of clarity/consistency.
<p>(1) Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention given in an earlier decision of any Board, the grounds for this deviation shall be given, unless such grounds are in accordance with an earlier opinion or decision of the Enlarged Board of Appeal. The President of the European Patent Office shall be informed of the Board's decision.</p>	<p>(1) Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention given in an earlier decision of any Board, the grounds for this deviation shall be given, unless such grounds are in accordance with an earlier decision or opinion or decision of the Enlarged Board of Appeal according to Article 112, paragraph 1, EPC. The President of the European Patent Office shall be informed of the Board's decision.</p>	Change(s) for reasons of clarity/consistency.
<p>(2) If, in its decision, a Board gives a different interpretation of the Convention to that provided for in the Guidelines, it shall state the grounds for its action if it considers that this decision will be more readily understood in the light of such grounds.</p>	<p>(2) If, in its decision, a Board gives a different interpretation of the Convention to from that provided for in the Guidelines for Examination, it shall state the its grounds for its action doing so if it considers that this the decision will be more readily understood in the light of such grounds.</p>	Change(s) for reasons of clarity/consistency.
<p>Article 21 Deviation from an earlier decision or opinion of the Enlarged Board of Appeal</p>	<p>Article 21 Deviation from an earlier decision or opinion of the Enlarged Board of Appeal</p>	
<p>Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention contained in an earlier opinion or decision of the Enlarged Board of Appeal, the question shall be referred to the Enlarged Board of Appeal.</p>	<p>Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention contained in an earlier decision or opinion or decision of the Enlarged Board of Appeal according to Article 112, paragraph 1, EPC, the question shall be referred to the Enlarged Board of Appeal.</p>	<p>Change(s) for reasons of clarity/consistency.</p> <p>Here it is clarified that a referral to the Enlarged Board of Appeal does not apply to a case in which a Board wishes to deviate from a decision of the Enlarged Board of Appeal on a petition for review.</p>
<p>Article 22 Referral of a question to the Enlarged Board of Appeal</p>	<p>Article 22 Referral of a question to the Enlarged Board of Appeal</p>	
<p>(1) If a point is to be referred to the Enlarged Board of Appeal, a decision to this effect shall be taken by the Board concerned.</p>	<p>(1) If a point question is to be referred to the Enlarged Board of Appeal in accordance with Article 112, paragraph 1, EPC, a decision to this effect shall be taken by the Board concerned.</p>	Change(s) for reasons of clarity/consistency.
<p>(2) The decision shall contain the items specified in Rule 102, sub-paragraphs (a), (b), (c), (d) and (f), EPC and the point which the Board refers to the Enlarged Board of Appeal. The context in which the point originated shall also be stated.</p>	<p>(2) The decision shall contain the items specified in Rule 102, sub-paragraphs (a), (b), (c), (d) and (f), EPC and the point question which the Board refers to the Enlarged Board of Appeal. The context in which the point question originated arose shall also be stated.</p>	Change(s) for reasons of clarity/consistency.
<p>(3) The decision shall be communicated to the parties.</p>	<p>(3) The decision shall be communicated to the parties.</p>	
<p>Article 23 Binding nature of the Rules of Procedure</p>	<p>Article 23 Binding nature of the Rules of Procedure</p>	
<p>These Rules of Procedure shall be binding upon the Boards of Appeal, provided that they do not lead to a situation which would be incompatible with the spirit and purpose of the Convention.</p>	<p>These Rules of Procedure shall be binding upon the Boards of Appeal, provided that they do not lead to a situation which would be incompatible with the spirit and purpose of the Convention.</p>	
<p>Article 24 Entry into force</p>	<p>Article 24 Entry into force</p>	
<p>These Rules of Procedure shall enter into force upon entry into force of the revised text of the European Patent Convention in accordance with Article 8 of the Revision Act.</p>	<p>(1) The revised version of the Rules of Procedure of the Boards of Appeal (revised version) shall enter into force on [DATE].</p> <p>(2) Upon entry into force of the revised version, the text of the Rules of Procedure of the Boards of Appeal valid until that time shall cease to be in force.</p>	<p>Pursuant to proposed new Article 24, the revised version of the Rules of Procedure (the revised version) is to enter into force on a date still to be specified, which will depend on when the revised version is put to the Administrative Council for approval.</p> <p>This date will be at least six months after the date of approval by the Administrative Council, so that parties will have time to familiarise themselves with the new provisions before they become applicable.</p>

<u>RPBA – current provisions</u>	<u>RPBA – proposed provisions</u>	<u>Explanatory remarks</u>
	<p><u>Article 25</u> <u>Transitional provisions</u></p> <p><u>(1) The revised version shall apply to any appeal pending on, or filed after, the date of the entry into force, subject to the following paragraphs.</u></p> <p><u>(2) Article 12, paragraphs 4 to 6, of the revised version shall not apply to any statement of grounds of appeal filed before the date of the entry into force and any reply to it filed in due time. Instead, Article 12, paragraph 4, of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force shall continue to apply.</u></p> <p><u>(3) Where the summons to oral proceedings has been notified, or the period specified in a communication of the Board has expired, before the date of the entry into force, Article 13, paragraph 2, of the revised version shall not apply. Instead, Article 13 of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force shall continue to apply.</u></p>	<p>Proposed new Article 25 lays down the transitional provisions. The revised version of the Rules of Procedure of the Boards of Appeal will in principle apply to all appeals pending on the date of its entry into force. Therefore, as submissions already on file may be affected, two exceptions are foreseen in order to protect legitimate expectations which parties may have had at the time of filing such earlier submissions.</p> <p>An exception is made with respect to revised Article 12, paragraphs 4 to 6. These provisions will not apply retrospectively to a statement of grounds of appeal filed before the date of entry into force of the revised version, or to replies thereto filed within the four-month period, irrespective of whether this period expires before, on or after the date of entry into force of the revised version. Any submission which is already on file before the entry into force of the revised version, and which is subsequent to the statement of grounds of appeal or the reply thereto, will however be subject to all the provisions of revised Article 13, paragraph 1, including the analogous application of revised Article 12, paragraphs 4 to 6.</p> <p>A further exception is made with respect to the strict provision of revised Article 13, paragraph 2. It will only apply to a submission filed after the statement of grounds of appeal or reply thereto if, at the date of entry into force of the revised version, the summons to oral proceedings has not yet been notified, or a period specified in a communication has not yet expired. Otherwise, Article 13 of the Rules of Procedure of the Boards of Appeal in the version valid until the date of the entry into force of the revised version will continue to apply.</p>