



Europäisches
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The Boards of Appeal of the EPO

Presentation at the Japan Symposium on IP / TOKYO 2022



Boards
of Appeal

Summary of main points

- Organisational structure of the EPOrg and the EPO
- Competence and composition
- Internal structure
- Appeal structure
- Referrals to the Enlarged Board of Appeal
- Overall figures for the Boards of Appeal
- Aspects of the appeals procedure and the new Rules of Procedure of the Boards of Appeal

Organisational structure of the EPORG and the EPO

Art. 4 EPC

Organs of the European Patent Organisation

- (1) The organs of the Organisation shall be:
 - (a) the European Patent Office;
 - (b) the Administrative Council.
- (2) The task of the Organisation shall be to grant patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.

Art. 15 EPC

[EPO] Departments entrusted with the procedure

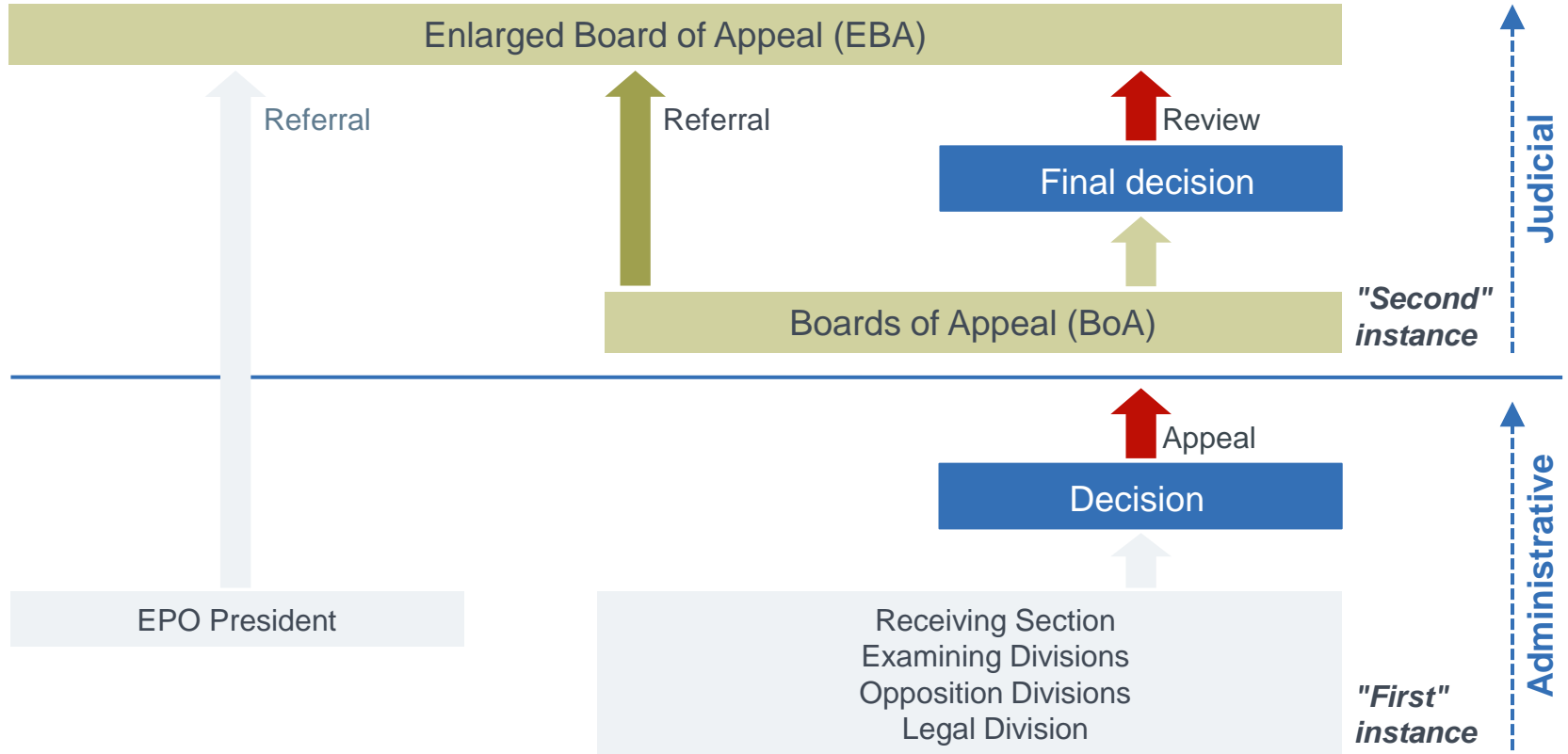
- a) a Receiving Section
- b) Search Divisions
- c) Examining Divisions
- d) Opposition Divisions
- e) a Legal Division
- f) Boards of Appeal
- g) an Enlarged Board of Appeal

Appeal Structure

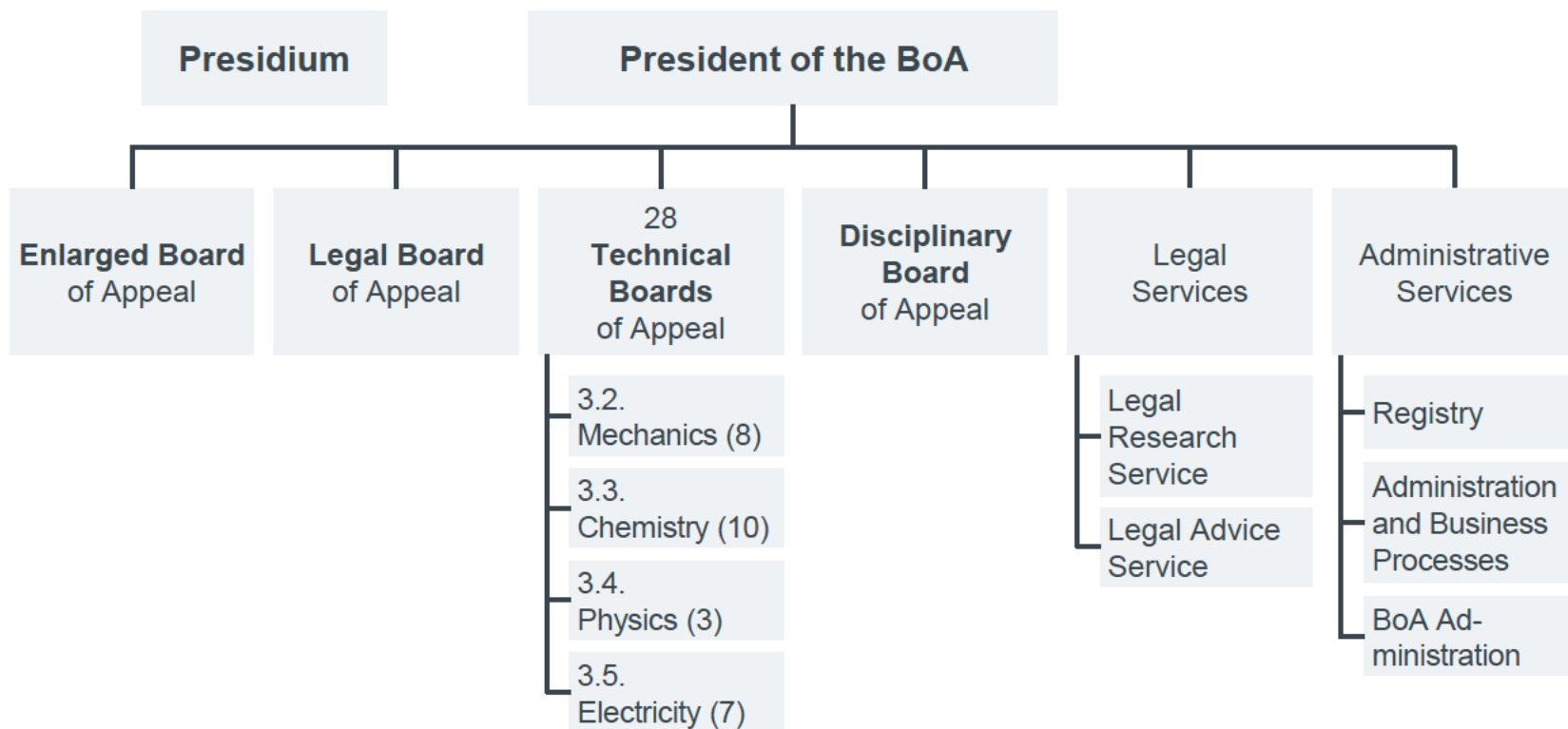
Internal structure, competence and composition

Referrals to the Enlarged Board of Appeal

Appeal structure



Internal structure of the Boards of Appeal



Technical Boards of Appeal (Art. 21(1), (3)(a) and (b), (4) EPC)

- Appeals against decisions of **examining** and **opposition divisions**
- **Composition:**
 - 2 technically and 1 legally qualified members
 - in certain cases: 3 technical and 2 legal
- **Workload 2021:**
 - per Board (organisational unit):
av. 121 cases settled (T ../..)
 - 52% increase in production since structural reform



Legal Board of Appeal (Art. 21(1), (2), (3)(c) EPC)

- Appeals against decisions of:
 - Receiving Section
 - Legal Division
 - Examining divisions not involving grant of patent/refusal of application
- **Composition:**
 - 3 legally qualified members (including Chair)
- **Workload 2021:**
 - 11 cases settled (J ../..)



Disciplinary Board of Appeal (Art. 134a(1) EPC)

- Appeals in matters of **professional representation** before the EPO, including European qualifying examination (EQE)
- **Composition:**
 - disciplinary cases: 3 legal members, 2 professional representatives
 - EQE: 2 legal members, 1 professional representative
- No power to refer questions to the Enlarged Board of Appeal ([D 5/82](#))
- **Workload 2021:**
6 cases settled (D ../..) – EQE appeals

Enlarged Board of Appeal (Art. 22 EPC)

Responsible for:

- **Deciding on points of law** referred by Boards of Appeal under Art. 112(1)(a) EPC
- Giving **opinions on points of law** referred by President of the EPO under Art. 112(1)(b) EPC
- **Deciding on petitions for review** of decisions of Boards of Appeal under Art. 112a EPC

Enlarged Board of Appeal

- **Referral for decision or opinion (Art. 112 EPC)**
 - uniform application of law
 - point of law of fundamental importance
- **Mechanism**
 - referral of a point of law by a board
(→ for decision) of its own motion or following request of a party
 - referral by EPO President (→ for opinion)
where two boards have given different decisions



2021: 3 decisions ([G 1/19](#), [G 4/19](#), [G 1/21](#));
3 pending referrals (G 2/21, G 1/22 & G 2/22)

Enlarged Board of Appeal – referrals in 2021/2022

Decided in 2021

- [G 1/19](#) "Patentability of computer implemented simulations", **decision of 10 March 2021.**
- [G 4/19](#) "Double patenting", **decision of 22 June 2021.**
- [G 1/21](#) "oral proceedings by videoconference", **decision of 16 July 2021.**

Pending in 2022

- **G 2/21** "plausibility", referred by [T 116/18](#).
- **G 1/22 & G 2/22** "entitlement to priority", referred by [T 1513/17](#) and [T 2719/19](#) (consolidated proceedings).

Enlarged Board of Appeal (Art. 22 EPC)

- **Petition for review (Art. 112a, R. 104 – 110 EPC)**

Review of board decision on ground that

- a **fundamental procedural defect** occurred
- a criminal act may have had an impact on decision

- **Two-stage procedure:**

- Stage 1: filter for cases clearly inadmissible or unallowable
- Stage 2: deciding on merits (in enlarged composition)



2021: 12 cases settled (R ../..)

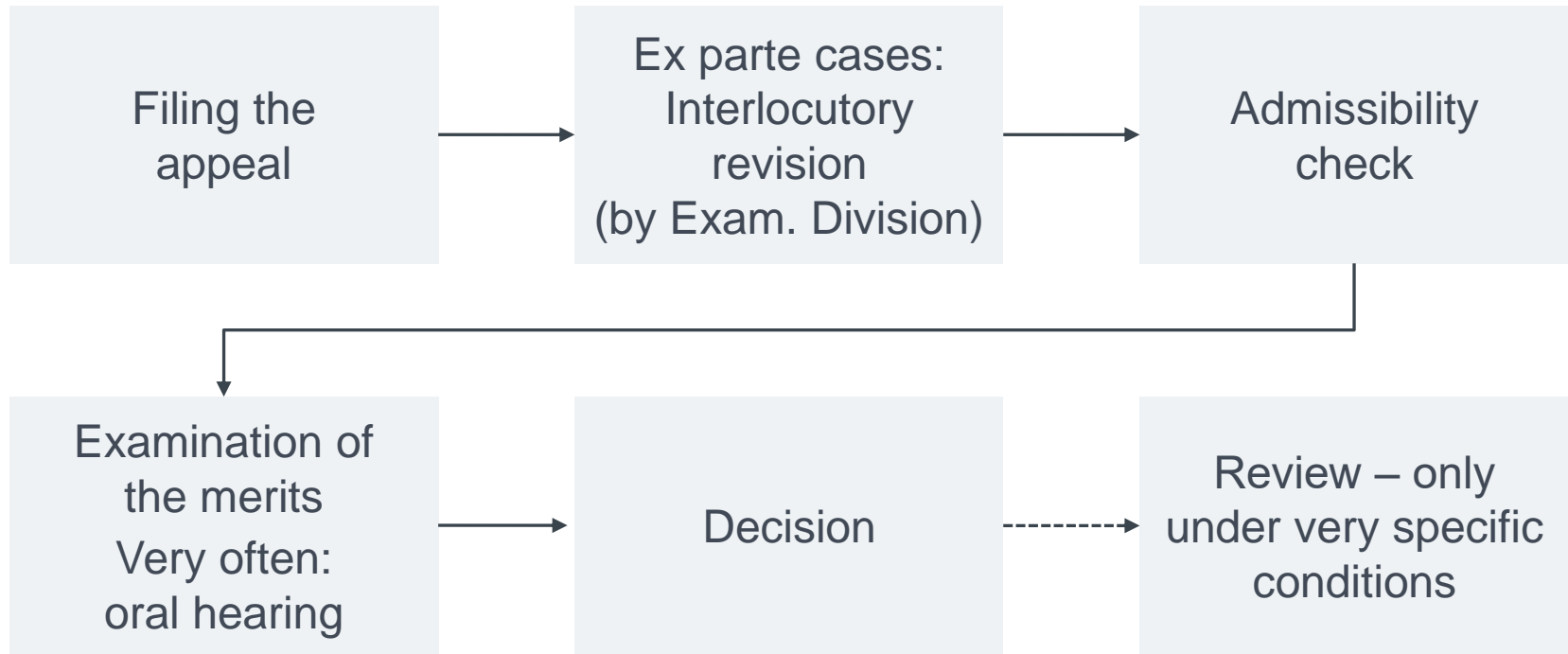
Boards of Appeal – overall figures 2021

- Appeals
 - 2 245 **received**
 - 3 395 **settled** (i.e. decided, or otherwise terminated)
 - 7 131 **pending** at 31 December 2020
 - 90% of cases settled within 59 months (60 months in 2020)
 - Increase of production 52% since 1 January 2017
 - 76% of OPs conducted using **videoconference** technology
- Staff at 31 December 2021:
 - 28 chairs and 168 members, forming 28 technical boards, the Legal Board and the Enlarged Board of Appeal
 - 256 staff in total

(See also the [Annual report of the Boards of appeal](#))

Aspects of the appeals procedure and the new Rules of Procedure of the Boards of Appeal

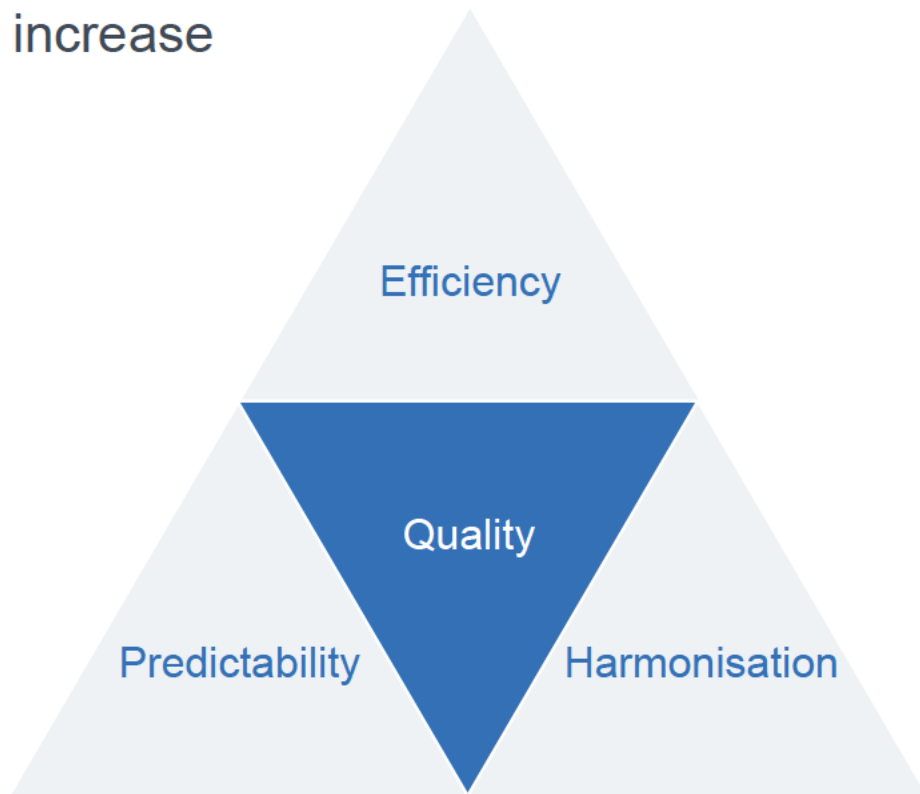
Main steps of appeals procedure (Art. 108 – 111 EPC)



Aims of the revision of the RPBA

The aims of the revision are to increase

- Efficiency
- Predictability
- Harmonisation



Revision of the Rules of Procedure – RPBA (1/2)

Aims:

- **Harmonisation of approach** of case law and RPBA
 - codification/further streamlining of "best practice":
 - more consistent exercise of discretion
 - increased predictability for parties
- **Improved efficiency** of the appeal procedure
 - for rapporteur and board (active case management)
 - tightening up procedure/ facilitating exercise of discretion:
 - steady reduction in backlog and pendency times

Revision of the Rules of Procedure – RPBA (2/2)

- Improved procedural guidance for parties
 - by transparent and predictable structure of proceedings
 - by increasing parties' responsibility for procedural economy
- while
 - respecting parties' fundamental right to fair proceedings
 - recognising parties' general interest in having appeal case dealt with in a timely manner
 - maintaining quality of Boards' decisions.

Revision of the Rules of Procedure – Key Aspects

- Entry into force 1.1.2020 (Art. 24 RPBA) – transitional provisions (Art. 25 RPBA)
- Publication of annual list of cases for following working year (Art. 1(2) RPBA)
- Review of decision "in a judicial manner" (Art. 12 RPBA)
- "Core" provisions (Art.12, 13 RPBA 2020) – **stricter convergent** approach
- **Mandatory communication** before oral proceedings (Art. 15(1) RPBA)
- Written decision within **three** months of oral proceedings (Art. 15(9) RPBA)
- Consolidation and **acceleration** of proceedings (Art. 10 RPBA)

See [Supplementary publication 2](#), Official Journal 2020, [Rules of Procedure of the Boards of Appeal 2020](#) (including [explanatory notes](#))
See also art 15a RPBA, in force as of 01 April 2021: Official Journal 2021, A19 "[Decision of the Administrative Council of 23 March 2021](#)"

Amendments to a party's case

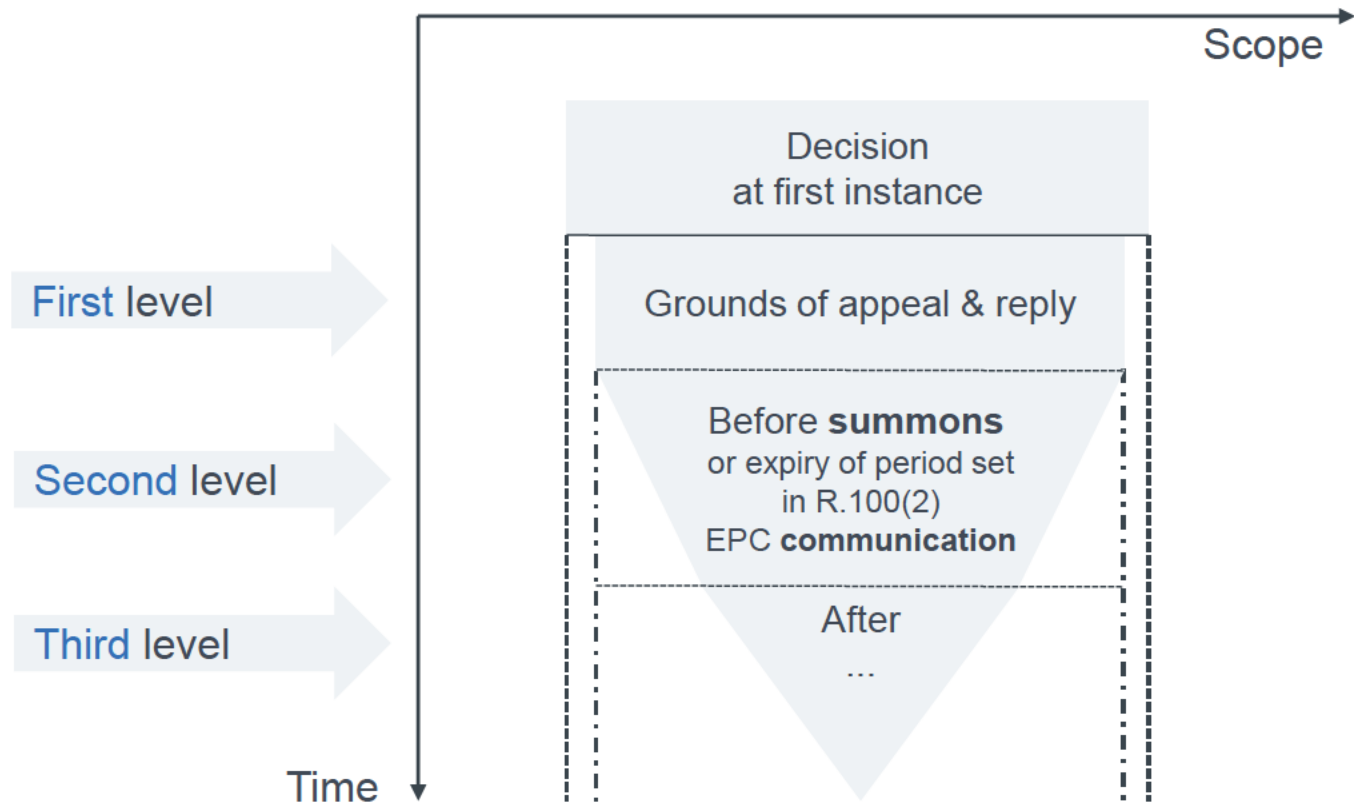
"Convergent approach"

- **Onus is on parties** to justify amendment to their case.
- Amendment should **narrow down scope of the case**.
- Admittance at **discretion** of Board and **becomes increasingly limited**.
- **Three levels:** new Articles 12(4), 13(1) and 13(2) RPBA 2020

Three levels of the convergent approach (1/2)

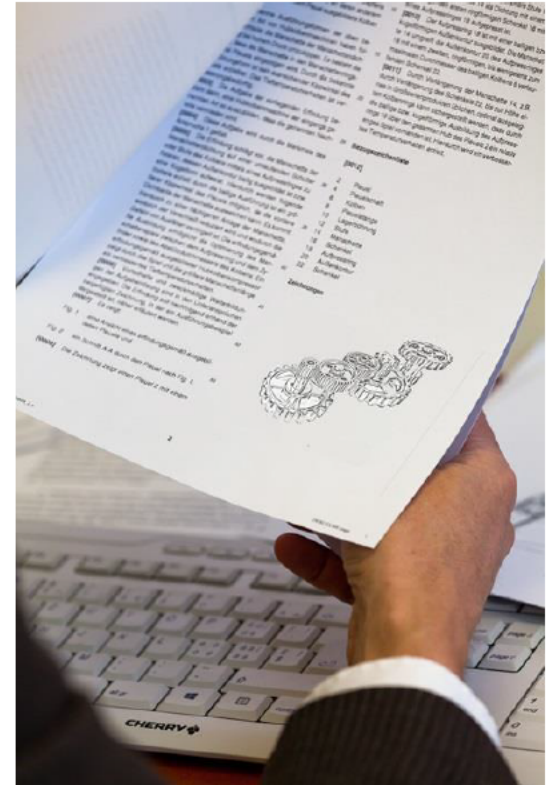
- First level: **At outset** of appeal proceedings: statement of grounds of appeal and replies thereto – Article 12(4) – discretion of the board
- Second level: **before period set in communication** or before **summons** to oral proceedings has been notified – Article 13(1) – justification + discretion + criteria
- Third level: **after period set in a communication under Rule 100(2) EPC** has expired or **summons** to oral proceedings has been notified – Article 13(2) – no admittance (exceptions)

Three levels of the convergent approach (2/2)



Connected cases – consolidation of proceedings

- Hearing **connected cases** one after the other and **consolidation** of appeal proceedings – Article 10(2)
- Deal with **similar cases** in same composition
- If **clearly connected**, Board hears cases one immediately after the other.



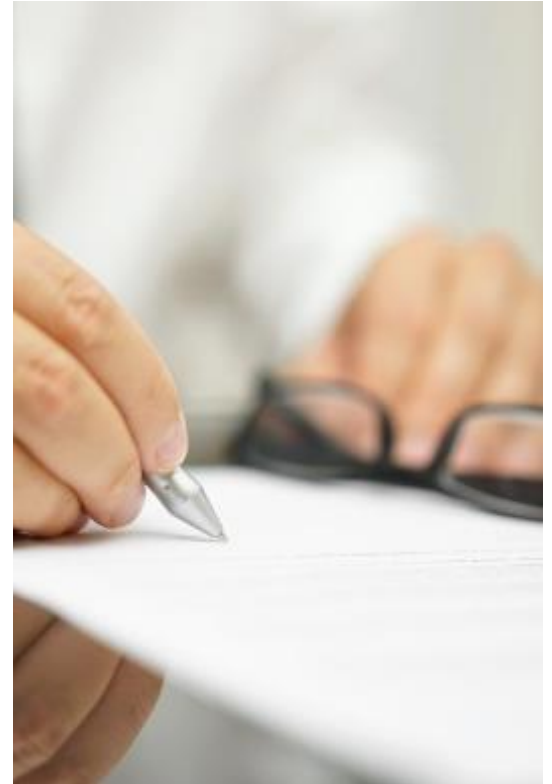
Acceleration of appeal proceedings

- **Acceleration** of proceedings – Article 10(3) to (6)
- Allows Board to **give one appeal priority over other** pending appeals.
- **Parties** and **courts** can request acceleration.
- **Parties** need **valid reason** justifying acceleration, e.g. pending infringement proceedings.
- **Aim:** to put "acceleration" on statutory basis with **clear criteria**.



Mandatory communication

- **Mandatory communication** by Board in preparation for oral proceedings – Article 15(1)
- **Communication**
 - is based on **thorough analysis** of case
 - draws attention to matters of **particular significance** for decision
 - may also include **preliminary opinion**



Decision on the appeal (Art. 111, R. 101–103, 111(1) EPC, Art. 15 RPBA)

- Decision usually announced **orally** at end of oral proceedings (exceptionally, proceedings may be continued in writing).
- **Written reasoned decision** issued within three months (Art. 15(9) RPBA).
- If **remittal**, first instance bound by board decision in so far as facts are the same (Art. 111(2) EPC).

Abridged Decisions (Article 15(7), (8) RPBA)

- Abridged written decision after decision in oral proceedings.
- Precondition:
 - explicit consent of the parties
 - no indication that third party or court has, in the particular case, a legitimate interest in decision not being abridged.
- Reasons for the decision in abridged form may already be included in minutes.

Remittal to department of first instance

- New rule on **remittal** to department of first instance – Article 11
- Boards **shall not** remit case to department of first instance, **unless special reasons** present themselves.
 - reduce "ping-pong" effect between
 - Boards and departments of first instance
 - Time saver



Information on the case law of the Boards

Internet – Boards of Appeal

The screenshot shows the top navigation bar of the European Patent Office website. On the left is the EPO logo with text in German, English, and French. To the right is a search bar and buttons for 'Website' and 'Patents'. Further right are links for 'Media', 'Contact us', and a language dropdown set to 'English'. Below this is a dark navigation bar with menu items: 'Home', 'Searching for patents', 'Applying for a patent', 'Law & practice', 'News & issues', 'Learning & events', and 'About us'. The main content area features a large banner for 'Contribute to our Strategic Plan 2023' with a 'Have your say' button. On the left, a vertical menu lists 'Searching for patents', 'Applying for a patent', 'Law & practice', and 'Boards of Appeal' (with a scales icon), the latter being highlighted with a red box and a red arrow. At the bottom of the banner are three buttons: 'Strategic Plan 2023', 'Try out new Espacenet', and 'Vacancies'.

Internet – Boards of Appeal web section

The screenshot shows the top navigation bar of the EPO website. On the left is the EPO logo with the text 'Europäisches Patentamt', 'European Patent Office', and 'Office européen des brevets'. In the center is a search bar and two buttons labeled 'Website' and 'Patents'. On the right are links for 'Media', 'Contact us', and a language dropdown set to 'English'. Below this is a dark navigation menu with items: 'Home', 'Searching for patents', 'Applying for a patent' (highlighted with a mouse cursor), 'Law & practice', 'News & issues', 'Learning & events', and 'About us'. The main content area has a breadcrumb trail: 'Home > Law & practice > Boards of Appeal'. A left sidebar contains a list of links: 'Search decisions', 'Recent decisions', 'Enlarged Board of Appeal', 'Procedure', 'Annual report', 'President of the Boards of Appeal', 'About the Boards of Appeal', 'Communications', and 'Publications'. The main heading is 'Boards of Appeal', followed by 'Print' and 'Share' icons. A large photograph of the EPO building is shown. To the right of the photo is the 'Boards of Appeal' logo, which features a scale of justice. Below the logo is a 'Contact' section with the heading 'Boards of Appeal' and a link 'Contact us using an online form'. At the bottom of the contact section is the address: 'Address: Richard-Reitzner-Allee 8, 85540 Haar, Germany'. Below the photo is a paragraph of text: 'The Boards of Appeal are the first and final judicial instance in the procedures before the European Patent Office (EPO). They have the task of reviewing contested decisions of the Office's departments of first instance within the framework of the European Patent Convention (EPC). They are headed by the President of the Boards of Appeal.'

Case law of the Boards of Appeal

- [Recent](#) and [Selected](#) decisions
- [Enlarged Board of Appeal](#): pending and decided petitions for review and referrals
- Case Law of the Boards of Appeal of the EPO, [10th edition](#) 2022
- Case Law report [2021](#)
- OJ EPO Supplementary publications
EPO Board of Appeal Case Law ([2020](#); [2018 & 2019](#))



Thank you very much for your attention!

Ingo Beckedorf

Chair, Technical Board of Appeal 3.2.07