

THE CURRENT STATE OF TRIALS/APPEALS

INGO BECKENDORF | DEPUTY OF THE PRESIDENT OF THE BOARDS OF APPEAL | 25 OCTOBER 2024

EXECUTIVE SUMMARY

- Recent developments at the Boards of Appeal: some figures
- Commitment to quality
- Other initiatives at the Boards of Appeal

RECENT DEVELOPMENTS AT THE BOARDS OF APPEAL

Some figures



OBJECTIVES 2018-2023

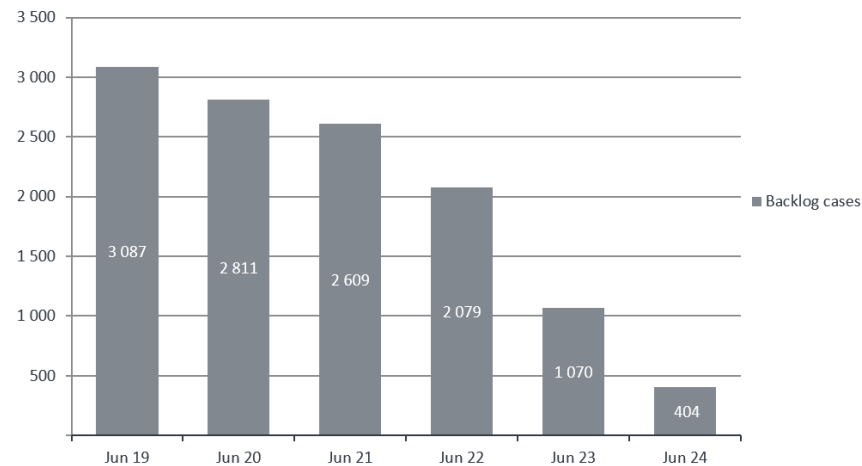
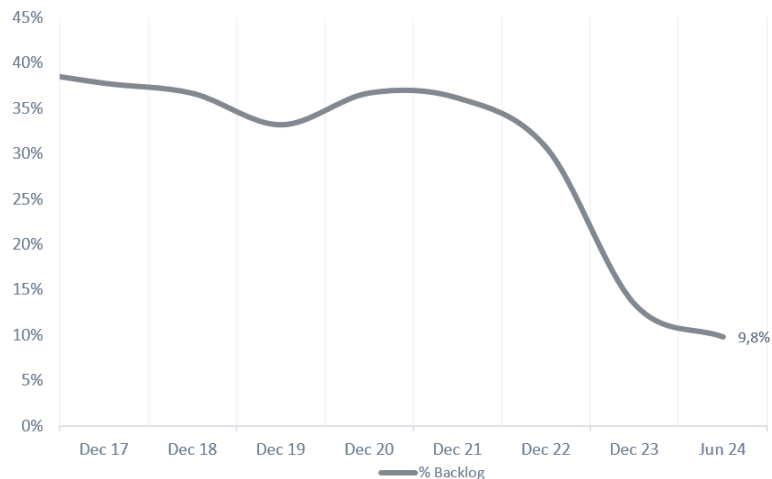
Objective	Status 30 June 2024	Conclusion
To settle 90% of all cases within 30 months	<ul style="list-style-type: none">■ Objective achieved in June 2024■ 9.8% of cases pending over 30 months	
To reduce the number of pending cases to below 7 000	<ul style="list-style-type: none">■ Objective achieved in March 2022■ 4 125 pending on 30 June 2024	

MEASURES TO ACHIEVE OBJECTIVES 2018–2023

- Additional resources
- Improved planning
- Performance management
- **Highlight 2023:** increased flexibility in the BDS (Art. 1(2)(b) BDS-TBA)
- Amendments to the RPBA – entering into force in 2020, e.g.
 - Art. 15(1) RPBA: improved quality of communications → increased withdrawals
 - Art. 15(9)(a) RPBA: written decision shall be issued within 3 months
 - Art. 12 and 13 RPBA: convergent approach; front-loading of the procedure, hearings more concentrated and efficient
 - Art. 1(2) RPBA: annual list of cases
- Staggered options for reimbursement of the appeal fee if appeal is withdrawn

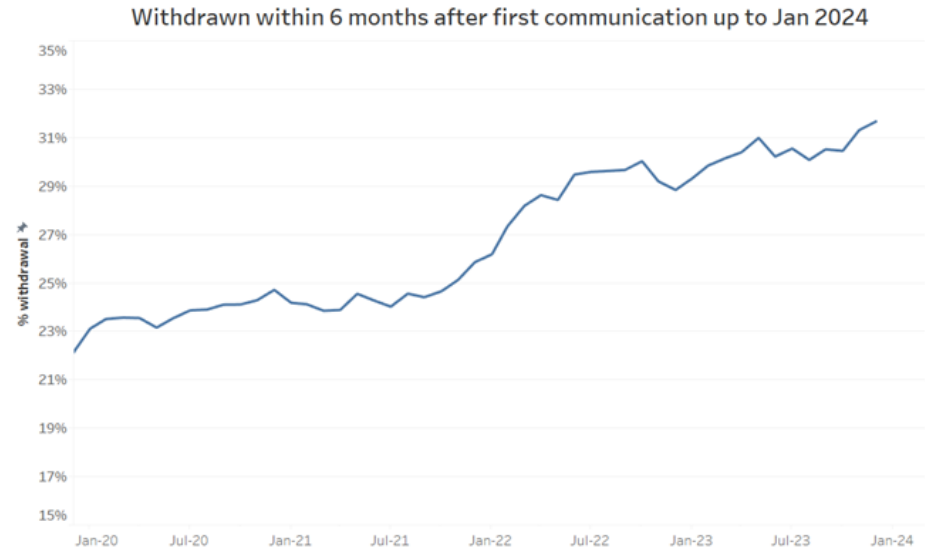
PENDING CASES OLDER THAN 30 MONTHS

- As at 30 June 2024, overall, **9.8% pending cases older than 30 months** (30 June 2023: 19,2%): Mechanics 4.7%, Chemistry 6.8%, Physics/Electricity 18.4%
- 404 pending cases older than 30 months as at 30 June 2024 (30 June 2023: 1070)



DEVELOPMENT OF WITHDRAWALS FOLLOWING A COMMUNICATION

- Considerable increase in the number of appeals withdrawn following a substantive communication
- Likely explanation: effects of the RPBA 2020 (mandatory communication in preparation of oral proceedings)



WORKLOAD AND PRODUCTION: FIRST HALF 2024

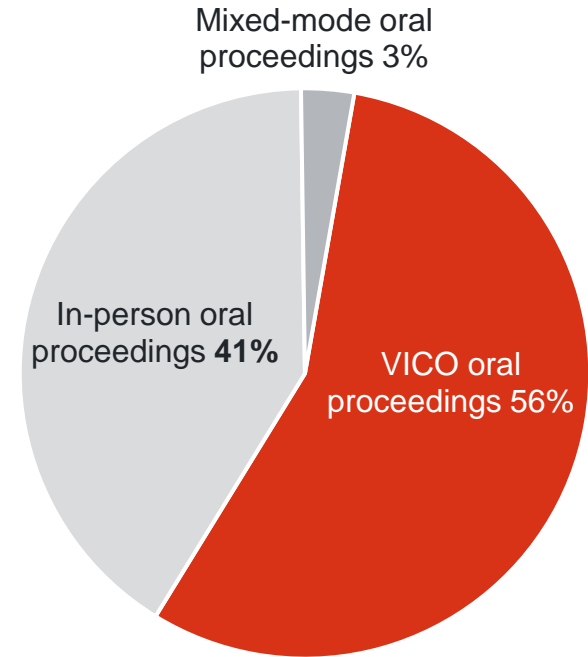
	New cases		Settled cases	
	Jun 23	Jun 24	Jun 23	Jun 24
Technical boards of appeal	1205	873	1 829	1 655
Enlarged Board of Appeal	11	15	8	8
Legal Board of Appeal	6	4	6	5
Disciplinary Board of Appeal	1	2	45	13
Total	1222	894	1 888	1 681

WORKLOAD AND PRODUCTION BY PROCEDURE AND TECHNICAL FIELD

Technical boards of appeal (Type of procedure and technical field)	New cases		Settled cases	
	Jun 23	Jun 24	Jun 23	Jun 24
Ex parte (Examination procedure)	224	192	665	529
Inter partes (Opposition procedure)	981	681	1 164	1126
Total	1 205	873	1 829	1 655
Mechanics	514	329	608	545
Chemistry	371	319	572	496
Physics/Electricity	320	225	649	614

FORMAT OF ORAL PROCEEDINGS

- Distribution remained constant compared to the same period in 2023
- Further information on [Oral proceedings before the Boards of Appeal](#) on EPO's website



NEW OBJECTIVES FROM 1 JANUARY 2024

Initial Objective	Timeframe	Forecast
No more than 10% cases older than 24 months	■ By end 2025	

■ Supported by:

- Specific amendments to the Rules of Procedure of the Boards of Appeal (RPBA) which entered into force on 1 January 2024
- Regular review of incoming workload and enhanced cooperation by the boards

■ Pendency time on 30 June 2024: 27.6% of pending cases were older than 24 months

MEASURES TO ACHIEVE THE NEW OBJECTIVES – AMENDMENTS TO THE RPBA

- Amendment to Article 13(2) RPBA:

Notification of a communication under Article 15(1) RPBA replaces the notification of a summons to oral proceedings as a trigger for the third level of the convergent approach

- **Amendment to Article 15(1) RPBA:**

Enables early notification of a summons to oral proceedings

Keeps a safeguard for the triggering of the third level of the convergent approach

- Amendment to Article 15(9)(b) RPBA:

Harmonises the text of the provision with Article 15(9)(a) RPBA

ENLARGED BOARD:

- Decided:
 - **G 2/21 "Reliance on a purported technical effect for inventive step (plausibility)":** referred by [T 116/18](#) in 2021; oral proceedings in November 2022; [decision](#) published in March 2023
 - **G 1/22 and G 2/22 "entitlement to priority":** referred by [T 1513/17](#) and [T 2719/19](#) (consolidated proceedings); oral proceedings in May 2023; [decision](#) published in October 2023
- Pending referrals:
 - **G 1/23 "Solar cell":** referred by [T 438/19](#) in June 2023
 - **G 1/24 "Heated aerosol":** referred by [T 439/22](#) in June 2024

COMMITMENT TO QUALITY



QUALITY

- [Quality-focused decision-making](#) paper (2020)
- Internal professional development
- Performance evaluation and objective-setting
- Exchanges – in particular judicial ones
- Increased availability of legal resources

Training

Dialogue

Information
and resources

Case management

Oral proceedings

Decisions

Performance
evaluation



QUALITY THROUGH EXCHANGE

Framework	Initiatives and stakeholders
Internal	<ul style="list-style-type: none">■ Member workshops■ Professional development opportunities (PDC sessions, legal drafting courses)
External	<ul style="list-style-type: none">■ Judges (Expert workshop, Judicial internships, participation in joint panels and conferences, e.g. Fordham, Venice, Case Law Conference, JSIP)■ Institutional counterparts (e.g. Quality Dialogue with the EPO, IP5 TAB, bilateral exchanges)■ User associations (Annual exchange meetings, e.g. MSBA, FICPI; hosting visits, e.g. US Bar, JETRO)
User consultations (2023/24)	<ul style="list-style-type: none">■ Technicalities of VICO■ Proposed amendments to RPBA 2020■ Survey on the "Case Law of the BoA" publication

QUALITY THROUGH KNOWLEDGE



OTHER INITIATIVES AT THE BOARDS OF APPEAL



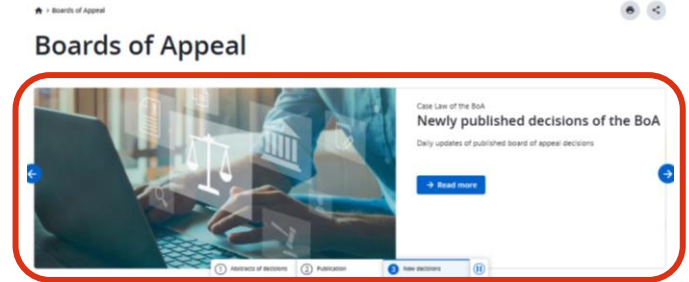
2024: GUIDANCE FOR THE USE OF ARTIFICIAL INTELLIGENCE

- In-depth analysis on possibilities and limitations of using tools based on artificial intelligence (AI) by sub-group of Automation Steering Committee and including broader internal discussions
- First internal guidance paper for the BoA on the use of AI-based tools
- Overriding principle: **staff must take full responsibility for the content and quality of their work at all times**
- For board members, the overriding principle applies in particular to the concrete and detailed wording of the board's decisions and communications

BOA WEB SECTION AND LEGAL RESOURCES

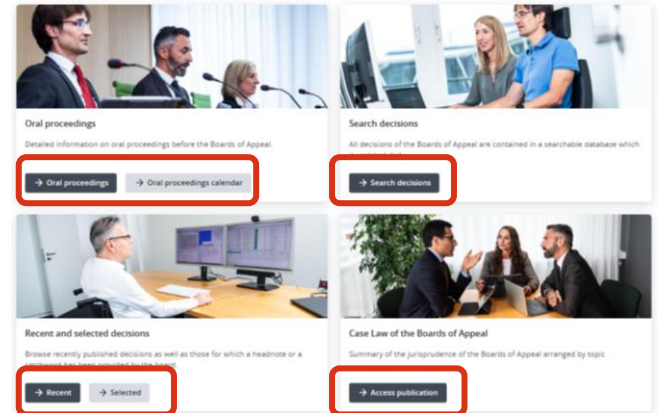
- Landing page: epo.org/appeals
- **"What's new"** carousel
- Information on **oral proceedings**

- Quick access to case law resources:
 - **BoA decisions** and search functions
 - **"Case Law of the Boards of Appeal"** publication



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.

Services in the spotlight



ANNUAL REPORT OF THE BOA

- Milestones, activities and initiatives available in the annual reports in the BoA web-section
- [Annual Report of the Boards of Appeal 2023](#)



THANK YOU FOR YOUR ATTENTION
