

MB *Milestones*
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EPO Reform 2020 - New Appeal Procedure (RPBA 2020)



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A. HOT OFF THE PRESS AND FAR-REACHING

The amended Rules of Procedure of the Boards of Appeal of the European Patent Office (RPBA 2020) apply from 1 January 2020.

The RPBA 2020 directly and indirectly affects all Examination and Opposition proceedings before the EPO, and will force Applicants, Patent Owners and Opponents to develop new strategies so that they can continue to operate successfully before the EPO. With the RPBA 2020, the EPO intends to increase the efficiency of the Boards of Appeal, the primary aim being to speed up Appeal procedures and reduce the number of pending cases, which is certainly desirable for all parties involved. For 2018, the Boards of Appeal have already achieved this goal: in the period from 1 January 2017 to 31 December 2018, the number of settled Technical Appeal Cases increased by an impressive

22.6%. By 2023, however, the efficiency of the Boards of Appeal should be further increased: from this date, **90% of all cases will be settled within 30 months** of receipt and the number of pending cases will be reduced to less than 7000. These aims are as set out in the 5-year plan of the President of the Boards of Appeal.

In order to achieve this ambitious goal, the current 22.6% increase in the number of settled cases is far from sufficient. A further increase is necessary to achieve this, while at the same time noting that there is a large increase in the number of new Appeals being filed (up 8.4% from 2017 to 2018).

Against this background, it is foreseeable that the implementation of the RPBA 2020 will have a drastic effect on the Appeal Procedures before the EPO.

B. THE RPBA 2020

The RPBA 2020 pursues three goals:

1. Increase the **efficiency** of the Boards of Appeal by reducing the number of subjects and issues to be dealt with. The focus of the Appeal Proceedings will focus on a review of the contested decision.
2. The possibilities for amendments in the Appeal will be even more limited than before.

An essential aspect of the efficiency measures of the RPBA 2020, is a three-step convergence procedure which the Boards of Appeal will

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apply to the respective submissions of the parties at the beginning and during the course of the proceedings (including during Oral Proceedings). This convergence is embodied by the discretion of the Boards of Appeal to allow amendments to the Appeal arguments decreasing as the duration of the proceedings increases. This, in conjunction with the focus on the contested decision, will result in a limitation of the subject matter which may be discussed.

3. The predictability of decisions shall be improved. To address this, and to also improve the efficiency and focus of Oral Proceedings, a mandatory communication of the Board of Appeal in preparation for the Oral Proceedings is intended. This communication should also serve to harmonise the procedures of the individual Boards of Appeal. The communication should contain the relevant points of discussion for the Oral Proceedings and, where appropriate, a preliminary assessment of the Board of Appeal. Unfortunately, the latter is not mandatory.

C. WHAT SHOULD YOU DO?

In general, the well-known adage applies here: *“Don't put off until tomorrow what you can do today”*. The first instance procedures of patent Examination and Opposition will become even more important than at present. To speculate on the Appeal Procedure in order to land a surprise coup for tactical reasons, against which an Opponent can do

little to defend themselves, was and is a risk that will be exacerbated in the future by the RPBA 2020. This applies to the filing of requests, as well as to all other changes to the matter(s) in dispute during Appeal Proceedings. The groundwork for a possible Appeal must, therefore, be done carefully in the first instance and fully included and applied, in order to be successful under the new Appeal Procedure.

Developing and presenting appropriate strategies for proceedings before the EPO is beyond the scope of this newsletter. We would, therefore, like to offer an in-house seminar to allow us to fully discuss the individual new regulations of the RPBA 2020 and the resulting implications. This seminar will give us the chance to assist you in developing strategies for successful patent application filings covering your inventions at the EPO, warding off Oppositions filed against your granted Patents and assisting you in opposing patents of your competitors.

As a former member of the Boards of Appeal, Dr. Felgenhauer has decades of experience in conducting Appeal Proceedings and will be happy to share his expertise with you. ■

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