Online consultation: Boards of Appeal

The European Patent Organisation has launched a structural reform of its Boards of Appeal. The main features of the proposed reform are described in the attached document (CA/16/15), which has been presented by the European Patent Office to the Administrative Council in March and has met with broad support. The aim of the reform is to ensure and increase the organisational and managerial autonomy of the Boards of Appeal, the perception of their independence as enshrined in Article 23 EPC, as well as their efficiency within the legal framework of the current European Patent Convention.

The aim is also to take account of national, European and international developments aiming at enhancing the autonomy of the Judiciary and/or the efficiency.

The European Patent Office, which will prepare the relevant concrete proposals to be submitted to the Administrative Council, would welcome contributions from the users of the European patent system concerning possible improvements of the functioning of the Boards of Appeal with respect to both their autonomy and the perception of their independence and their efficiency. Contributions from the users will be duly considered in the preparation of the future concrete proposals and presented to the Administrative Council. Contributions will be processed and presented to the Administrative Council in an anonymised manner and an excerpt of the contributions will be made available to the general public.

We would in particular welcome contributions concerning the following questions:

**Question A. Position of the Boards of Appeal – Independence**

The independence of the Boards of Appeal is enshrined in Article 23 of the EPC. In the past users have sometimes expressed concerns about possible conflicts of interest or about the appointment procedures for members of the Boards of Appeal which could affect the perception of the independence. At many national and international Courts there are specific rules aiming at preventing actual or perceived conflicts of interest of members of the judiciary.

If specific rules were introduced for members of the Boards of Appeal what type of scenarios should they cover?

How could the appointment and re-appointment procedures for the members of the Boards of Appeal be improved and in particular how could more external candidates be attracted?

**Question B. Work of the Boards of Appeal - Efficiency**

As is apparent from Annex 2 of Document CA16/15, over the years, the Boards of Appeal have accumulated a considerable backlog of pending cases and the average length of proceedings has reached a duration of 34 months, while recently the number of appeals has decreased and the number of withdrawals of appeals increased.
Do you have any suggestions on how the efficiency of the Boards of Appeal could be improved? What would in your opinion be the optimal length of the proceedings?

**Question C. Work of the Boards of Appeal – Procedure**

The Rules of Procedure of the Boards of Appeal are currently drawn up by the Presidium of the Boards of Appeal (Rule 12(3) of the Implementing Regulations of the European Patent Convention). In the past, users have sometimes expressed concerns about the functioning and the consistency of application of some of these Rules and the impact on the efficiency, transparency and predictability of proceedings, including the right of the parties to be heard.

Do you have any suggestions of improvement of the procedures before the Boards of Appeal?

Which changes to the procedures could contribute to increasing efficiency and/or predictability and transparency of proceedings?

**Question D. Boards of Appeals Committee (BOAC)**

It is envisaged to create a special sub-Committee of the Administrative Council (BOAC) in order to monitor the general functioning of the BOA and to advise and make general proposals for improvements both to the Administrative Council and the future President of the Boards of Appeal (currently Vice-President of DG 3). Currently, a mixed composition of the BOAC consisting of members of the Administrative Council and external members to be chosen among senior judges is envisaged. However, considering the paramount importance of an optimal functioning of the Boards of Appeal for the European patent system and its users, a participation of (a) user representative(s) could also be envisaged as well as user consultations to be carried out by the BOAC concerning the general functioning of the Boards of Appeal and their Rules of Procedure.

Do you think that the users should be given a seat in the BOAC?

Would you be in favour of the BOAC carrying out surveys among users concerning the general functioning of the Boards of Appeal with a view to make general proposals for improvements?

Would you in particular be in favour of the BOAC having the possibility to make proposals for changes to the Rules of procedure of the Boards of Appeal?

**Question E. Proceedings of petitions for review**

The possibility for a party to file a petition for review of a decision of the Boards of Appeal to the Enlarged Board of Appeal has been introduced by the Revision of the European Patent Convention of 29.11.2000. While users have in general welcomed this new possibility, there are some concerns expressed relating to the composition of the Enlarged Board of Appeal in such proceedings which consists exclusively of internal members pursuant to Rule 109(2) of the Implementing Regulations to the European Patent Convention.
Do you find the current composition of the Enlarged Board of Appeal in review proceedings, with exclusively internal members, adequate? What kind of alternative composition would be better?

**Question F. General**

Are there any other aspects of the general functioning of the Boards of Appeal where you see a need for improvement and which should be tackled in the course of the reform?