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16 June 2020

Dear President Campinos

Revision of Arrangements for Oral Proceedings

Further to my letter of 9th June 2020 (relating to coronavirus extensions of time in written proceedings), I would like to ask for your further consideration of issues relating to oral proceedings (both during and after the current pandemic).

Videoconferencing (for examination proceedings):

- CIPA strongly supports videoconferencing for oral proceedings in first instance examination cases, and during lockdown we believe it is the only feasible way.
- When lockdown is over, we think videoconferencing should be the norm for examination proceedings, but the applicant should have the right to face-to-face proceedings on request.
- However, parties need a mechanism to address any technical problems which arise during the course of proceedings. This goes to the right to be heard.

Videoconferencing (for opposition proceedings):

- We welcome the trial of videoconferencing for opposition, but note that technical problems have been reported. We urge the EPO to search urgently for a better IT solution than the outdated Skype for Business, so that it can be introduced as soon as possible. For example, the KUDO system is now being used for SACEPO meetings. To ensure a common solution, this search should also involve the Boards of Appeal. We would welcome consultation and the chance to assist in testing any new system.
- We also ask that when videoconferencing is offered to the parties, the opposition division should be sure to state that it is still a trial. A CIPA member has reported an instance where it was offered at short notice, without making the trial status clear.
- However, opposition is a procedure where the parties may have reasons for face-to-face proceedings that are not immediately apparent to the Opposition Division. For example, it can be very useful to respond to the other party's arguments with a presentation on a flip-chart. It can also be useful to observe the reaction of the other party as one's own arguments are presented.
- This is particularly the case as oppositions are likely to have higher commercial value than examination proceedings, meaning that the travel costs may be less significant.

- For these reasons, even when a better IT solution is available, we believe that any party should have the right to attend oral proceedings in person if they wish. Videoconferencing should still be offered to the other parties if they give notice that they wish to use it.

Face-to-face opposition oral proceedings

- CIPA is grateful for the postponement of face-to-face opposition oral proceedings scheduled until 14th September 2020.
- It should however be noted that there is still uncertainty about what the lockdown situation in the UK will be in September. Some aspects of the current uncertainty could last well beyond then. There may therefore be a need for further consideration and CIPA stands ready to assist.¹
- Whether or not any further general extension becomes appropriate, we urge the EPO to promise that an announcement (one way or the other) will be made with adequate notice before 14th September, e.g. one month.² This will allow representatives time to plan (and seek further individual extensions if necessary). Very significant problems have arisen recently, when examination/opposition divisions themselves do not have advance notice of changes to EPO policy, and so refuse to postpone oral proceedings despite the representative's inability to attend during a national lockdown.

We thank you for your consideration of these issues.

Yours sincerely,



Richard Mair
President

¹ At the time of writing, the UK Government still advises against all but essential international travel.
<https://www.gov.uk/guidance/travel-advice-novel-coronavirus>

Furthermore, even if UK representatives are able to enter Germany or The Netherlands, they are now obliged to self-isolate at home for 14 days on their return.
<https://www.gov.uk/uk-border-control>

It is uncertain when that will change, or whether special arrangements will be made in due course for travellers returning from lower risk countries.

² We draw attention to the UK Intellectual Property Office's helpful promise – even for normal written examination matters – that it will provide a minimum of 2 weeks' notice before ending its "interrupted days" period.
<https://www.gov.uk/government/news/coronavirus-important-update-on-ipo-services>