



30 June 2015

BUSINESSEUROPE RESPONSE TO EPO USER CONSULTATION ON REFORM OF THE BOARDS OF APPEAL (BoA)

BUSINESSEUROPE welcomes the opportunity to contribute to the ongoing debate concerning possible improvements of the functioning of the Boards of Appeal (BoA) with respect to their autonomy and independence as well as their efficiency.

We support the aim of reaching these objectives within the boundaries of the European Patent Convention (EPC) as they are very important. This has the unquestionable advantage that the necessary measures can be implemented quickly. From an applicant's perspective, the quality, cost-effectiveness, timeliness and legal predictability of the decisions of the BoA are of utmost significance. All measures to reform the BoA have therefore to guarantee the necessary freedom and independence of the members of the BoA.

Generally, BUSINESSEUROPE welcomes the proposals to give the BoA more independence and autonomy, including in particular full managerial and organisational powers to the President of the BoA. At the same time, it is necessary to clarify which measures are presented for efficiency purposes and which to ensure the autonomy and independence of the BoA. There should be transparency about the objective of each proposed measure.

Question A. Position of the Boards of Appeal – Independence

A central issue is about the appointment and re-appointment procedures for the members of the BoA.

It is important to strengthen the transparency of procedures in relation to the conditions of appointments and re-appointments at the level of both the proposals and comments of the President of the EPO as well as the decisions of the Administrative Council. The absence of observers from these discussions at the Administrative Council risks reinforcing the perception of lack of transparency. It should be feasible to protect individual candidates by anonymising the presentation and discussion of specific files.

Question B. Work of the Boards of Appeal – Efficiency

The importance of timeliness for a properly-functioning appeals system has already been highlighted. This is why it is necessary to ensure the efficient appointment, reappointment and recruitment of staff, so that the BoA are maintained at full strength and backlogs minimised.

Ex parte cases should be treated during a maximum period of one year. Inter partes cases could take more time but a good "case management" could allow to limit the maximum time to reach a decision in two years. It is noted that inter partes Unified Patent Court (UPC) procedures are designed in a way to reach decisions in no more than one year per instance. The same should be a goal for the BoA, provided that the efficient appointment, re-appointment and recruitment of staff is ensured as already stressed by BUSINESSEUROPE.

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

The Rules of Procedure of the BoA leave so much discretion to the Boards or their Chairmen on practically all their aspects that they cannot realistically be considered as transparent or their application as predictable.

We believe that procedures in the BoA should be defined more precisely and strictly. Deviations should be authorised exceptionally and be duly justified. Any improvements in the Rules of Procedure of the BoA should address the need for a clear delimitation between the different stages of the procedure and the role of the rapporteur regarding the management of the case at each stage of the process as well as passing from one stage to the next.

The UPC Rules of Procedure could serve as an indication of best practices on efficiency of procedures.

Question D. Boards of Appeal Committee (BOAC)

It would be desirable that the BOAC consults regularly with users to collect their views on the functioning of the BoA, the quality and efficiency of procedures. As in the other sub-committees of the Administrative Council, there should be the possibility for current observers to make a similar request, including users of the system.

Question F. General**Budget**

It is important to avoid the perception under the current proposal that the President of the EPO is controlling the budget proposed by the President of the BoA.

The new arrangements need clarification that the President of the EPO will include the BoA's budget as proposed by the President of the BoA in the overall budget presented to the Administrative Council in line with the aim of the proposed reform to avoid a revision of the EPC.

Location

We agree that the proposal to accommodate the BoA in a separate building has merit. However, we consider that moving the BoA outside Munich would hinder rather than help the objective of increasing efficiency (since many existing members are likely to leave), and would adversely affect the prospects of recruiting new members (who are likely to be drawn from other departments of the EPO).

Therefore, accommodating the BoA in a different building in Munich is strongly preferred.
