

A recent webinar jointly organized by AICIPI (Italian association of in-house IP counsels and experts) and Collegio dei Consulenti in Proprietà Industriale (the Italian group of FICPI), chaired by Studio Torta's president Mauro Eccetto, focused on oral proceedings before the European Patent Office (EPO) held by videoconference (VICO).

The Covid-19 pandemic has changed the way we live and work extensively over the last year. Traveling and in-person meetings have become difficult, if at all possible, due to social distancing and travel restrictions imposed by the pandemic. In order to maintain business continuity, businesses and organizations worldwide had to adapt quickly to remote-working and virtual conferencing systems. The EPO is no exception.

Oral proceedings by VICO before examining divisions were already possible before the pandemic, although only a minority of the hearings were actually held remotely. As of April 2020, all oral proceedings before examining divisions are held by VICO; oral proceedings by VICO were also introduced in oppositions, on condition that all the parties agreed. Simultaneous translation is available similarly to in-person oral proceedings.

By decision of the President of the EPO, as of January 2021 all oral proceedings before opposition divisions are held by VICO until 15 September 2021. Also taking of evidence via VICO is now possible.

As reported by the EPO representatives in the event, in the first two months of this year, almost 600 opposition VICOs were held; all of them were successfully completed, with no major technical problems.

Oral proceedings are now possible in appeal proceedings too, when the Board considers it appropriate either upon request of a party or of its own motion (amended article 15a of the Rules of the Boards of Appeal).

There is an ongoing debate on whether VICO should remain as the standard mode of holding oral proceedings when the pandemic is over. User and business associations have taken different positions, often biased by marketing issues.

While it is understandable that Munich-resident attorneys favour in-presence proceedings, as they don't need a flight to Munich and an overnight stay, several user associations support VICO as the new norm after the pandemic.

Most of the comments opposing VICO as the new default stressed the importance of face-to-face verbal communication and even non-verbal communication, which would be missed in a VICO. Also, the risk of technical issues is a frequent argument in anti-VICO arguments.

After experiencing several VICO oral proceedings, we can conclude that the latter argument is weak, as the on-line platform works smoothly. As to the "body language" argument, any attorney who has attended oral proceedings at the EPO, typically sitting at the counterparty's side and frequently hearing the adversary attorney's statement through simultaneous translation, knows it is hardly decisive.

Also conceding this is a drawback of the VICO system, which would anyway affect all parties, we feel it is largely outweighed by the many advantages, including cost saving for the clients, effective use of working time for the attorneys, and equally easy access to oral proceedings independently of the distance from the EPO.

In conclusion, VICO oral proceedings are, in our view, a welcome step forward in the direction of efficiency and fair access to oral proceedings.

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Link to the article as published: <https://ntplusdiritto.ilsole24ore.com/art/epo-videoconferenza-un-accesso-equo-ed-efficiente-procedimenti-orali-ADlse9TB>