

*Collegio Italiano dei
Consulenti in Proprietà Industriale*

Oral proceedings by VICO
The discussion in FICPI and Collegio

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FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FEDERATION
VON PATENTANWÄLTEN

Once upon a time...

...we only had hearings in person



VICO? Nothing new!

- Used by Italian courts since 1992
- Used by the EPO since 1998 (examination only)
- Used by the USPTO/PTAB since 2014 (at least)
- Adopted by the UPC (Rule 264: «The Court may also order that a hearing takes place by telephone or video conference.»)

VICO at the Italian IP Courts

- Started in 2020
- Software: Microsoft Teams
- Substantiated request against VICO may be filed
- Audio/video recordings forbidden
- Documents may be shared on screen
- Parties/representatives must always be on video
- Email address and telephone numbers must be provided at least 3 days in advance

VICO at the European Court of Human Rights

- Recordings of all public hearings freely available
- Hearings by VICO due to Covid-19



Source:
ECHR
website

User consultation on Art. 15a RPBA (Nov. 2020)

1. The Board may decide to hold oral proceedings pursuant to Article 116 EPC by videoconference if the Board considers it appropriate to do so, either upon request by a party or of its own motion.
2. Where oral proceedings are scheduled to be held in person, the Chair may allow a party, representative or accompanying person to attend by videoconference. In exceptional circumstances, the Chair may decide that a party, representative or accompanying person shall attend by videoconference.
3. The Chair may allow any member of the Board in the particular appeal to participate by videoconference.

FICPI's response (1/2)

- FICPI believes that a party's right to an in-person oral hearing is a fundamental principle of any judicial system.
- Once the Covid emergency is over, therefore, parties should always have the right to attend oral proceedings in person, at least in *inter partes* proceedings, even if oral proceedings by videoconference become a standard option for conducting oral proceedings in the future.

FICPI's response (2/2)

- In this connection, FICPI notes that proceedings before the Boards are last instance proceedings and it is very important that parties are seen to have full access to justice.



Collegio's survey (1/2)

- Hearings before the Boards of Appeal should always be held in person:

Yes 6,0 %, No 48,5 %,

Once the Covid emergency is over 45,5 %

- A Board may decide that a hearing shall be held by VICO:

Yes 45,5 %, No 54,5 %

Collegio's survey (2/2)

- A party/agent/person may request to attend an in-person hearing by VICO:

Yes 84,8 %

No 15,2 %

- A Board may decide that a party/agent/person attends an in-person hearing by VICO:

Yes 51,5 %

No 48,5 %

- The Chair may decide that a Board member attends an in-person hearing by VICO:

Yes 57,6 %

No 42,4 %

Other responses

Several associations responded to the public consultation and the responses ranged from:

- those supporting mandatory VICO also after the Covid-19 emergency, to
- those believing that mandatory VICO affects the right to be heard

Thank you for your attention!

Diagram of Zoom Meeting Attention Span

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