



NACIONALINĖ TEISMŲ ADMINISTRACIJA

Biudžetinė įstaiga, L. Sapiegos g. 15, LT-10312 Vilnius, tel. (8 5) 268 5186, faks. (8 5) 268 5187, el. p. info@teismai.lt.
Duomenys kaupiami ir saugomi Juridinių asmenų registre, kodas 188724424

Teisėjų tarybai

2020-06-23 Nr. 4R-874-(1.17)

DĖL TEISĖJO KANDIDATŪROS TEIKIMO Į EUROPOS PATENTŲ TARNYBOS IŠPLĖSTINĘ APELIACINĘ KOLEGIJĄ

Teisėjų taryba ir Nacionalinė teismų administracija 2020 m. birželio 12 d. gavo Valstybinio patentų biuro raštą „Dėl nacionalinio teisėjo skyrimo kitai kadencijai į Europos patentų tarnybos Išplėstinę apeliacinę kolegiją“, kuriuo prašoma informuoti, ar šiuo metu Europos patentų tarnybos (EPT) išorinio Išplėstinės apeliacinės kolegijos nario pareigas einanti Lietuvos Aukščiausiojo Teismo teisėja Guoda Ambrasaitė-Balynienė, kurios kadencija baigiasi 2020 m. gruodžio 31 d., gali būti paskirta į šias pareigas kitai kadencijai, arba prašoma pateikti kitą kandidatūrą.

EPT Išplėstinė apeliacinė kolegija pagal Europos patentų konvencijos 112 straipsnį priima sprendimus dėl teisinių klausimų, susijusių su patentų išdavimu, kuriais nesutaria kitos apeliacinės kolegijos. Kandidatu į Kolegiją turėtų būti siūlomas nacionalinis teisėjas, turintis ilgametę patirtį dirbant su patentų bylomis bei puikiai mokantis bent vieną iš Europos patentų organizacijos kalbų (anglų, prancūzų arba vokiečių). EPT Išplėstinės apeliacinės kolegijos nariai paprastai skiriami 3 metų laikotarpiui.

Pažymėtina, kad, Nacionalinei teismų administracijai kreipusis į Teisėjų tarybos Mokymų ir tarptautinių ryšių komitetą, komiteto nariai kandidatu siūlė teikti Lietuvos Aukščiausiojo Teismo teisėją Godą Ambrasaitę-Balynienę ir Lietuvos apeliacinio teismo teisėją Vytautą Zelianką. Abu teisėjai kandidatuoti sutinka.

Maloniai prašome Teisėjų tarybos paskirti vieną iš aukščiau rašte pateikiamų arba kitų reikalavimus atitinkančių kandidatų eiti EPT išorinio Išplėstinės apeliacinės kolegijos nario pareigas.

PRIDEDAMA:

1. Teisėjų tarybos nutarimo projektas, 1 lapas.
2. Lietuvos Respublikos Valstybinio patentų biuro raštas, 10 lapų.

Direktorė

Natalija Kaminskienė

Monika Kontrauskienė tel. (8 5) 210 7325, el. p. monika.kontrauskiene@teismai.lt



LIETUVOS
TEISMAI



TEISĖJŲ TARYBA

NUTARIMAS

**DĖL EUROPOS PATENTŲ TARNYBOS IŠPLĖSTINĖS APELIACINĖS KOLEGIJOS
IŠORINIO NARIO KANDIDATŪROS**

2020 m. birželio d. Nr. 13P- (7.1.2)
Vilnius

Vadovaudamasi Lietuvos Respublikos Valstybinio patentų biuro 2020 m. birželio 12 d. raštu, taip pat Lietuvos Respublikos teismų įstatymo 120 straipsnio 25 punktu, Teisėjų taryba n u t a r i a:

Siūlyti paskirti Europos patentų tarnybos Išplėstinės apeliacinės kolegijos išoriniu nariu metų laikotarpiui.

Pirmininkas

Sekretorius



LIETUVOS RESPUBLIKOS VALSTYBINIS PATENTŲ BIURAS

Biudžetinė įstaiga, Kalvarijų g. 3, 09310 Vilnius,
tel. (8 5) 278 0250, faks. (8 5) 275 0723, el. p. info@vpb.gov.lt, <https://vpb.lrv.lt>
Duomenys kaupiami ir saugomi Juridinių asmenų registre, kodas 188708943

Nacionalinei teismų administracijai

2020-06-

Nr. 2R-

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Nr.

Teisėjų tarybai

DĖL NACIONALINIO TEISĖJO SKYRIMO KITAI KADENCIJAI Į EUROPOS PATENTŲ TARNYBOS IŠPLĖSTINĘ APELIACINĘ KOLEGIJĄ

Valstybinis patentų biuras (VPB) gavo Europos patentų organizacijos (EPO) Administracinės tarybos raštą, kuriuo prašoma informuoti, ar šiuo metu išorinio Išplėstinės apeliacinės kolegijos nario pareigas einanti teisėja G. Ambrasaitė-Balynienė, kurios kadencija baigiasi 2020 m. gruodžio 31 d., gali būti paskirta į šias pareigas kitai kadencijai.

Europos patentų tarnybos (EPT), kuri atsakinga už Europos patentų išdavimą, Išplėstinę apeliacinę kolegiją pagal Europos patentų konvencijos (EPK) 112 straipsnį priima sprendimus dėl teisinių klausimų, susijusių su patentų išdavimu, kuriais nesutaria kitos apeliacinės kolegijos.

Tuo atveju, jeigu teisėja G. Ambrasaitė-Balynienė negalėtų tęsti šių pareigų, prašoma pateikti kitą kandidatūrą. Kandidatas turi būti teisinį išsilavinimą turintis ir nacionaliniame teisme dirbantis teisėjas. Pažymėtina, kad kandidatas turi turėti ilgametę darbo su patentų bylomis patirtį, taip pat labai gerai mokėti bent vieną iš EPO kalbų (anglų, prancūzų arba vokiečių). Nariai paprastai skiriami trejų metų laikotarpiui. Detalesnė informacija pateikiama pridedamuose dokumentuose.

Paprastai nariai yra skiriami kitai kadencijai, išskyrus atvejus, kai yra rimtų priežasčių, dėl kurių jie negalėtų būti perskirti.

Maloniai prašytume iki 2020 m. liepos 25 d. informuoti VPB apie galimybę perskirti G. Ambrasaitę-Balynienę EPO Išplėstinės apeliacinės kolegijos nare, o jeigu tokios galimybės nėra ir būtų siekiama teikti kitą kandidatūrą – tokio kandidato gyvenimo aprašymą.

PRIDEDAMA: 1. EPO Administracinės tarybos pirmininko laiškas, 2 lapai;
2. Aiškinamasis dokumentas CA/6/99, 7 lapai.

Direktorė

Irina Urbonė

Dovilė Tebelškytė, tel. (8 5) 211 3540, el. p. dovile.tebelskyte@vpb.gov.lt



Tikime laisve

1990 KOVO 11



Europäische
Patent-
organisation

European
Patent
Organisation

Organisation
européenne des
brevets

Verwaltungsrat

Administrative Council

Conseil d'administration

Der Präsident

The Chairman

Le Président

EPA/EPO/OEB - 80298 München - Deutschland

Ms Irina Urbonė
Director
State Patent Bureau of the Republic of Lithuania
Kalvarijų 3
LT-09310 VILNIUS
LITUANIE

irina.urbone@vpb.gov.lt

✉ EPA/EPO/OEB
80298 München
Deutschland
☎ +49-89/2399 - 1101
Fax +49-89/2399 - 2891
e-mail: council@epo.org

Zeichen/Reference/Référence

05.06.2020

Datum/Date/Date

Appointment/reappointment of national judges to the Enlarged Board of Appeal

Dear Ms Urbonė,

The Administrative Council of the European Patent Organisation appoints national judges from the Organisation's member states to serve as external legally qualified members of the Enlarged Board of Appeal.

Currently, Ms Goda Ambrasaitė-Balynienė is a serving external legally qualified member of the Enlarged BoA, who's term of office will expire on 31.12.2020. Serving members may be re-appointed if they continue to meet the conditions for appointment.

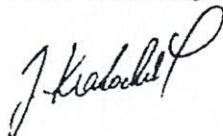
Candidates should be legally qualified members of the national courts or quasi-judicial authorities of the Contracting States (Art. 11(5) EPC). They should also be judge of many years' standing and be currently involved in patent law. It is also essential that candidates are able to work in one or more of the EPO's official languages. Explanation about the function and qualifications of the external legally qualified members of the Enlarged BoA is provided in CA/6/99 (Annex).

Please inform me if Ms Goda Ambrasaitė-Balynienė is available for re-appointment. If you propose to appoint another candidate, please include a curriculum vitae, detailing in particular the candidate's education, professional

experience and current function. The proposal should also indicate the official languages in which the candidate is able to work.

I intend to table this matter at the Council meeting in October (AC/164). Kindly send me your answer by end of July 2020.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Kratochvíl', with a stylized flourish at the end.

Josef Kratochvíl
Chairman of the Administrative Council

Annex: CA/6/99

CA/6/99

Orig.: German

Munich, 19.05.1999

SUBJECT: Participation of judges from the member states in the Enlarged Board of Appeal

DRAWN UP BY: President of the European Patent Office

ADDRESSEES: Administrative Council (for opinion)

SUMMARY

In December 1997 the Working Party on Directorate-General 3 of the European Patent Office, set up by the President, submitted its final report (CA/84/97 with Annex) to the Administrative Council. One of the measures suggested in the report concerns the increased involvement, on the basis of Article 160(2) EPC, of judges from the member states in the judicial activities of the EPO's Enlarged Board of Appeal. This would help to harmonise substantive patent law in Europe and promote the acceptance of Enlarged Board of Appeal case law. The present document contains an invitation to the representatives of the contracting states on the Administrative Council to nominate one suitable candidate per contracting state for appointment as a legally qualified member of the Enlarged Board of Appeal under Article 160(2) EPC. It also sets out the principles according to which these members would be selected to serve on the Enlarged Board in specific cases. In view of its importance, this item in the working party's final report has been given priority. Proposals on further items in the report requiring action by the Administrative Council will be submitted to the Council in due course.

I. INTRODUCTION

1. Under Article 22 in conjunction with Article 112 EPC, the EPO's Enlarged Board of Appeal is responsible for deciding points of law referred to it by the boards of appeal and for giving opinions on points of law referred to it by the President where two boards of appeal have given different decisions on a question.
2. The Enlarged Board of Appeal at present comprises a Chairman, who is also Vice-President Directorate-General 3, the chairmen of the boards of appeal (17 members) and six legally qualified members of the boards of appeal. On the basis of Article 160(2) EPC, which provides for the option of appointing external members (see point 7 below), the Enlarged Board also includes two national judges: Mr Brinkhof, Vice-President of the Regional Court of Appeal (Gerechtshof) at The Hague, and Mr Jestaedt, a judge at the German Federal Court of Justice (Bundesgerichtshof). For giving decisions or opinions, the Enlarged Board of Appeal consists of five legally qualified and two technically qualified members (Article 22(2) EPC).
3. In 1996 the President, after consulting the Administrative Council, set up a working party (referred to below as "the DG 3 working party") to examine whether the independence of members of the boards of appeal and the Enlarged Board should be safeguarded by legal measures and/or made more apparent to the outside world (CA/51/96).
4. The report of the working party, chaired by Ms Sedemund-Treiber, President of the German Federal Patent Court, was presented to the Administrative Council at its meeting of December 1997 (CA/84/97, Annex, referred to below as "the report") and met with a favourable response. After this, a working group, made up of members of DG 3 and other EPO departments, set about implementing the report's conclusions.
5. One of the suggestions made by the DG 3 working party was that more judges from the national courts of the member states should participate in the activities of the Enlarged Board of Appeal (Report, point 37 ff). The working party felt that this would help to harmonise substantive patent law in Europe. This view is justified: the unification of the law on the grant of European patents remains incomplete as long as such unity is confined to statute law (the EPC) and excludes case law. Together with other, similar, measures (such as the biennial Symposium of European Patent Judges), the increased

involvement of national patent judges in the decisions of the European patent system's supreme judicial body would be an important means of working towards this aim.

6. The importance of this measure has also been pointed out on several occasions by the heads of delegation and the Administrative Council, and at the 80th heads of delegation meeting in October 1998, the Office said it would produce a document. This has now been done. After outlining the basis for the measure, the document describes the proposed procedure for appointing national judges to the Enlarged Board of Appeal and explains how the judges would be chosen to serve in specific cases. Further measures arising from the report which require action by the Administrative Council will be presented in due course.

II. THE BASIS FOR THE PARTICIPATION OF NATIONAL JUDGES IN THE ENLARGED BOARD OF APPEAL

7. The basis for the participation of national judges in the Enlarged Board of Appeal is Article 160(2) EPC, under which the Administrative Council may, during a transitional period the expiry of which is determined by the Council itself, and after consulting the President, appoint as members of the Enlarged Board of Appeal legally qualified members of national courts of the contracting states, who may continue their activities in their national courts or authorities. The minimum term of appointment is one year, the maximum less than five years.
8. As mentioned in point 2 above, the Administrative Council has already exercised this option. At present, two national judges, one from the Netherlands and the other from Germany, are members of the Enlarged Board of Appeal. Article 160(2) EPC refers to a transitional period, but allows the Administrative Council to determine when this period has expired. Since the Administrative Council has not yet invoked its authority in this respect, Article 160(2) remains a viable basis for appointing national judges as members of the Enlarged Board of Appeal.
9. However, it must be pointed out that the plans for revising the EPC include a proposal to delete Articles 159 to 163 and 167. Regarding Article 160(2), the deletion is justified, since the provision was designed to ensure a sufficient fund of technical expertise at a time when the EPO was rapidly expanding. This phase is now coming to an end, and the necessary know-how is available. In order to retain the possibility of promoting harmonisation by appointing national judges to the Enlarged Board of Appeal, Article 160(2) will eventually have to be replaced by a durable alternative, tailored to this

specific purpose. For example, it would be possible to amend Article 11 EPC, dealing with the appointment of senior employees.

III. THE APPOINTMENT OF NATIONAL JUDGES TO THE ENLARGED BOARD OF APPEAL

10. As suggested in the report (point 39), one judge for each contracting state is to be appointed to the Enlarged Board of Appeal. On the one hand, the harmonising effect needs to be as comprehensive as possible, ie all the contracting states should be involved. On the other, it is necessary to ensure, by limiting the number of appointees to one per contracting state, that the Enlarged Board does not become too big, which would render its composition unmanageable in specific cases.
11. As far as the requirements for appointment are concerned, the aim of involving national courts more would best be served if the new members of the Enlarged Board served as legally qualified members, replacing, in specific cases, one or two of the five internal legal members. The candidates would therefore be required to have at least a university degree in law.
12. The report (point 39) emphasises that the candidates should be serving national patent judges of many years' standing. It is indeed vital to prevent the misuse of the Enlarged Board of Appeal as a training ground for judges with little experience of patent law. This is not to deny the importance of training as a means towards harmonisation. But, considering also the major interests which are often at stake, the Enlarged Board of Appeal is not appropriate for training purposes, which would be better served by other means, such as allowing national judges to attend proceedings as observers. Patent law must form at least part of the candidates' current range of activities. Although it is not really possible to define an annual minimum number of cases, having only occasional dealings with patent law will obviously not suffice. Current involvement in patent law is also important, since the cause of harmonisation is unlikely to be much advanced by the participation of judges who have a great deal of past experience in this field but have since moved elsewhere.
13. The candidates would also have to meet certain linguistic requirements. Fluency in at least one EPO official language is essential. A knowledge of at least one of the other two languages would also be desirable, as the candidates could then be selected to serve in cases where one of these languages is the language of proceedings.

14. Regarding the term of appointment, Article 160(2) EPC states that this shall be less than five years but not less than one year, and may be renewable. In practice, members appointed on the basis of this provision normally serve for a term of three years. It is proposed that this practice be retained. As a rule, the option of reappointment should be made use of unless there are good reasons to the contrary: for example, if the member in question leaves the field of patent law. The intended harmonising effect can only be fully achieved if there is sufficient opportunity to participate in the activities of the Enlarged Board. This would not be the case if only one term of appointment were allowed, bearing in mind the number of national judges to be appointed to the Enlarged Board, the relatively small number of cases and the fact that national judges would not participate in all the cases heard by the Board (see point 20(a)).
15. Members of the Enlarged Board of Appeal under Article 160(2) EPC are appointed by the Administrative Council after consulting the President. If the Administrative Council approves the proposals set out in this document, the delegations of the contracting states will be asked to nominate one candidate each, in accordance with the requirements explained above. An exception will be made for the Netherlands and Germany, which already have judges - ie Messrs. Brinkhof and Jestaedt - as members of the Enlarged Board of Appeal appointed under Article 160(2) EPC.
16. The nominations should include at least the candidate's curriculum vitae, documenting, in particular, his or her qualifications and language skills, and indicating the official language(s) in which he or she wishes to participate in the activities of the Enlarged Board of Appeal (see point 20(d)).
17. With a view to the annual allocation of duties (Rule 10(1) EPC), it would be desirable for the new members' term of appointment to begin on 1 January 2000. To allow time for preparation, the members would therefore have to be appointed, at the latest, at the December 1999 meeting. This means, in turn, that the nominations would have to be sent to the Chairman of the Administrative Council by 15 October 1999, so that he can submit them to the Council at the December meeting after consulting the President.

IV. PARTICIPATION OF NATIONAL JUDGES IN SPECIFIC CASES

18. The following comments are intended to inform the Administrative Council about the principles governing the participation, in specific cases, of legally qualified members of the Enlarged Board of Appeal appointed under Article 160(2) EPC.

19. Under Rule 10 EPC a special authority, the Presidium - consisting, apart from its Chairman, of members of the boards of appeal - is responsible for allocating duties to the boards of appeal and designating the regular and alternate members of the various boards of appeal and the Enlarged Board. This is done before the beginning of each working year.
20. In December 1998 the Presidium discussed and approved the following principles:
 - (a) The report (points 38 and 41) says that up to two national judges should be allowed to serve on the Enlarged Board of Appeal in cases "which go beyond internal EPO issues". The reason for excluding internal issues is to prevent the participation of national judges in cases which have no bearing on case law in their countries and therefore lack any potential harmonising effect. Such issues would be, for example, the questions referred to the Enlarged Board of Appeal in G 6/91 (Entitlement to reduction of the appeal fee), G 5/93 (Exclusion of certain EPC time limits from re-establishment of rights), or G 8/95 (Competence of the technical boards of appeal in the case of appeals against the refusal of a request for correction of the decision to grant). In case of doubt, however, it should be assumed that the question does indeed have a broader significance, and at least one national judge should be involved.
 - (b) Decisions on the participation of national judges in specific cases are taken by the Chairman of the Enlarged Board of Appeal after consulting the (internal) members of the Board in the composition decided in the business distribution scheme. The same applies to the consequent removal from the Board of one or two of its internal legal members.
 - (c) The report (point 42) recommends the use of a rotation system for selecting national judges to participate in specific cases. In accordance with this recommendation, the judges will be taken from a rota in the business distribution plan, applying the alphabetical order used by the Administrative Council for listing the contracting states.
 - (d) If a national judge in line to serve on the Board is unable to participate in a case because the language of proceedings is not one of his stated working languages (see point 16), then his place will be taken by the next judge on the list who meets the relevant language requirements. He will then be invited to serve on the next case for which he is linguistically qualified. However, if he is prevented from taking part for some other reason, he will lose his place on the list and will have to wait his turn at the end of the rota.

V. CONCLUSION

21. The delegations of the contracting states on the Administrative Council are requested, on the basis of the foregoing, to nominate a candidate for appointment as a legally qualified member of the Enlarged Board of Appeal under Article 160(2) EPC, and to send their nominations to the Chairman of the Administrative Council by 15 October 1999 at the latest.
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