

Revision of the Rules of Procedure of the EPO Boards of Appeal: IP Inclusive submissions



IP INCLUSIVE

Working for diversity and inclusion in IP

These submissions are made by IP Inclusive, in response to the EPO's consultation on its proposed new Rules of Procedure of the Boards of Appeal. They relate to the language used in the rules.

Whilst we recognise that some attempts have been made to replace gender-specific terms with neutral alternatives, there are other instances where this opportunity has been missed, or indeed where gender bias would be *introduced* by the proposed new wording. **We believe this should be addressed before the rules are finalised.**

Throughout the new text, the gender-specific term "Chairman" is used instead of the more neutral "Chairperson" or "Chair". In addition, many of the articles refer to Board of Appeal members as specifically male – for example the Chairman in Articles 1(2) and 4(1), the Rapporteur in Article 5(6), and the Board of Appeal "member" in Articles 2(2), 3(2) and 8(3).

Clearly it is possible for Board of Appeal members to be women. We believe it is both backward-looking and unhelpful to use language that suggests the contrary. Such language creates assumptions in the reader's mind about the gender of EPO tribunal members. The assumptions may only be unconscious, but they are the stronger for reinforcing exactly those latter-day prejudices which people are now fighting to overcome. They reinforce stereotypes from a time when men and women were not treated as equals.

We believe that this type of gender bias could have significant discriminatory effects:

- preventing EPO staff from recruiting and appraising objectively for Board of Appeal positions, and from working alongside female tribunal members as equals;
- compromising the interactions between EPO customers – including professional representatives – and tribunal members;
- undermining the performance and confidence of female tribunal members; and
- discouraging female recruits to the Boards of Appeal, or indeed to other roles within the EPO.

Such outcomes are not good for equality, diversity and inclusivity.

UNESCO, in its *Guidelines on Gender-Neutral Language*, felt sufficiently strongly about the impact of gender-biased language to comment that "language does not merely reflect the way we think: it also shapes our thinking. If words and expressions that imply that women are inferior to men are constantly used, that assumption of inferiority tends to become part of our mindset. Hence the need to adjust our language when our ideas evolve. Language is a powerful tool: poets and propagandists

know this – as, indeed, do victims of discrimination.” Notably, that report dates back to the end of the twentieth century.

As such, and particularly in today's sociopolitical climate, the gender neutrality of public documents is not a minor point. Stakeholders now see no justification for reinforcing outdated prejudices, compromising inclusivity and nurturing discrimination. A small but timely change to a text can make a big difference to its reception. And if these new Rules of Procedure still apply in ten years' time, they are likely to be judged even more harshly than today.

This is, then, an excellent opportunity for the EPO to demonstrate its respect for its female employees and customers and its commitment to improving diversity and inclusivity. As the UK Intellectual Property Office works to eradicate terms such as "the skilled man" from its documentation, and to acknowledge that inventors, applicants and attorneys may be either male or female, we would ask the EPO also to seek a more courteous and open-minded form of language in the official texts it drafts.

Guidance on gender-neutral language for statutory, official and legal documents is readily available, for example in the UNESCO guidelines referred to above (<http://unesdoc.unesco.org/images/0011/001149/114950mo.pdf>), and in the UK from The Fawcett Society (see <https://www.fawcettsociety.org.uk/gender-neutral-language-in-statutory-official-and-legal-documents>). IP Inclusive would be happy to assist in redrafting the relevant English language parts of the Rules of Procedure.

About IP Inclusive

IP Inclusive (www.ipinclusive.org.uk) is an association of individuals and organisations who share a commitment to improving equality, diversity and inclusivity throughout the UK IP professions. Its founding members were the Chartered Institute of Patent Attorneys (CIPA), the Chartered Institute of Trade Mark Attorneys (CITMA), the IP Federation and The UK Association of the International Federation of Intellectual Property Attorneys (FICPI-UK), with active support and involvement from the UK Intellectual Property Office. Our supporters span the IP-related professions, and include chartered UK patent attorneys and European patent attorneys, trade mark attorneys, IP solicitors and barristers, IP analysts, IP administrators, licensing executives and IP Office examiners, as well as many professionals who work in or with IP firms, for example practice managers, HR managers and IP recruitment specialists.