

R. 71a EPC 1973 notification. In T. 2434/09 the board held that the applicant did not have a right to continuation in writing if the department of first instance introduced a new document in oral proceedings and thereby changed the subject of the proceedings. The party's right to be heard under Art. 113(1) EPC 1973 was observed if the applicant was given an adequate amount of time to study the document and present comments.

In T. 765/06 the examining division had pointed out in the summons that preparatory submissions and new claims should not be filed later than one month before the date of oral proceedings. Six days before the oral proceedings, the applicant filed new requests which the rapporteur, in a telephone conversation with the applicant, regarded as prima facie non-protectable and which were not admitted in the oral proceedings pursuant to R. 71a EPC 1973. The board found that conceding permission to file new claims did not comprise an assurance that such claims would be considered in the proceedings, with a considerable restriction of the time available for examination.

In T. 798/05 the board held that R. 71a EPC 1973 did not constitute an absolute bar on late submissions in opposition proceedings, which would rule out prima facie examination. R. 71a EPC 1973 did not override or restrict the principle of ex officio examination enshrined in Art. 114(1) EPC 1973, since an implementing regulation ranked lower than an EPC Article. The actual wording of R. 71a EPC 1973 using the expressions "brauchen, need not, peuvent" left room for discretion over the admission of late submissions.

In T. 937/09 the board held that, if the applicant filed amendments to the application before the final date set by the examining division under R. 116(1) EPC, the examining division could still refuse such amendments under R. 137(3) EPC. See also T. 2355/09.

6.4. Communication under Article 15(1) RPBA 2020

6.4.1 General issues

Art. 15(1) RPBA 2020 now provides that a communication is to be issued by the board: "In order to help concentration on essentials during the oral proceedings, the Board shall issue a communication drawing attention to matters that seem to be of particular significance for the decision to be taken. The Board may also provide a preliminary opinion". The issue of a communication under Art. 15(1) RPBA 2007 was not mandatory.

6.4.2 Purpose of communication under Article 15(1) RPBA 2007 or Article 15(1) RPBA 2020

In T. 1459/11 the board held that the purpose of the communication under Art. 15(1) RPBA 2007 was to establish the framework of the oral proceedings (see also T. 2006/13). The communication did not – explicitly or implicitly – represent an invitation or opportunity to file further written submissions or to shift the focus of the case to be heard at oral proceedings (see also T. 751/16). The terms of the appeal were rather determined by the statement of grounds of the appeal and the reply thereto (Art. 12(2) RPBA 2007). Consequently there was no legal basis in either the EPC or the RPBA for the filing of a "response" to a communication pursuant to Art. 15(1) RPBA 2007. A board was under no