

## 2.6. The right to be heard in oral proceedings

The right to oral proceedings regulated by Art. 116(1) EPC forms a substantial part of the right to be heard granted by Art. 113(1) EPC (T 209/88, T 862/98, T 1050/09). The right to be heard in oral proceedings subsists so long as proceedings are pending before the EPO (T 598/88, T 556/95, T 114/09).

The right to present comments enshrined in Art. 113(1) EPC does not need to be exercised in writing but may be satisfied by way of oral proceedings (T 1237/07). This does not mean, however, that it is for the boards to ensure, of their own motion, that all points raised at some point in the proceedings are discussed at the oral proceedings. Rather, it is for the parties to address any point they consider relevant and fear may be overlooked and to insist, if necessary by way of a formal request, that it be discussed (R 17/11). This also applies in oral proceedings before the opposition division (T 7/12).

In T 2232/11 the board held that the mere announcement of a further submission based on additional documents, at the opening of the discussion on an invention's reproducibility, was insufficient to oblige the examining division to follow this announcement up ex officio later on in the oral proceedings. The applicant was therefore responsible for notifying the examining division, where necessary via a formal request, of its intention to make further submissions on the topic. Given the course of the proceedings, the applicant ought to have expected that the examining division might reach a final decision after interrupting the proceedings to deliberate.

Conversely, Art. 113(1) EPC cannot be interpreted in a way that a party's right to be heard is already satisfied if a party, having requested oral proceedings according to Art. 116 EPC, has had the opportunity to argue in writing. If this interpretation of Art. 113(1) EPC were to be followed, the parties' right to oral proceedings under Art. 116 EPC would be redundant, with the unacceptable consequence that an opposition division or a board of appeal would be entitled, with regard to a controversial issue discussed during written procedure, to give a decision right at the beginning of oral proceedings without hearing the parties (T 1077/06).

Non-compliance with a request for oral proceedings deprives the party of an important opportunity for presenting its case in the manner it wishes and using the possibilities open to him under the EPC. By virtue of its request for oral proceedings, the party can rely on such proceedings being appointed before an adverse decision is issued, and therefore has no reason to submit further arguments in writing (see T 209/88, T 1050/09; and also chapter III.C.2. "Right to oral proceedings").

Conducting oral proceedings effectively and efficiently, although subject to the discretionary power of the chairman, must nevertheless guarantee that the fundamental procedural rights of each party in adversarial proceedings, i.e. the right to fair and equal treatment, including the right to present comments in oral proceedings (Art. 113(1) and 116 EPC) are respected (T 1027/13; see also chapter IV.C.6.1. "Principle of equal treatment").