

obligation to take such a "response" into account. Any submissions – whether arguments or requests – contained in such a "response" might constitute an amendment to the case presented.

This view was confirmed with regard to Art. 15(1) RPBA 2020 in e.g. T 2703/16. See also e.g. T 752/16, T 995/18 and T 2271/18.

6.4.3 Boards not bound by communication under Article 15(1) RPBA 2007 or Article 15(1) RPBA 2020

In T 1635/13 the board held that it was clearly set out in the board's communication that it expressed the "preliminary and non-binding" opinion of the board to streamline and prepare the oral proceedings. Therefore it was self-evident that the board could come to a different evaluation of the facts and submissions during the subsequent proceedings, in particular the oral proceedings, for whatever reason. Such a different evaluation was in itself neither a sufficient reason for admitting subsequently filed requests nor a fundamental procedural defect (see R 3/09). See also T 614/89 (in relation to Art. 11(2) RPBA 1980), T 2006/13.

For case law on Art. 15(1) RPBA 2020, see the chapters V.A.4.5.5c) "Objections or arguments raised for the first time during oral proceedings" and V.A.4.5.6i) "Change in board's preliminary opinion" (see in particular T 995/18).

6.4.4 Boards' discretion to send communication under Article 15(1) RPBA 2007

According to Art. 15(1) RPBA 2007 it was in the board's discretion to send a communication under Art. 15(1) RPBA 2007. Under Art. 15(1) RPBA 2020 this is now mandatory. The introduction of Art. 15(1) RPBA 2020 superseded G 6/95 (OJ 1996, 649) in this respect. In G 6/95 the Enlarged Board held that the boards continued to have discretion as to whether or not to send a communication when issuing a summons to oral proceedings, as provided for in Art. 11(2) RPBA 1980, since the then newly introduced R. 71a(1) EPC 1973 (now R. 116(1) EPC) did not apply to the boards of appeal. The Administrative Council could not amend the Implementing Regulations in such a way that the effect of an amended rule was in conflict with the RPBA – adopted under Art. 23(4) EPC 1973 by the Presidium of the boards of appeal and approved by the Council as reflecting the boards' independence. See inter alia T 382/02, T 355/13.

6.5. Location of oral proceedings

In T 1012/03, the applicant, having been summoned to oral proceedings before the examining division in The Hague, had requested that oral proceedings take place in Munich instead. The board noted that Art. 116 EPC 1973 did not expressly stipulate the location where oral proceedings had to take place. The board examined whether the President had the power to establish examining divisions in The Hague and concluded that such a power was provided for by Art. 10(1), (2)(a) and (b) EPC 1973. The board concluded that in the case in hand the justification for conducting oral proceedings in The