

4.1. Doubt as to the nature of the request for oral proceedings

The question whether a request for oral proceedings has been made must be decided on the individual facts of each case. Whether a request in the legal sense has been made does not merely depend upon the actual use of the word "request" (T 283/88, T 263/91, T 1829/10). If there is the slightest doubt, clarification should be sought from the party concerned (see e.g. T 299/86, OJ 1988, 88; T 19/87, OJ 1988, 268; T 870/93; T 417/00; T 1829/10; T 2373/11; T 2557/12; T 1500/13).

If an EPO department has any doubt as to whether a party has requested oral proceedings (e.g. if the request is for a "hearing"), it must clarify the matter in order to avoid committing a substantial procedural violation (T 1829/10, T 2373/11, T 1972/13). As a request for an "interview" is different from a request for oral proceedings, the examining division can refuse such a request without seeking clarification (T 1606/07, T 1976/08).

Nevertheless, in T 528/96, the board explained that, although the opposition division might reasonably have been expected to query whether a request for oral proceedings was in fact intended, the fact that it failed to do so did not constitute a procedural violation, since the onus to make a clear request was on the party itself (see also T 26/07).

In T 2687/17 the board considered it irrelevant that the request for oral proceedings had "only" been made on Form 2300 and not repeated in the statement of grounds for opposition because there was no obligation to state the reasons for a request for oral proceedings.

4.2. Wording of request

4.2.1 Wording constituting a request

In T 19/87 (OJ 1988, 268) the board considered that the request for "an interview as a preliminary to oral proceedings" could only be construed as both a request for an interview (which might or might not be granted) and request for oral proceedings.

In T 668/89 the phrase "applicant's representative claims his right to appear and argue the case orally" was deemed to be a valid request for oral proceedings.

In T 494/90 the wording "We request that we be given the opportunity to attend an oral hearing which may be appointed" was accepted as request for oral proceedings in the circumstances of the case.

In the ex parte case T 95/04 the appellant's request for a telephone call from the examiner was followed by a further request "in any event" for an opportunity to be heard before an adverse decision was taken. In the board's view, the expression "in any event" implied that, if the examiner was to exercise his discretion and not to communicate further with the applicant, then the applicant wished to have a further opportunity to be heard which under the circumstances could only be provided by appointing oral proceedings.