

opportunity to present its comments in that respect. This constituted a violation of the provisions of Art. 113(1) EPC.

See also chapter III.G.3.3. "Right to be heard".

#### 2.3.4 Documents supplied by applicants but used against them

The right to be heard has not been observed if a decision to refuse an application is based essentially on documents which, though supplied by the applicant in support of his case, are used against him to produce an effect on which he has not had an opportunity to make observations (see T 18/81, OJ 1985, 166 and T 188/95).

#### 2.3.5 Document cited containing information already known

In T 643/96 the examining division relied in its decision on a document for which it gave only incomplete bibliographic data. The board held that the examining division's failure to provide the applicant with a copy of the document did not amount to a substantial procedural violation (regarding the right to be heard) because the document added nothing to the case, and contained only information already known to the applicant. See also T 1564/18 in which no communication of the examining division contained the essential legal and factual reasons leading to the finding in the appealed decision that claim 1 of the main request lacked novelty over the prior-art device considered for the first time in the novelty assessment of the refusal. Since no reason had been given why the amendments made in advance of the oral proceedings held in absentia justified the change to this new closest prior art, the decision was issued in violation of the right to be heard even though the prior-art device on which the refusal was based was disclosed in the same document as a closest prior art considered previously in the examination procedure.

#### 2.3.6 Reliance on the International Preliminary Examination Report (IPER)

In T 587/02 the board held that if the only communication preceding the decision to refuse an application merely draws attention to an IPER, the requirements of Art. 113(1) EPC are met provided the IPER constitutes a reasoned statement as required by R. 51(3) EPC 1973 (R. 71(2) EPC), using language corresponding to that of the EPC; in the case of an inventive step objection this requires a logical chain of reasoning which can be understood and, if appropriate, answered by the applicant. In the case in hand, the IPER did not fulfil these requirements, and the board held that the applicant's right to be heard had been violated (see also T 1020/15).

In T 1065/99 the board stated that when an IPER drawn up by the EPO under the PCT was relied on by the examining division, such reliance should not be presented to applicants in such a manner as to suggest that the examining division had not given objective consideration to the patentability requirements of the EPC. In this case, the IPER had been adopted by the examining division as the only basis for its opinion that the application did not meet the requirements of the EPC. The board came to the conclusion that there were three objections which were only obliquely touched upon in the IPER, and