

7.1.2 Oral proceedings scheduled from the start for more than one day

In T 1642/11 the board held that when oral proceedings were scheduled for more than one day, a party could not have the expectation that the hearing would finish on the first day. If a party was absent on the second day, the oral proceedings could continue without that party (R. 115(2) EPC and Art. 15(3) RPBA 2007).

7.1.3 Continuation of oral proceedings beyond the last scheduled day

In case T 2534/10 the chairman of the opposition division had proposed, late in the evening of the only scheduled hearing date, that the oral proceedings be continued the next day. Although the patent proprietor had objected to this proposal, the proceedings had been continued the next day, and both parties had attended. The board observed that the two months' notice to be given in summons to oral proceedings under R. 115 EPC met the parties' fundamental need to be able to plan for and estimate the likely course of those proceedings. They had the same need when it came to continuing proceedings on a calendar day other than that specified in the summons. Accordingly, a fresh summons had to be issued if proceedings were to be continued beyond the calendar day specified in the original summons.

In T 1674/12 the opposition division had continued the oral proceedings on 9 September 2011, even though the summons was only for 8 September and two opponents had objected. The board held that, in the light of T 2534/10, the opposition division had committed a procedural error, irrespective of the opponents' objections: to continue the proceedings on 9 September, it had to have the express consent of all parties. T 2534/10 had also ruled that remittal was necessary only if the error had affected the final decision; a case could be remitted only to recommence procedural acts performed on the second day, not covered by the summons. In the case in hand, the proceedings would have taken essentially the same course, even if the division had adjourned the oral proceedings on the evening of 8 September rather than continuing them the following day.

7.1.4 Duration of deliberations

In T 1138/12 the board pointed out that the EPC did not prescribe for how long an opposition division had to deliberate to reach a decision. It was therefore conceivable that the members, having discussed the case in advance, might find their preliminary opinion confirmed by the submissions at the oral proceedings and then agree that that was the case by, for instance, simply making eye contact or nodding at the end of the discussion with the parties. Both the duration and the form of an opposition division's deliberations depended on the scope and complexity of the case in hand, the degree of compatibility of the members' opinions, which might diverge, playing a major role in this regard.

7.2. Excluding the public from oral proceedings

In T 1401/05 of 20 September 2006 the board excluded the public from that part of the oral proceedings which concerned the exclusion of certain documents from file inspection. Under Art. 116(4) EPC, oral proceedings shall in principle be public in so far as the board