

thus in the communication under R. 51(2) EPC 1973 (R. 71(1) EPC). Therefore, the party had had no opportunity to contest those objections.

#### 2.3.7 Change of provisional opinion

In T 68/94 the appellant submitted that the opposition division had violated Art. 113 EPC by changing its provisional opinion after the oral proceedings without giving the appellants an opportunity to comment on the grounds on which the contested decision was based. The board pointed out that provisional opinions were never binding. The purpose of oral proceedings was to summarise and discuss the parties' arguments. All arguments in the case had been known to both parties.

In T 1824/15, the board held that the members of an examining division were free to change their minds at any point in the procedure, including during oral proceedings, as long as the requirements of Art. 113(1) EPC were fulfilled.

#### 2.3.8 Statement of grounds of appeal not received by respondent

For the EPO's failure to deliver the opponent's statement of grounds of appeal to the patentee (respondent) see chapter V.B.4.3.19 "Successful petitions under Article 112a(2)(c) EPC".

### 2.4. Consideration of the parties' arguments, submissions and evidence

#### 2.4.1 General principles

The right to be heard under Art. 113(1) EPC requires that those involved be given an opportunity not only to present comments (on the facts and considerations pertinent to the decision) but also to have those comments considered, that is, reviewed with respect to their relevance for the decision on the matter (see, with regard to Art. 112a EPC, chapter V.B.4.3.10 "Consideration of the parties' arguments in the written decision" and, with regard to R. 111(2) EPC, chapter III.K.3.4 "Reasons for the decision"). However, it is not necessary to consider each and every argument of the parties in detail in a decision. The boards may also refute arguments implicitly, and may disregard irrelevant arguments (R. 5/15).

#### 2.4.2 Decision must demonstrably show that arguments were heard and considered

The deciding department must demonstrably hear and consider parties' comments (T 206/10, with further reference to T 763/04, T 246/08; see also T 1709/06, T 645/11). Merely repeating the parties' submissions is not enough; rather, it has to be clear from the reasons that the substance of their core arguments has been addressed in arriving at the decision (T 2352/13).

A decision which fails to take into account the arguments submitted by a party and which is based on a ground on which the party had had no opportunity to present its comments, contravenes Art. 113(1) EPC and this constitutes a substantial procedural violation (see