

(T.765/06; as to the reasons for the introduction of R.71a EPC see T.343/08). The purpose of R.116(1) EPC is to provide the EPO with a case management framework for the preparation of oral proceedings (T.798/05, T.66/14). In T.1067/08 the board held that the purpose of this provision was in particular to prevent parties from seeking unjustified procedural advantages by abusive tactics in disregard of procedural economy and to the disadvantage of other parties.

In T.1750/14 the board interpreted R.116(1) EPC in conjunction with R.132(2) EPC. From the wording of R.116(1) EPC it was not clear whether the non-applicability of R.132(2) EPC to R.116(1) EPC also precluded the possibility of extending specified periods, implying that the final date for making submissions in preparation for the oral proceedings set under R.116(1) EPC could not be changed. The board considered that a **change of the final date** should normally be allowable when the date for oral proceedings is postponed. At least in cases where a final date is specified relative to the date for oral proceedings (usually one month before the scheduled oral proceedings), it could even be argued that the final date was postponed automatically when the oral proceedings were postponed.

According to the established case law, R.116(1) EPC (former R.71a EPC 1973) should **not be construed as an invitation to submit further evidence** (see T.39/93, OJ 1997, 134; T.452/96; T.628/14; T.710/15). There is no general duty for an examining division to provide feedback on an applicant's reply to a summons to oral proceedings, in advance of such oral proceedings (T.343/08, T.462/06, R.2/13). In T.462/06 the board also stated that R.116 EPC did not mean that already in the communication all lines of arguments or a detailed reasoning for the decision should be set out. In T.601/06 the board held that R.71a(1) EPC 1973 did not impose an obligation on the EPO to give a preliminary opinion on the allowability of individual claims when issuing the summons.

In T.355/13 the board held that nothing in the expression "**the points to be discussed**" could lead to the conclusion that reasons for a preliminary opinion of an opposition division on the matter related to the points to be discussed should be given. The annex to the summons could legitimately only mention the points that needed to be discussed. The annex to the summons in an adversarial interpartes procedure such as opposition proceedings should not give rise to the impression that the case was decided without having heard the parties, and thus it should not comprise any definite opinion on the final conclusion of the case. However, an opposition division could express a preliminary opinion on the case.

R.116 EPC (R.71a EPC 1973), and Art.114(2) EPC on which it is based, refer to late-filed facts and evidence but not to new **arguments**, which can be made at any stage in the first-instance proceedings (T.131/01, OJ 2003,115; T.926/07; T.1553/07; T.2430/09; T.2238/15).

6.3.2 Examination and opposition proceedings

In T.755/96 (OJ 2000, 174) the board observed that R.71a EPC 1973 gave the EPO a discretionary power. The EPO's power to accept or refuse late-filed new facts or evidence