

only the final requests to be stated by the chairman before declaring the debate closed (Art. 15(5) RPBA 2007) were essential for the oral proceedings **on appeal**. Requests which had been withdrawn were usually irrelevant for the board's decision, and therefore not "essential". See also T 957/99, T 966/99.

In T 231/99 the board held that an **essential function** of the minutes was to record for the appellate body the essentials of the oral proceedings at the previous instance.

In T 396/89 the board held that if an important matter of fact was conceded, that **concession** ought to be carefully recorded in the minutes.

In T 1735/08 of 27 September 2012 the board held that there was no need under R. 124(1) EPC, nor was it usual practice in proceedings before the boards of appeal, to record in the minutes that the board had expressed a **provisional opinion on patentability** before announcing its decision. Where it was decided to set aside the contested decision and remit the case to the department of first instance for further prosecution, the set of claims on which that department was to base its fresh decision and the reasons why, in the board's opinion, that set of claims met some of the patentability requirements were not set out in the minutes, but rather in the reasons for the decision.

According to T 317/09 the relevance required under R. 124 EPC related to the decision to be taken by the board. The appellant's statement describing how it understood certain features of the invention neither affected the course of the proceedings, nor was it, as the **appellant's subjective assessment**, relevant for the decision to be taken by the board. See also T 468/99.

In T 281/03 of 17 May 2006 the board held that, in order to guarantee the right to be heard, there should have been an explicit step, recorded in the minutes of the **opposition division**, giving the opponent an opportunity to **comment on inventive step** before the final deliberation, or alternatively an opportunity after the deliberation to comment on the opposition division's conclusion that such an objection was not prima facie apparent. The fact that before the final deliberation "the floor was given to the opponent again" or that the opponent made a "last submission", reported in the minutes, was not enough to meet this requirement.

In T 1359/04 the board observed that the **examining division's introduction of new documents** only at the oral proceedings was an unusual step, and that the utmost care therefore had to be taken to safeguard the applicant's right to be heard. The proceedings should normally be interrupted to give the affected party sufficient opportunity to study the new evidence and reconsider how to present his case. The very function of the minutes in such cases was to document that the proper procedural steps had been duly taken.

In T 1798/08 the board held that it was not the function of the minutes to record statements which a party considers to be possibly relevant, such as the statement relating to the board's **alleged denial of the legal right to be heard**. This statement did not relate to the surrender or abandonment of subject-matter and did not otherwise have any impact on