

5.1. Right to present comments and non-attendance of a party by choice

According to T 1500/10 R. 115(2) EPC makes it clear that the oral proceedings are themselves an opportunity for the applicant to present its comments, in accordance with Art. 113(1) EPC. If a party decides not to attend the oral proceedings without a serious reason, it chooses not to make use of the opportunity to comment at the oral proceedings on any of the objections raised during them, and it has no right to make additional written submissions. Serious reasons are the same reasons that could justify postponement of oral proceedings (see in this chapter III.C.6.1.4).

In T 1339/14 the board held that the purpose of oral proceedings was to give parties an opportunity, in addition to their written submissions, to make their cases orally as well, and to be heard in this form. Oral proceedings also enabled parties to amend their cases and to respond directly in that forum to any such changes made by the opposing party. A party who failed to attend the oral proceedings forfeited this opportunity.

In T 1801/17 the board noted that there is no legal obligation to attend the oral proceedings. The patent proprietor dealt with all the outstanding objections during the written opposition proceedings, including filing auxiliary requests aimed at overcoming the added subject-matter ones known at the time. This was a legitimate way of defending oneself against an opposition and does not suggest any intention to avoid a ruling on the matter at first instance. By proceeding in this way, the proprietor did not forfeit the right to defend itself in appeal against objections that were only raised during oral proceedings.

On the question of whether a decision pronounced against a party who has chosen not to attend oral proceedings may be based on new facts, evidence and/or arguments introduced during those oral proceedings, see chapter III.B.2.7. "The right to be heard in case of the non-attendance at oral proceedings".

5.2. Non-attendance of party who filed new claims without amended description before oral proceedings; no reason for postponement of ruling

In T 917/95 the board held that a patentee who, in inter partes proceedings, filed a new claim but no amended description prior to the oral proceedings before the board of appeal and who failed to attend the oral proceedings could not rely on the board's postponing its ruling simply to permit amendment of the description, even if the new claim was grantable (see also T 725/00, T 109/02, T 181/02, T 776/05, T 651/08, T 2294/08). In T 1810/06 the board extended this finding of T 917/95 to an ex parte case. In T 985/11 the board stated that it still has discretion under Art. 111 EPC to decide how to proceed in this situation, and in particular whether to remit the case to the opposition division for adaptation of the description or exercise the powers of the opposition division and either continue the proceedings in writing or revoke the patent.

5.3. Obligation to give notice if not attending oral proceedings

In T 653/91 the board held that if, having been summoned to oral proceedings, a party did not wish to attend such proceedings, both the board (through its registrar) and any other