

had been referred to in the minutes as a member of the opposition division, although in fact he was not a member and did not take part in the oral proceedings (see also T 212/97).

In T 212/97 the board pointed out that R 89 EPC 1973 permitted the opposition division to correct an obvious mistake in the copy of the decision notified to the parties. In the case at issue, a fourth person had been named as a member of the opposition division although no such person had been mentioned in the original document.

4. Legal effect of corrections according to Rule 140 EPC

The EPO makes corrections on request or of its own motion (T 150/89). In T 212/88 the board held that correction of errors under R 89 EPC 1973 (R 140 EPC) had to be done by means of a decision, with retrospective effect from the date of the original decision. In T 116/90 of 3 December 1990 it was held that it was unnecessary to re-date the decision as from the date of correction.

In T 130/07, the board reiterated that a correction made no difference to either the date of the corrected decision or the appeal period triggered by its service (as previously held in T 212/88 and T 1176/00). It nevertheless reprimanded the EPO for its continued failure, despite the case law already established on the point, to avoid issuing such "second decisions" bearing a seemingly new date and so seemingly triggering a fresh appeal period and instead issue properly reasoned correction decisions clearly marked as such (similarly T 105/11). On the issue of the distinction from genuine second decisions, see III.A.3.6. and III.K.3.1.1

In T 105/11 the board held that in application of the principle of the protection of legitimate expectations, the statement of grounds of appeal was deemed to have been filed in time, even though the appellant directed the notice of appeal and the statement of grounds of appeal against the correction decision with an alleged new date.

4.1. Correction requests as opposed to appeals

In T 425/97 the board referred to G 8/95 (OJ 1996, 481), which dealt with the scope of R 89 EPC 1973 (now R 140 EPC), stating that the difference between an appeal against a decision and a request for correction of a decision might be seen in the fact that in the first case the remedy was directed against the substance of the decision and in the latter case against the form in which the decision was expressed. In another decision issued prior to G 1/10, the board in T 1093/05 (OJ 2008, 430) similarly held that, if a grant decision was defective, the patent proprietor had to consider carefully the nature of the defect and how it could best be rectified. If it involved a substantial procedural violation, rectification was possible only on appeal.

In T 1869/12 the board stated that in case of procedural violations in the granting procedure, rectification is only possible via appeal against the decision to grant. A correction of the published European patent specification or of the decision to grant cannot be allowed when this specification corresponds to the true intention of the Examining Division when granting the patent.