

publication), otherwise Art. 128(2) EPC 1973 became null and void. If oral proceedings would facilitate a prompt decision, the summons under R. 71(1) EPC 1973 could give shorter notice – even without the other party's agreement – provided the parties were given enough time to prepare. The Legal Board referred to Art. 125 EPC 1973 and stated that it was a generally recognised principle of procedural law that notice could be curtailed in urgent cases. The degree of curtailment should be decided on a case-by-case basis.

In T. 111/95 the board stated that the examining division had no right simply to set a date for oral proceedings about two weeks after despatch of the summons. The board found that there was nothing on file to establish that the applicants' representative, at any time and unconditionally, accepted the date set. The onus of proving that an agreement for a shorter notice period was reached lay with the examining division. The board thus held that the summons was null and void, as were the actions following and resulting from it. See also T. 772/03.

In T. 601/06 and T. 869/06 the boards offered an alternative date within a period of about two months from the date of the request in view of the balance of interests of the parties and the public. The period of about two months arose from the fact that, except for when the parties consent, new summons had to be issued at least two months in advance of a hearing, so that dates within the two-month period from the date of the request could not be used for other cases.

According to the board in T. 2534/10, R. 115 EPC equally applied where oral proceedings were continued on a date other than that fixed in the summons and that a fresh summons for that date therefore had to be issued. See also T. 1674/12.

Where the board has sent more than one summons to oral proceedings, it is normally the summons which was sent first which is "the summons to oral proceedings" within the meaning of Art. 25(3) RPBA 2020 (T. 1511/15).

6.3. Final date for written submissions in the preparation for oral proceedings and late submission of new facts and evidence – Rule 116 EPC

6.3.1 General issues

R. 116(1) EPC (R. 71a(1) EPC 1973) stipulates, inter alia, that, when the EPO issues the summons to oral proceedings, a final date for making written submissions in preparation for the oral proceedings must be fixed. New facts and evidence submitted after this date need not be considered, unless admitted on the grounds that the subject of the proceedings has changed. The same is true for applicants or patentees invited under R. 116(2) EPC (R. 71a(2) EPC 1973) to submit documents which meet the requirements of the EPC.

As construed according to its **object and purpose**, R. 116 EPC (R. 71a EPC 1973) is intended to give the decision-making department and other procedural parties enough time to prepare thoroughly for the oral proceedings and so ensure that they are not faced with surprising new facts and do not take potentially inappropriate decisions in undue haste