

the department of first-instance (see chapter [V.A.9.4.](#)), as well as a substantial procedural violation under [R.103\(1\)\(a\) EPC](#) that may, if equitable, justify the reimbursement of the appeal fee (see chapter [V.A.11.6.8](#)); see, for example, [T.820/10](#), [T.623/12](#), [J.13/10](#).

A fundamental violation of [Art.113 EPC](#) in appeal proceedings can be the basis for filing a petition for review to the Enlarged Board of Appeal ([Art.112a\(2\)\(c\) EPC](#); see chapter [V.B.4.3.](#)). A petition for review can also be based on the failure to arrange requested oral proceedings, and on the failure to decide on a party's request. Both of these additional grounds also reflect an aspect of the right to be heard (see chapter [V.B.4.4.](#) "Article 112a(2)(d) EPC – any other fundamental procedural defect"). The case law of the Enlarged Board of Appeal under [Art.112a EPC](#) is primarily to be found in chapter [V.B.4.](#), to which the reader is also directed in order to cover all the jurisprudence in relation to the right to be heard. Decisions on the right to be heard taken by the Legal Board of Appeal and by technical boards of appeal are, on the other hand, almost exclusively dealt with in the present chapter, and only exceptionally referred to in chapter [V.B.4.3.](#) "Article 112a(2)(c) EPC – alleged fundamental violation of Article 113 EPC".

For the right to be heard in **examination proceedings**, see chapter [IV.B.2](#) (in particular chapter [IV.B.2.3](#), on the refusal of an application after a single communication and chapter [IV.B.2.6](#), on issuing a further communication). In **opposition proceedings** the right to be heard is inextricably linked to the principle of **equal treatment**, see chapter [IV.C.6.1](#) and, with regard to opposition appeal proceedings, chapter [V.B.4.3.6](#) on boards' obligation to remain neutral; as to the opposition division's obligation to invite the parties as often as necessary to file observations, see chapter [IV.C.6.2.](#); as to the opportunity to comment on new grounds of opposition, see chapter [IV.C.3.4.6](#). With regard to the observance of the right to be heard in the context of the taking of **evidence**, see chapter [III.G.3.3](#). The right to be heard may also play a role in the decision whether to accept **late filed submissions** (see chapter [IV.C.4.](#) "Late submission of documents, lines of attack and arguments"). With regard to the requirement for **reasoned decisions** under [R.111\(2\) EPC](#), see chapter [III.K.3.4](#).

## 2. The right to be heard under Article 113(1) EPC

### 2.1. Violation of the right to be heard examined ex officio

The boards of appeal can examine the facts of the case of their own motion pursuant to [Art.114\(1\) EPC](#) and verify whether or not [Art.113 EPC](#) has been complied with by the departments of first instance (see e.g. [T.186/02](#)).

### 2.2. Causal link between the violation of the right to be heard and the final decision

#### 2.2.1 Appeal proceedings

When reviewing appeal proceedings, the Enlarged Board's review is limited to "fundamental" violations of the right to be heard. This requires a causal link between the alleged violation and the final decision. Such a causal link does not exist when, even if a procedural violation can be demonstrated, the same decision would have been taken for