

4.7. Request for oral proceedings in relation to further prosecution proceedings after remittal

According to the established case law, "further prosecution" proceedings on remittal by the board of appeal are to be regarded as a continuation of the original opposition proceedings, particularly where the original interlocutory decision had been set aside by the board and was therefore no longer legally effective. Thus, with remittal, parties' requests valid in the opposition proceedings, including any auxiliary request for oral proceedings, become effective again, if they were not withdrawn (T 892/92, T 120/96, T 742/04, T 1425/05, T 1548/11).

In T 1866/08 the board considered that the appeal procedure was separate from the examination procedure (see, for example, G 8/91, T 34/90). It followed that a request for oral proceedings to be held before the examining division could not validly be made during the appeal proceedings. As a consequence, the appellant would have to file a new request for oral proceedings after the procedure was resumed by the examining division. T 901/10 confirmed T 1866/08, adding that a request for oral proceedings in possible further appeal proceedings in the future would have to be requested again during such proceedings.

4.8. Request for oral proceedings as a reply to a communication

In T 1382/04 the appellant had been invited to file observations on the board's communication under R. 100(2) EPC. Failure to reply to such an invitation in due time would result in the application being deemed withdrawn (R. 100(3) EPC). The appellant had not made any substantive observations on the board's communication but had filed a request for oral proceedings. The board considered the request for oral proceedings as a reply avoiding a deemed withdrawal under R. 100(3) EPC. Similarly, the board in T 861/03 stated that a request for oral proceedings could be a valid reply to a communication under Art. 96(2) EPC 1973 (now Art. 94(3) EPC).

5. Non-attendance at oral proceedings

The absence of parties from oral proceedings is in general governed by R. 115(2) EPC and – for the boards of appeal – by Art. 15(3) and (6) RPBA 2020. Concerning non-attendance at oral proceedings before the examining division, see also the notice from the EPO, OJ 2020, A124.

According to Art. 15(3) RPBA 2020, the board is not obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of a party duly summoned who may then be treated as relying only on its written case (see also Art. 15(3) RPBA 2007, which has essentially the same wording as Art. 15(3) RPBA 2020). The board may therefore, in accordance with Art. 15(6) RPBA 2020, ensure that the case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary.