

In T. 474/04 (OJ 2006, 129), the board held that if assertions made in an unsworn witness declaration remained contested, a request to hear the witness had to be granted before these assertions were made the basis of a decision against the contesting party.

In T. 909/03 the hearing of a witness took place in the morning and the oral proceedings continued in the afternoon. The board held that it was not necessary for a party to be given a copy of the minuted testimony before commenting on that testimony. During the oral proceedings the party had been given sufficient opportunity to comment. No substantial procedural violation had thus occurred.

In T. 716/06 the board confirmed that where oral evidence of a witness was requested by a party the competent department should grant this request only if it considered this oral evidence necessary to clarify matters that were decisive for the decision to be taken. However, where an opponent requested that a witness be heard on an alleged public prior use and on the disclosure of a certain feature by this prior use, the competent department as a rule had to grant this request before deciding that the alleged public prior use was neither established nor constituted a novelty-destroying state of the art. See also T. 1100/07.

2.6.5 Oral submissions of an accompanying person

For the denial of a request for an accompanying person to present oral submissions see chapter V.B.4.3.18 "Further examples of unsuccessful petitions". See also chapter III.V.5. "Oral submissions by an accompanying person".

2.7. The right to be heard in case of the non-attendance of oral proceedings

The proceedings may continue without the duly summoned but non-attending party (R. 115(2) EPC). The case law of the boards demonstrates, however, that the non-attending party's right to be heard under Art. 113 EPC must not be ignored.

2.7.1 Facts and evidence put forward for the first time during oral proceedings

In G. 4/92 (OJ 1994, 149), which explicitly relates to inter partes proceedings only, the Enlarged Board held that, in view of the right to present comments, a decision against a party who had been duly summoned but who failed to appear at oral proceedings could not be based on facts put forward for the first time during those oral proceedings. Evidence put forward for the first time during oral proceedings could not be considered unless it had been previously notified and it merely supported the assertions of the party which had submitted it. New arguments, on the other hand, did not constitute new grounds or evidence, but were reasons based on the facts and evidence already put forward. As regards new arguments, the requirements of Art. 113(1) EPC could thus be satisfied even if a party who chose not to appear did not have the opportunity to comment on them during oral proceedings.

According to Art. 15(3) RPBA 2020 (formerly: Art. 11(3) RPBA 2003, then Art. 15(3) RPBA 2007), "[t]he Board shall not be obliged to delay any step in the