

L. Correction of errors in decisions

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1. Competence to correct a decision according to Rule 140 EPC

The competence to correct errors under R. 140 EPC (R. 89 EPC 1973) lies with the body which took the decision (see e.g. G 8/95, OJ 1996, 481, J 12/85, J 16/99). Hence, even during opposition proceedings, the examining division is competent for correcting errors according to R. 140 EPC (Guidelines H-VI, 3.3 – March 2022 version). In accordance with the decision of the President of the EPO dated 23 November 2015 (OJ 2015, A104), decisions under R. 140 EPC are dealt with by formalities officers.

1.1. Competence of opposition division or examining division

In T 226/02 the board considered that the opposition division had acted *ultra vires* in taking a decision under R. 89 EPC 1973 to correct a decision of the examining division. The board held that only the body which had taken a decision was entitled to correct it so as to put it in the form which it had intended it to take. Thus, only the examining division was entitled to correct its own decision. This finding was endorsed by the board in T 1495/09, which held that, in the case at issue, pursuant to R. 140 EPC, the opposition division in opposition proceedings had no competence to correct the decision taken by the examining division and would thus have acted *ultra vires* if it had corrected the grant decision. The same applied to the board of appeal in opposition-appeal proceedings (Art. 111(1), second sentence, EPC 1973).

1.2. Competence of the boards of appeal

In J 12/85 (OJ 1986, 155) the board held that a board of appeal could only examine appeals from decisions of other instances of the EPO (Art. 21(1) EPC). Thus it cannot examine a request for a correction, based on R. 89 EPC 1973 (R. 140 EPC), of the decision under appeal. A decision on this request first had to be rendered by the examining division before the matter could be referred to the board of appeal.