

EPO was that the examining division considered it expedient. Even if it were at all possible to argue in retrospect that the holding of oral proceedings was not "expedient", such argument would ignore the wording of Art. 116(1) EPC, which makes the decision to hold oral proceedings dependent on the subjective assessment of the division.

In T 1734/10 the board held that evaluating whether oral proceedings were indeed expedient was part of the examining division's discretion, which was to be exercised taking into account the progress made in the examination proceedings. For assessing expediency, the main consideration in the Guidelines was procedural economy and certainly not the condition of a complete lack of progress in the examination ("last resort situation").

In T 120/12 the board held that it was up to the examining division to decide, taking the circumstances of the case into account, whether or not it considered it to be expedient to summon the applicant to oral proceedings under R. 115(1) EPC. Neither the EPC nor the Guidelines required that reasons for this decision be given with the summons.

In T 446/09, in view of its decision not to remit the case to the first instance, the board considered it to be expedient to hold oral proceedings in order to bring the case to a conclusion, and therefore refused the appellant's request to cancel the oral proceedings.

In T 166/04 the board held that, in particular, clarity problems could be handled expediently during oral proceedings.

In T 1388/10 the board held that it was not expedient to hold oral proceedings where an applicant merely submitted that it considered a particular objection overcome without putting forward any arguments in support of its position.

3.2. Effects of withdrawal of a request for oral proceedings in case of oral proceedings at the instance of the EPO

The withdrawal by a party of its request for oral proceedings, with its further request for continuation of the proceedings in writing have no effect in a case where the oral proceedings are held at the instance of the EPO (T 556/07, T 1578/05).

4. Request for oral proceedings

A party's right to oral proceedings is subject to a clear and unambiguous request for such proceedings (T 352/89, T 663/90, T 1976/08, T 1500/13). The refusal of a request for oral proceedings normally constitutes a violation of the right to present comments. If the request for oral proceedings is ignored, even due to an oversight, the decision must be set aside as null and void (T 19/87, OJ 1988, 268; T 93/88; T 766/90; T 556/95, OJ 1997, 205; T 996/09; T 740/15; J 12/15; T 1951/16).

In T 1050/19 the board admitted a late-filed request for oral proceedings on the basis that it was an exercise of the right to be heard rather than an amendment to the appeal case within the meaning of Art. 13(1) RPBA 2020.