

and, by issuing the contested decision without holding oral proceedings, as requested by the appellant, it had infringed the right to be heard. See T 120/96, T 679/97, T 1548/11.

In T 1775/12 the board held that the procedural issue of admission under R. 137(3) EPC of amendments filed in response to a communication under R. 71(3) EPC constituted a "subject of the proceedings" within the meaning of Art. 116(1) EPC, second sentence, EPC which was distinct from the discussion of matters of substantive law that had previously taken place at oral proceedings.

4.5. Auxiliary request for oral proceedings

There is no requirement in the EPC or in the case law that only unconditional requests to oral proceedings are admissible. It is normal practice to request oral proceedings e.g. only for the eventuality of an imminent adverse decision (see inter alia T 870/93, T 1136/10). According to the established practice of the boards of appeal, a request for oral proceedings on an auxiliary basis is interpreted as a request for oral proceedings unless the board intends to decide the case in favour of this party (see T 3/90, OJ 1992, 737).

In T 344/88 the appellants requested that oral proceedings be held if the opposition division intended to maintain the patent in whole or in part. The opposition division rejected the opposition as inadmissible without appointing oral proceedings. The board found that while it was true that, in rejecting the opposition as inadmissible, no formal decision had been taken to maintain the patent, this was nevertheless the consequence of the decision.

According to the established case law, a party is not adversely affected by a decision to remit a case for further prosecution, and for this reason there is no need to grant an auxiliary request for oral proceedings (see inter alia T 147/84, T 222/87, T 42/90, T 924/91, T 47/94, T 1434/06, T 1367/12, T 1727/12, T 1205/13).

In T 902/04 the board held that, since the opponent's request was allowed, there was no need to hold the oral proceedings which only the opponent had requested on a purely auxiliary basis. See also T 545/08, T 749/15.

4.6. No oral proceedings – decision in favour of the party

In their statement of grounds of appeal the appellants in T 494/92 made an unconditional request for oral proceedings. The board stated that in view of the positive conclusion it had reached regarding the question of inventive step, and in the absence of any other substantive and/or procedural issues, such oral proceedings would serve no purpose. The board thus treated the request as merely conditional (see also T 2445/11). In T 1050/09, the opposition division, referring to T 494/92, had treated the opponent's unconditional request for oral proceedings as merely conditional as it had decided in favour of the opponent. The board agreed and added that a successful party had no reason to doubt the correctness of the procedure leading to the decision in its favour.