

collective decision-making and in conflict with Art. 21 EPC 1973. Since the requested telephone interview could have led the rapporteur to take a position on an issue where a collective decision would have been required, or to commit the board without preliminary discussion, the request was refused. See also T 1109/02, T 653/08, T 911/10. This was confirmed in T 1251/08, in which the board added it wished to avoid giving the impression that it was never appropriate for parties in ex parte proceedings to telephone the rapporteur.

In T 1984/07, the board did not rule out that there may be circumstances in which a telephone call may be appropriate: for example, if only minor objections remain which could be easily attended to by straightforward amendments. However, in the case in hand, the objections were of such nature that any further amendments were likely to entail more than just a simple modification to the wording of the claims or a straightforward adaptation of the description. Examples of cases in which the rapporteur contacted the applicant by phone are: T 329/90, T 182/90 (OJ 1994, 641), T 594/94, T 931/99, T 845/10, T 680/13.

2.2. Right to oral proceedings before the Receiving Section

Under Art. 116(2) EPC, oral proceedings must take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it envisages refusing the European patent application. The Legal Board, exercising the powers within the competence of the Receiving Section, can refuse a request for oral proceedings made by an applicant in the course of an appeal against a decision of the Receiving Section for the same reasons (J 20/87, OJ 1989, 67).

Although according to Art. 116(2) EPC the Receiving Section is entitled not to grant a request for oral proceedings, the applicant has the right to a decision on that request (J 16/02). Not deciding on a request put before the Receiving Section constitutes a substantial violation of the applicant's right to be heard (J 9/18). The discretion foreseen in Art. 116(2) EPC in dealing with the request for oral proceedings is not without limits and has to be exercised in light of recognised procedural principles such as the right to be heard set out in Art. 113(1) EPC (J 17/03).

The decision confirming a loss of a right (R. 69(2) EPC 1973, R. 112(2) EPC) is not a case in which the Receiving Section "envisages refusing the European patent application" within the meaning of Art. 116(2) EPC 1973 (J xx/xx=J 900/85, OJ 1985, 159; J 17/03).

3. Oral proceedings at the instance of the EPO

Oral proceedings may take place even if they were not requested, as according to Art. 116(1) EPC, oral proceedings shall take place at the instance of the EPO if it considers this to be expedient.

3.1. Expediency of oral proceedings

In T 660/12 the board held that the wording of both Art. 116(1) EPC and the Guidelines made it clear that the only criterion for oral proceedings to take place at the instance of the