

that violations of Art. 19(2) EPC 1973 should lead to a remittal regardless of the parties' position at least in situations where third parties were affected by the outcome of the defective first-instance proceedings.

In T 234/11 the dossier showed that two members of the opposition division had taken part in the grant proceedings. The board ruled that the wording of Art. 19(2) EPC left no room for discretion. Nor did the conclusion reached in T 838/02 apply because here the issue was the patent's maintenance in amended form and, besides, the parties to the proceedings had conflicting interests: one sought remittal to the opposition division; the others did not want that.

## 2. Date of decision

### 2.1. Entry into force of decisions

The Enlarged Board of Appeal in G 12/91 (OJ 1994, 285) distinguished between decisions taken after the closure of the debate in oral proceedings and decisions taken following written proceedings. Where oral proceedings are held, the decision may be given orally. The decision becomes effective by virtue of its being pronounced. The equivalent of that point in time in written proceedings is the moment the decision is notified. Once it has been pronounced and, in the case of written proceedings, notified, the decision enters into force and cannot be amended, even by the department that issued it. A decision may only be revoked by the department that issued it by way of an interlocutory revision under Art. 109 EPC 1973 if one of the parties has filed an admissible and well-founded appeal.

### 2.2. Completion of the internal decision-making process

According to G 12/91 (OJ 1994, 285) the point in time at which a decision enters into force, i.e. the moment it is pronounced or notified, is not the last moment at which parties could still submit observations. This had to be done **at an earlier point** in the proceedings to allow the decision-making department time to deliberate and then issue its decision based on the parties' submissions. Where oral proceedings are held, this moment is the closing of the debate, this point being fixed by the decision-making department – having first heard the parties' submissions – to allow itself time to consider its decision (see J 42/89; T 762/90 and T 595/90, OJ 1994, 695). In the case of decisions taken following **written** proceedings, the point in time at which the internal decision-making process was completed was the date on which the formalities section handed over the date-stamped, post-dated decision to the EPO postal service. This marks the completion of proceedings before the decision-making department, which can no longer amend its decision. This point in time should be clearly indicated in the decision.

In T 2573/11 the board decided that if it was clearly indicated in the decision on which date the formalities section handed the decision over to the EPO postal service, this date was thus the date on which written proceedings before the decision-making department were completed.