

4.3. Withdrawal of request for oral proceedings

4.3.1 Withdrawal only by virtue of a clearly expressed intention not to proceed with the request

A party's request for oral proceedings can be withdrawn only by virtue of a clearly expressed intention not to proceed with the request, for example in the form of an unambiguous written statement to that effect on the file (T 1548/11). Silence on the part of a party cannot be interpreted as withdrawal of the request for oral proceedings (T 766/90, T 35/92, T 686/92, J 12/15, T 1951/16). A withdrawal of the request for oral proceedings requires an unambiguous expression of the party's wish to withdraw (T 795/91, T 879/92, T 2687/17). If there is no unequivocal proof of the withdrawal of the request, it has to be assumed that the request, once submitted, remains valid and was therefore also valid at the time of the contested decision (see T 283/88, T 598/88, T 663/90, T 1951/16).

A considerable number of decisions treat the announcement of non-attendance of the oral proceedings (see below in this chapter III.C.4.3.2) and the lack of statement of grounds of appeal followed by lack of response to a notification of the inadmissibility of the appeal (see below in this chapter III.C.4.3.3) as equivalent to a withdrawal of the request. For the question of whether a withdrawal of a request for oral proceedings can lead to a different apportionment of costs under Art. 104 EPC, see chapter III.R.2.2. "Acts or omissions prejudicing the timely and efficient conduct of oral proceedings".

4.3.2 Announcing non-attendance

Where oral proceedings are scheduled upon a party's request and that party subsequently expresses its intention not to attend, such statement is generally interpreted as a withdrawal of the request for oral proceedings.

In T 3/90 (OJ 1992, 737) oral proceedings were appointed as a result of a party's request. The party subsequently stated that it would not be represented at the oral proceedings. The board held that such a statement should normally be treated as equivalent to a withdrawal of the request for oral proceedings (see also T 696/02, T 1027/03, T 1482/05, T 871/07, T 1229/12, T 2188/12, T 320/16, T 517/17, T 849/18). By stating that it will not attend oral proceedings and by requesting a decision on the record, a party unequivocally expresses that it is interested in an immediate decision on the file as stood and that it does not wish to present his arguments orally in the requested oral proceedings (T 1482/05). As a consequence, the decision can be handed down in writing without holding oral proceedings (Art. 12(8) RPBA 2020). See T 320/16 and T 502/16.

In T 910/02 the board remitted the case to the department of first instance for further prosecution without oral proceedings, since all the parties who had presented their comments in the appeal proceedings had either withdrawn their request for oral proceedings or had stated that they would not attend oral proceedings. In such a case the board has discretion either to abide by the date for the oral proceedings in order to announce a decision, or to cancel the oral proceedings and issue a decision based on written proceedings. T 663/10 confirmed T 910/02, adding that the board was not obliged