

In T 2235/12 the examining division had introduced, two days before the oral proceedings, two additional documents and a new objection into the procedure. The appellant's request for a postponement of the oral proceedings was rejected, and the appellant did not attend the oral proceedings. The board held that the new objection was not related to the points indicated in the summons and that the appellant should have been given an adequate opportunity to react to the new objection. Attending the oral proceedings would not have changed the fact that the timeframe was too short for the representative to get instructions from the client and to prepare for oral proceedings with a new focus. The board concluded that rejecting the appellant's request for a postponement of the oral proceedings infringed the appellant's right to be heard.

In T 75/10 the board saw no reason to overturn the opposition division's admission of late-filed documents that appeared highly relevant for novelty. These had been generated from an archive different from the databases commonly used for a prior-art search. The board considered that the opposition division should have granted the patentee's request for postponement of the oral proceedings, after deciding to admit these. The board stated that there was an essential difference between a prima facie assessment of the possible relevance and publication date of a late-filed document for deciding upon its admission into the proceedings and the full in-depth assessment of novelty vis-à-vis such a document, which required determining whether the document was made available to the public before the effective filing date.

In T 763/15 the board could not see any indication that the appellant had been allowed to argue during the oral proceedings on the issue of admissibility of auxiliary request 2. In the opposition proceedings the chairman, after commenting on the amendment made to claim 1 of auxiliary request 2, immediately announced "that AUX2 is not admitted in the proceedings". A decision taken and pronounced by the opposition division cannot be challenged any more in the same proceedings. Therefore, the board considered it to be irrelevant that "The Patentee did not react on this decision not to admit AUX2 in the proceedings", as recited in the minutes.

In T 1238/14, the appellant had filed auxiliary requests 1 and 2 in response to the examining division's summons to oral proceedings, but the division – without holding the oral proceedings – had then decided to refuse the claims according to those auxiliary requests too as not patentable. The defects in those claims had not been communicated to the appellant in advance for comment. Instead, it had first – and only – learned of them on receiving the decision to refuse the application on the basis of both the main request and the two auxiliary requests. The board held that, where an applicant had been summoned to oral proceedings, it was entitled to assume that they would actually take place and that it would be given an opportunity there to respond to any objections raised by the examining division.

In T 482/16 the board concluded that, by rejecting the appellant's request for postponement of the oral proceedings, the examining division had not provided the appellant with the appropriate opportunity to present its comments on documents the examining division had introduced for the first time during the oral proceedings.