

There is no infringement of the right to be heard where an examining division refuses to minute a party's submissions during oral proceedings (T 1055/05).

A party's right to be heard under Art. 113(1) EPC does not imply a separate right of the party's representative to be heard and therefore does not imply a right to have oral proceedings before the EPO held by video conference (T 2068/14; see also chapter III.C.7.3. "Oral proceedings held by video conference").

In T 1414/18 the board held that a statement such as "the next procedural step will be summons to oral proceedings during which the application will be refused" made prior to a final decision to refuse a patent application may infringe a party's right to be heard and thus may lead to a substantial procedural violation. The phrase "will be refused" – on an objective basis – Implied that, regardless of any facts or arguments the applicant could potentially have brought forward thenceforth, the application was finally to be refused under Art. 97(2) EPC. Such a conduct of the proceedings was contrary to the very aim and purpose of the right to be heard under Art. 113(1) EPC.

2.6.1 Introduction of a new claim or relevant document

In a case where an opposition division or a board of appeal feels bound by Art. 114(1) EPC to examine new facts or evidence submitted for the first time during oral proceedings, it must, in accordance with Art. 113(1) EPC, give the other parties the opportunity to comment before issuing a reasoned decision based on such facts or evidence (G 4/92, OJ 1994, 149; see also T 484/90, OJ 1993, 448; with regard to late submissions see T 330/88, T 356/94 and chapter IV.C.4. "Late submission of documents, lines of attack and arguments"). The same principle has also been applied to decisions of examining divisions (see e.g. T 376/98). The applicant does not have a right in principle to continuation in writing; the party's right to be heard under Art. 113(1) EPC is also observed if the applicant is given an adequate amount of time to study the document and present comments. How much time is sufficient depends on the nature of the newly introduced document and the preceding procedure (T 2434/09).

a) Cases in which Article 113(1) EPC was violated in relation to the introduction of new claims or relevant documents

In T 951/97 (OJ 1998, 440), although document D4 had been mentioned in the European search report, it had not been cited at any stage in the examination procedure prior to the oral proceedings. The board found that the half an hour adjournment of the oral proceedings had been too short a period for an adequate analysis of the complex text of D4. As D4 was essential to the finding of the examining division in relation to inventive step, the decision was based on evidence on which the applicants had not had a sufficient opportunity to present their comments as required by Art. 113(1) EPC (see also T 492/03).

In T 783/89 the opposition division had proposed a new version of the main claim at the start of the oral proceedings, giving the opponents ten minutes to consider it. The board ruled that this had taken the opponents by surprise, and that the time given had not been sufficient to study the allowability of the amendments.