

2. Right to oral proceedings

2.1. Right to oral proceedings in examination, opposition and appeal proceedings

The right to an oral hearing is an extremely important procedural right which the EPO should take all reasonable steps to safeguard (T 668/89; T 808/94; T 556/95, OJ 1997, 205; T 996/09; T 740/15). If a request for oral proceedings (see in this chapter III.C.4.) has been made, such proceedings have to be appointed. This provision is mandatory and leaves no room for discretion (T 283/88, T 795/91, T 556/95, T 1048/00, T 740/15), i.e. parties have an **absolute right** to oral proceedings (T 552/06, T 189/06, T 263/07, T 1426/07, T 653/08, T 1251/08, T 1829/10). Considerations such as the speedy conduct of the proceedings, equity or procedural economy cannot take precedence over this right (T 598/88, T 731/93, T 777/06). The right to be heard in oral proceedings subsists so long as proceedings are pending before the EPO (T 556/95, T 114/09).

Where several parties are involved, e.g. in opposition proceedings, the EPC provides only for oral proceedings to which all the parties are invited, so as to respect the principles of judicial impartiality and the equal rights of parties (T 693/95).

In T 247/20 the board stated that oral proceedings form an important part of proceedings before the boards of appeal. Their prominence was underlined by the absolute right of a party to oral proceedings under Art. 116 EPC. They served to allow a discussion of the matters pertinent to the board's decision. Oral proceedings would serve no purpose if the parties were limited to presenting a mere repetition of the arguments put forward in writing. Instead, parties must be allowed to refine their arguments, even to build on them provided they stayed within the framework of the arguments, and the evidence, submitted in a timely fashion in the written proceedings.

In T 1790/17 the board underlined that the purpose of oral proceedings was, for the appellant, to better explain his case and, for the board, to understand and clarify points which, perhaps, up to that point were not sufficiently clear. This was particularly relevant in ex parte cases, where besides the applicant (appellant) no other party was involved. If amendments resulting from such discussions were not possible, oral proceedings would be pointless.

In G 2/19 (OJ 2020, A87) the Enlarged Board considered that a third party within the meaning of Art. 115 EPC who has filed an appeal against a decision to grant a European patent has no right to have its request for an order that examination proceedings in respect of the European patent be reopened for the purpose of removing allegedly unclear claims (Art. 84 EPC) heard at oral proceedings before an EPO board of appeal. Given the variety in the scope of that provision's application, its nature could not be considered so, as it were, absolute. The legislator had clearly intended it to serve as a basic rule governing the typical cases facing EPO departments in their everyday practice but it could not be ruled out that exceptions to this basic rule might be made where its application would make no sense in the specific circumstances of an individual case. Instead, Art. 116(1), first sentence, EPC was to be interpreted narrowly, such that a purely formal position as de