

good faith (G 2/97). This was especially true in situations where the appellant had initially requested that oral proceedings be held.

In T 578/14 the board took the view that, in the case in hand, the duly summoned appellant, who of her own volition did not attend the oral proceedings, could not be placed in a more advantageous position than she would have been if she had attended. The appellant's voluntary absence could not therefore be a reason for the board not to raise issues it would have raised if the appellant had been present.

In T 1367/09 the board did not raise Art. 84 EPC in its communication pursuant to Art. 15(1) RPBA 2007 (Art. 15(1) RPBA 2020). When reconsidering the case in preparation for the oral proceedings, the board noted that Art. 84 EPC should also be addressed. The oral proceedings were held in the absence of the appellant. In its decision, the board stressed that a board's communication has a preliminary character and does not have to be exhaustive. In general, new grounds for refusal have to be discussed during the oral proceedings. However, if a duly summoned appellant does not attend the scheduled oral proceedings, it waives the opportunity to present its comments on new grounds which were not mentioned in the communication under Art. 15(1) RPBA 2007 (Art. 15(1) RPBA 2020) but are decisive for the decision. In view of the principle of procedural economy, the board is not obliged to delay its decision. A board's decision dealing with new grounds, on which the appellant has not presented its comments, does not contravene the right to be heard (Art. 113(1) EPC) in such a case.

In T 1000/03 the board held that the appellant had been duly summoned, and at the oral proceedings could easily have corrected the minor deficiencies in the description. To delay the decision pending their correction was uncalled for (see Art. 15(3) RPBA 2020). Under Art. 113(2) EPC, the board had to keep to the text submitted by the appellant (applicant), who by not appearing at the oral proceedings had taken the risk of the application being refused even for easily remediable deficiencies (see also the ex parte case T 1903/06).

b) Inter partes proceedings

In T 986/00 (OJ 2003, 554) the board held, with reference to Art. 113(2) EPC and Art. 11(3) RPBA 2003 (Art. 15(3) RPBA 2020), that a patent proprietor who chooses not to be represented at oral proceedings should ensure that he has filed all the amendments he wishes to be considered. All the more when, as in the case at issue, the proprietor had been expressly warned about the possible necessity of amending the claims and the description.

In T 1010/13 oral proceedings took place in the presence of appellant I only. Although appellants II, III and IV did not attend the oral proceedings, the board held that the principle of the right to be heard pursuant to Art. 113(1) EPC was observed since that article affords only the opportunity to be heard, and by absenting itself from the oral proceedings a party gives up that opportunity (see CA/133/02 dated 12 November 2002, which is the explanatory note to former Art. 11(3) RPBA 2003 – now Art. 15(3) RPBA 2020 – cited in T 1704/06); see also chapter V.A.5.5.4a) "Absence of applicant (patent proprietor) from oral proceedings".