

In T 810/09 the board held that it was not competent to decide on a request for correction of a written decision taken by the opposition division and for this reason rejected the appellant's request for correction under R 140 EPC.

1.2.1 Legal Board or Technical Boards

In G 8/95 (OJ 1996, 481) the Enlarged Board of Appeal held that the decision refusing a request for correction of the decision to grant concerned the grant of the patent. It was, therefore, the technical boards – not the Legal Board of Appeal – which had to decide on appeals from a decision of an examining division refusing a request under R 89 EPC 1973 for correction of the decision to grant.

1.3. Competence to correct if application is no longer pending

In T 867/96 of 30 November 2000 the patentee had requested the correction under R 89 EPC 1973 of a sentence in the reasons for a board of appeal decision, stating that all the parties had agreed that a certain document represented the closest prior art. The board pointed out that the case was closed, as res judicata, and therefore no longer before it. However, citing in particular G 8/95 (OJ 1996, 481) and G 1/97 (OJ 2000, 322), the board held that only the board which had taken a decision could decide whether it required correction. Furthermore, establishing whether correction was necessary involved studying the facts, implying in general and up to a certain point that such requests were admissible. The current board thus ruled that the request for correction was admissible. Nevertheless this particular request did not fulfil the requirements of R 89 EPC 1973 and was therefore refused.

In J 16/99 the board held that when correction of the priority date of a granted patent is requested, there may be a case for correction under R 89 EPC 1973 of the EPO's decision to grant. The board found that R 89 EPC 1973 allowed the correction of errors in, inter alia, decisions to grant, without the limiting requirement that proceedings be pending.

2. Scope of Rule 140 EPC

According to the wording of R 140 EPC, in EPO decisions, only linguistic errors, errors of transcription and obvious mistakes may be corrected. R 140 EPC (formerly R 89 EPC 1973) applies to both decisions of the Boards of Appeal and those of first-instance departments. Following G 1/10 (OJ 2013, 194) R 140 EPC no longer covers the correction of the text of a patent. Neither is it applicable for the correction of legal errors, irrespective of whether they concern substantive or procedural aspects (G 1/97, OJ 2000, 322). This leaves only errors in bibliographic data contained in the decision to grant or formatting/editing errors during the preparation of the Druckexemplar (as well as printing errors in the publication of the granted patent) to fall under R 140 EPC (Guidelines H-VI, 3.1 – March 2022 version).

Correction of errors in decisions must be distinguished from correction of errors in documents filed by the applicant (or patentee) which falls under R 139 EPC.