

facto party to appeal proceedings was not enough to confer a right to require that oral proceedings be held if the person requesting them had no standing to appeal, because they had not been a party to the foregoing proceedings in the legal sense, or if the grievance they invoked was not appealable (see referral in T 831/17 of 25 February 2019).

#### 2.1.1 Right to oral proceedings even after a Rule 71(3) EPC communication

The board in T 556/95 (OJ 1997, 205) held that the discretion of an examining division to allow amendments up to the decision to grant the patent did not mean that that department had discretion to refuse a request for oral proceedings dealing with such amendments. The examining division had to have regard to Art. 116(1) EPC 1973 when exercising its discretion under R. 86(3) EPC 1973 in case of amendments requested after the issue of a communication under R. 51(6) EPC 1973 (equivalent in substance to R. 71(3) EPC). The Enlarged Board of Appeal – which in G 7/93 (OJ 1994, 775) had given some guidance as to how an examining division should exercise such discretion – could not limit the application of Art. 116(1) EPC 1973 by means of such guidance.

#### 2.1.2 Right to oral proceedings even if no new arguments are presented

In T 383/87 the board pointed out that Art. 116(1) EPC 1973 guaranteed the right of any party to request oral proceedings, i.e. to argue its case orally before the relevant department of the EPO. A party might feel that it could present its case better orally than in writing, even if it had no new arguments. It was then its genuine right to request oral proceedings without being inhibited by the fear of having to pay additional costs, unless the request for oral proceedings was a clear abuse of the law. See also T 125/89, T 318/91, T 1051/92, T 6/98. However, the lack of introduction of new points in oral proceedings was an aspect considered in T 167/84 (OJ 1987, 369) for the board making an award on costs. On the apportionment of costs, see chapter III.R.2.2. "Acts or omissions prejudicing the timely and efficient conduct of oral proceedings".

#### 2.1.3 No right to telephone conversation

According to the established case law, the EPC foresees the absolute right to oral proceedings under Art. 116(1) EPC, but not the right to a telephone interview or an informal telephone consultation. This applies to the procedure before the examining division (see chapter IV.B.2.7. "Informal communications"), as well as to the proceedings before the boards of appeal (see decisions cited below).

A board is not required to contact the appellant by holding a telephone interview, for instance with the rapporteur, either after receipt of the response to the summons, or on the day of the oral proceedings (T 552/06, T 189/06, T 1984/07, T 578/14).

In T 263/07 the appellant had requested that the rapporteur of the board telephone the appellant's representative to discuss the case so that the oral proceedings could possibly be cancelled. The board held that it was important that the same case was presented to all the board's members. For one of the board's members to be privy to evidence or arguments not available to the other members would be a breach of the principle of