

(see for example T. 946/96). Similarly, in T. 996/12 the board held that, unlike the situation in which an applicant submitted one or more auxiliary requests, submitting a new main request automatically leads to the replacement of any previous main request(s). By basing its decision explicitly on an earlier set of claims, the examining division decided upon a text to which the appellant (no longer) agreed.

In T. 1227/14 the appellant (patent proprietor) submitted that, contrary to what was indicated in the minutes of the oral proceedings, it had not delegated the adaptation of the description to the opposition division. It had instead requested a return to written proceedings for the adaptation of the description, but that had been omitted from the minutes. In spite of this, it had not requested the correction of that omission by the opposition division. The opposition division, however, had issued the impugned interlocutory decision on the text in which the opposed patent could be maintained without first submitting that text – containing the division's adapted description – to the patent proprietor. It had thus violated the principle of the right to be heard laid down in Art. 113(2) EPC. Even and especially where adaptation of the description is delegated to an EPO department, there is no scope for releasing it from this obligation.

The board in T. 861/16 noted that there was no mention anywhere, in either the minutes or the decision, that the patent proprietor had approved the amended text. Nor had the respondent (opponent) offered any evidence that the patent proprietor had explicitly approved a text submitted before the opposition division's decision. The board held that since the principle of tacit acceptance (*qui tacet consentire videtur*) was not established in the EPC, it was not enough to ask the patent proprietor if it wished to comment on the amendments to the description carried out by the opposition division. The opposition division had to ensure that the patent proprietor had given its agreement. The board held that in the absence of the patent proprietor's approval of the version as maintained, the proceedings before the opposition division were vitiated by a substantial procedural violation (Art. 113(2) EPC).

In T. 536/13 the board held that the "decision according to the state of the file" evidently did not take into account the comments and amended application documents filed by the applicant (appellant) in response to the examining division's second communication. The board found that the decision consequently did not comply with the requirement of Art. 113(2) EPC. The board also found that the decision was not reasoned within the meaning of R. 111(2) EPC. In the absence of any reasoning in respect of the applicant's latest comments and amendments, the board and the appellant were left in doubt as to which of the previously-raised objections still applied. See also chapters III.B.2.4.4 "Failure to consider submissions made after a communication", III.K.3.5. "Decisions according to the state of the file".

In T. 1558/18, the opposition division's decision to terminate the opposition proceedings, with the result that the contested patent had been maintained unchanged, had been at direct odds with the appellant's request that the patent be maintained in an amended version. The contested decision thus infringed the fundamental procedural principle of "party disposition" enshrined in Art. 113(2) EPC.