

out that the legally qualified member had not simply forgotten to sign the decision but had not been involved in taking the decision which constituted a substantial procedural violation (see also T 990/06).

3. Text submitted or agreed by applicant (patent proprietor) – Article 113(2) EPC

3.1. General

Under Art. 113(2) EPC, the EPO may consider and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant for or proprietor of the patent. See also chapter IV.B.3.2.3 "Decisions with no text submitted or agreed by the applicant (Art. 113(2) EPC)".

When taking its decision a board of appeal (or department of first instance) has no authority to order the grant of a European patent containing claims which are different in their content or interdependency from those submitted by the applicant (T 32/82, OJ 1984, 354). Art. 113(2) EPC is a fundamental procedural principle, being part of the right to be heard, and is of such prime importance that any infringement of it, even as the result of a mistaken interpretation of a request, has, in principle, to be considered to be a substantial procedural violation (T 647/93, OJ 1995, 132; see also T 996/12, T 690/09, T 32/82 and J 19/84). In any case, such violation occurs when the examining division does not make use of the possibility of granting interlocutory revision under Art. 109 EPC after the mistake has been pointed out in the grounds of appeal (T 647/93).

According to the board in T 996/12, Art. 113(2) EPC guarantees the fundamental principle of party disposition (*ne ultra petita*; see also R 14/10).

Art. 113(2) EPC does not give any right to an applicant in the sense that the EPO is bound to consider a request for amendment put forward by the applicant. The effect of the provision is merely to forbid the EPO from considering and deciding upon any text of an application other than that submitted to it or agreed by the applicant or proprietor (G 7/93, OJ 1994, 775; see also chapter V.B.4.3.17 "Alleged violation of Article 113(2) EPC"). The board in T 1104/14 held that this had to be understood to refer only to the decision on whether to admit the (filed) request; it did not mean the boards had the power to refuse to permit the filing of a request or not to record or accept a request during oral proceedings. That would generally constitute a serious breach of the autonomy granted by Art. 113(2) EPC to the applicant or patent proprietor to determine the text of its patent ("principle of free party disposition").

In R 8/16 the Enlarged Board held that, as a matter of principle, the board was free to examine the (pending) claim requests in any order, and therefore it was also free to conduct the discussion on them in any order, without having to give reasons. It further stated that the principle of party disposition expressed in Art. 113(2) EPC did not extend so as to permit a party to dictate how and in which order a deciding body of the EPO may examine the subject-matter before it. The only obligation on the EPO was not to overlook any still pending request in the final decision. The order of examination or discussion is a