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1. Introduction

The right of parties to a fair trial is a generally recognised procedural principle under Art. 125 EPC (**T 669/90**), and is to be observed in all proceedings before the EPO (**R 2/14 of 17 February 2015**). The predictability and verifiability of all state actions are indispensable elements of the rule of law and respect for fundamental procedural rights (**G 3/08**, OJ 2011, 10). It is a fundamental right of the parties which has to be safeguarded, irrespective of the merits of the party's submissions. The necessity to respect it is absolute (**R 3/10**).

Under Art. 113(1) EPC the decisions of the EPO may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments. The right to be heard under Art. 113(1) EPC is a fundamental principle (**J 13/10**) and of fundamental importance for ensuring a fair procedure between the EPO and a party to proceedings before it (**J 20/85**, OJ 1987, 102; **G 4/92**, OJ 1994, 149). It is intended to ensure that no party is caught unawares by grounds and evidence in a decision turning down a request on which that party has not had the opportunity to comment (**R 2/14**). In inter partes proceedings Art. 113(1) EPC reflects the principle that each party should have a proper opportunity to reply to the case presented by an opposing party (**G 4/95**).

Under Art. 113(2) EPC the EPO shall examine 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. This is a fundamental procedural principle, being part of the right to be heard, such that any infringement of it, even as the result of a mistaken interpretation of a request, must, in principle, be considered to be a substantial procedural violation (**T 647/93**, OJ 1995, 132).

A violation of the right to be heard in first instance proceedings may constitute a fundamental deficiency under Art. 11 RPBA 2020 that justifies the remittal of the case to