

PART VI APPEALS PROCEDURE

CHAPTER I APPEALS PROCEDURE

Art.106 Decisions subject to appeal

Disciplinary Board of Appeal

Under the authority of R.12(6) and Art.134a(1)(c), the Administrative Council has also assigned Disciplinary power to the Disciplinary Board of Appeal, issuing D decisions.

Art.134a(1)	epi, QE, disciplinary power, confidentiality
R.12(6)	Allocation of disciplinary power on professional representatives to Boards of Appeal
OJ 1980, 176	Additional rules of procedure of the Disciplinary Committee of the EPI, the Disciplinary Board and the Disciplinary Board of Appeal of the EPO (page AR-108)
OJ 1980, 188	Additional rules of procedure of the Disciplinary Board of Appeal of the EPO (page AR-117)
OJ 1998, 211	Notice concerning decisions taken by the Disciplinary Board of Appeal (page AR-120)

Accelerated appeal proceedings

OJ 2008, 220: Appeal proceedings are speeded up on request of parties with a legitimate interest, the national court or a competent authority of the contracting state. Acceleration is for instance justified:

- where an infringement action is pending or envisaged,
- decisions of potential licensees hinge upon the final decision given priority
- if an accelerated opposition is the subject of appeal

Exceptionally, appeal proceedings may also be speeded up ex-officio, for example in view of disadvantages which could ensue from the suspensive effect of the appeal

OJ 2008, 220 Accelerated proceedings before the boards of appeal (refer Annex B)

Sources of information on published decisions of a Board

The following sources provide information on decisions which have been published in 'full' by the EPO:

- EPO CD ROM Espace Legal
- Index of published decisions of Boards of Appeal (published twice a year in the OJEPO)
- The book Case Law of the Boards of Appeal of the European Patent Office, published by the EPO
- The web site of the EPO (www.epo.org)

Transitional provisions

J 10/07 r.1.2	Art.106 and 108 EPC 1973 apply to appeals relating to European patent applications pending at the time of their entry into force [reflects the intention and purpose of the transitional provisions, although they state that EPC2000 applies]
J 10/07 r.1.3	If the examination is governed by the Articles of the EPC 1973, the same also applies to the provisions of the EPC Implementing Regulations

Miscellaneous references

Art.21	Boards of Appeal
Art.23(3)	Binding of members of the Boards by provisions EPC not by instructions
Art.104	Costs
Art.112a	Petition for review by the Enlarged Board of Appeal
R.88	Costs
R.97	Appeal against apportionment and fixing of costs
R.98	Surrender or lapse of the patent
R.101	Rejection of the appeal as inadmissible
R.111	Form of decisions
R.142	Interruption of proceedings
T 162/82 1	Examining Division may depart from Guidelines; Board only checks conformity with EPC
OJ 2007, 303	Rules of procedure of the Enlarged Board of Appeal (consolidated)
OJ 2007, 536	Amendments to the Rules of Procedure of the Boards of Appeal of the EPO (page Annex B, 14)
C-VI 7.6	Refusal (page C-VI-22)
E-X 8.	Information as to means of redress (page E-X-6)

Art.106(1) Appeal from decisions Receiving Section, Examining, Opposition and Legal Division; suspensive effect

An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.

Decision - what is a decision

- R.111 Form of decisions
 J 8/81 I Whether document is decision depends on contents, not on form
 J 2/93 Letter from EPO Vice President not subject to appeal when evidently no decision from Art.21(1) instance

A communication by a formalities officer noting a loss of rights under R.112(1) is not a decision. Person concerned should apply for a decision under R.112(2) within 2 months. Such a decision is only given if the department does not share the opinion of the person requesting it. Reasons for decision must be stated. Appeal is possible. Only the person affected by the loss of rights will be party to the proceedings (E-VIII 1.9)

- E-VIII 1.9.1 Cases of loss of rights (page E-VIII-4)
 E-VIII 1.9.2 Noting and communication of loss of rights (page E-VIII-4)
 E-VIII 1.9.3 Decision on loss of rights (page E-VIII-4)

Decision - which decision may be appealed

Appeal from a decision of a Board of Appeal is not possible. The Enlarged Board of Appeal is not a second instance, but ensures uniform application of the law or deals with an important point of law (Art.112(1)). Review under Art.112a is possible on limited grounds.

- Art.106(2) Appeal against (interlocutory) decision not terminating proceedings
 Art.106(3) Appeal against apportionment of costs in opposition proceedings
 Art.107 Persons entitled to appeal and to be parties to appeal proceedings
 R.97(1) Appeal against apportionment of cost
 R.97(2) Appeal against fixing of costs
 R.98 Surrender or lapse of the patent
 G 1/97 I Request based on alleged procedural violation by board of appeal aimed at revision of the decision of the board must be refused as inadmissible
 G 1/97 II Decision on inadmissibility is to be issued by board of appeal which took the decision. Immediate decision without further procedural formalities allowed.
 G 5/91 2 No separate appeal against order relating to impartiality in first instance
 J 15/91 I Board of Appeal not competent to examine appeal on decision of EPO as IPEA even if EPO acted as receiving Office (protest is possible)
 J 15/91 II No comment on competence of Board for appeals on decision of EPO as receiving Office

Suspensive effect

- J 28/94-2 Suspensive effect of appeal means that contested decision has no legal effect until appeal resolved; publication of grant shall be deferred
 J 28/03 Suspensive effect means that the consequences following from an appealed decision do not immediately occur after the decision has been taken. Actions normally taking place after a decision are "frozen". Suspensive effect does not have the meaning of cancellation of the appealed decision. Even after an appeal the decision as such remains and can only be set aside or confirmed by the Board of Appeal. The status of a divisional application filed while an appeal against the decision to grant a patent on the parent application is pending depends on the outcome of that appeal. Therefore, the department of first instance cannot decide on the question whether the divisional application has been validly filed until the decision of the Board of Appeal on the appeal is taken.
 J 28/03 r.9 An appeal against the decision to grant the patent as requested by the applicant cannot benefit from the particular suspensive effect of an appeal against a refusal of a patent application
 J 28/03 r.11 Only an appeal against a refusal of the patent application would enable a party to file a divisional application independently of the outcome of the appeal, in other words even if the refusal of the "parent application" would have been confirmed by the Board of Appeal the divisional application would have its own and independent examining procedure
 E-XI 1. Suspensive effect (page E-XI-1)

Miscellaneous

- T 42/84 2 No enclosure of Art.106-108 with decision does not invalidate decision and is no substantial procedural violation
 W 3/93 3 Review restricted to examine justification of non-unity objection in view of reasons in invitation (no ex officio investigation)
 A-IV 2.8 Refusal of the earlier application (page A-IV-8)

Art.106(2) Appeal against (interlocutory) decision not terminating proceedings

A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows a separate appeal.

- J 37/89 If a request for extension of a time limit filed in good time has been rejected under R.132(2) (R.84 EPC1973), the ensuing loss of rights can only be overcome by a request for further processing (Art.121). Reimbursement of the fee for further processing may be requested. This secondary request will have to be decided on in connection with the final

	decision. Under Article 106(3) EPC, the decision on the secondary request can be appealed together with the final decision. The appeal may also be confined to contesting the decision on the secondary request.
A-IV 2.2	Staying the proceedings for grant (page A-IV-6)
D-VI 7.2.2	Decision on the documents on the basis of which the patent is to be maintained (page D-VI-5)
E-VIII 1.6	Extension of a time limit (page E-VIII-2)
E-X 4.1	Written form of decisions - General remarks (page E-X-2)
E-X 6.	Decisions which do not terminate proceedings – interlocutory decisions (page E-X-5)

Art.106(3) Appeal against apportionment of costs in opposition proceedings
The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

Art.104(2)	Fixing of amount apportionment and review
Art.104(3)	Equivalence of final decision of EPO fixing amount of costs to decision national court
R.88(1)	Apportionment of costs; expenses covered
R.88(2)	Bill of costs and evidence
R.88(3)	Filing of request for decision on awarding costs; term and fee for awarding of costs
Rfees.2, Item 11	Fee for appeal
Rfees.13	Termination of financial obligations
T 154/90 1	Appeal inadmissible if apportionment remains as sole subject (no other, admissible requests left)
E-XI 3.	Appeals against the apportionment of costs (page E-XI-1)
E-XI 4.	Appeals against the decision of the Opposition Division on the fixing of costs (page E-XI-1)

R.97 Appeal against apportionment and fixing of costs

Art.104	Costs
R.88	Costs
R.101	Rejection of the appeal as inadmissible

R.97(1) Appeal against apportionment of cost

The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal.

Art.104(2)	Fixing of amount apportionment and review
R.88(2)	Bill of costs and evidence
R.88(1)	Apportionment of costs; expenses covered
T 154/90 1	Appeal inadmissible if apportionment remains as sole subject (no other, admissible requests left)
E-XI 3.	Appeals against the apportionment of costs (page E-XI-1)

R.97(2) Appeal against fixing of costs

A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount exceeds that of the fee for appeal.

Art.104(3)	Equivalence of final decision of EPO fixing amount of costs to decision national court
R.88(3)	Filing of request for decision on awarding costs; term and fee for awarding of costs
Rfees.2, Item 11	Fee for appeal
E-XI 4.	Appeals against the decision of the Opposition Division on the fixing of costs (page E-XI-1)

R.98 Surrender or lapse of the patent

The decision of an Opposition Division may be appealed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.

Art.67(4)	Retroactively loss of provisional protection
Art.68	Effect of revocation or limitation of the European patent
R.75	Surrender or lapse of the patent
Art.99(3)	Parties to proceeding: opponents and patent proprietor
E-XI 2.	Appeals after surrender or lapse of the patent (page E-XI-1)

Art.107 Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Related law

- R.101(1) Deficiencies in appeal which must be corrected before expiry of time limit for appeal
 R.111 Form of decisions

General appeal aspects

- G 1/88 Appeal possible after silence on R.82(1) (R.58(4) EPC1973) communication
 G 2/91 2 No re-imburement of appeal fees when several parties have paid them
 G 4/91 IV Intervention in appeal period has no effect if no appeal is filed
 G 1/94 Intervention admissible during pending appeal proceedings
 G 2/04 II If, when filing an appeal, there is a justifiable legal uncertainty as to how the law is to be interpreted in respect of the question of who the correct party to the proceedings is, it is legitimate that the appeal is filed in the name of the person whom the person acting considers, according to his interpretation, to be the correct party, and at the same time, as an auxiliary request, in the name of a different person who might, according to another possible interpretation, also be considered the correct party to the proceedings.
 T 473/98 II An opponent is not adversely affected by findings favourable to the proprietor included in a revocation decision nor is the proprietor as sole appellant protected against a reformatio in peius in respect of such findings.

Persons entitled to appeal - party, adverse affection

Article 107 EPC is concerned with those entitled to appeal and to be parties to appeal proceedings. It must be possible to determine these precisely and easily if the appeal process is not to be tangled up already at the outset in complicated investigations as to the relations between the original parties and later would-be parties and would-be appellants. This makes the only sensible interpretation of "party" in Article 107 EPC one limited to the parties of record in the first instance proceedings which led to the decision under appeal and their duly recorded successors (T 656/98, reason 1.1)

In ex-parte proceedings an appeal is not admissible in respect of an administrative decision dealing with a request of the sole party to the proceedings and fully allowing it for the reason that the requesting party is not thereby adversely affected. That is the case for any such decision (validly) taken by any department of the EPO entrusted with proceedings under the EPC, including Formalities Officers acting on behalf of an Examining Division (Rule 11(3) = Rule 9(3) EPC1973) and Notice of the Vice-President DG2.). (T 713/02)

- J 12/85 2 Adverse affection only if decision is not consistent with request
 T 73/88 3 No appeal of patentee against loss of priority if patent maintained
 T 459/88 1 Opponent's appeal admissible if solely based on proprietor's request for revocation
 T 156/90 Appeal of opponent accepting amended claims is inadmissible
 T 369/91 1 All parties may file an appeal after maintenance of patent in amended form

Persons entitled to appeal - transfer

- G 4/88 A pending opposition may be transferred or assigned as part of the opponent's business assets together with the assets in the interests of which the opposition was filed
 T 563/89 Selling of company prior to appeal also transfers right to lodge appeal
 T 298/97 I Appeal is inadmissible if notice is filed by adversely affected party but grounds are filed by different party (even if there is an economic relationship)
 T 298/97 III Commercial interest in revocation is not a requirement for opposition. Commercial interest not sufficient to allow transfer of opposition (must be transfer of related business assets)
 T 298/97 IV Transfer of business assets to two separate persons can only give one and only one the right to take over the opposition, upon providing of evidence
 T 9/00 A (legal) person can acquire party status only once (even if two valid notices are filed). The later opposition is inadmissible for lack of a general legitimate interest. Legitimate interest cannot be inferred from the fact that the later opposition is assigned to a part of a company that is being transferred. If the subject of an opposition is assigned to two different parts of a company, the status of opponent can pass to a third party only if both parts or the entire company are transferred to it
 T 656/98 For a transferee of a patent to be entitled to appeal, the necessary documents establishing the transfer, the transfer application and the transfer fee (R.22; R20 EPC1973) must be filed before the expiry of the period for appeal
 T 1178/04 The EPO must examine, ex officio, the status of the opponent at all stages including the validity of any purported transfer of the status of opponent. The doctrine of no reformatio in peius does not apply

Roles of parties to appeal, reformatio in peius

- G 2/91 1 A party of right has no independent right to continue the proceedings
 G 9/92 1 If proprietor is sole appellant, Board of Appeal and opponent may not challenge maintenance of amended patent
 G 9/92 2 If opponent is sole appellant, proprietor may only defend patent as maintained amended
 G 9/92 r.11 Party of right may only defend result obtained before department of first instance

- G 1/99 In principle, an amended claim, which would put the opponent and sole appellant in a worse situation than if it had not appealed, must be rejected. However, an exception to this principle may be made in order to meet an objection put forward by the opponent/appellant or the Board during the appeal proceedings, in circumstances where the patent as maintained in amended form would otherwise have to be revoked as a direct consequence of an inadmissible amendment held allowable by the Opposition Division in its interlocutory decision. In such circumstances, in order to overcome the deficiency, the patent proprietor/respondent may be allowed to file requests, as follows:
- in the first place, for an amendment introducing one or more originally disclosed features which limit the scope of the patent as maintained;
 - if such a limitation is not possible, for an amendment introducing one or more originally disclosed features which extend the scope of the patent as maintained, but within the limits of Article 123(3) EPC;
 - finally, if such amendments are not possible, for deletion of the inadmissible amendment, but within the limits of Article 123(3) EPC.
- G 10/93 Consideration of new ground or re-consideration of met ground allowed in grant appeal
- J 28/94-1 Applicant may challenge justification for suspension under R.14 (R.13 EPC 1973) if not heard; is party of right to appeal against third party's rejection of suspension request

Termination of appeal

- G 2/91 1 A party of right has no independent right to continue the proceedings
- G 7/91 No continuation of appeal after withdrawal of sole opponent/appellant
- G 8/91 Appeal proceedings ex and inter partes terminated if sole appellant withdraws
- G 3/04 After withdrawal of the sole appeal, the proceedings may not be continued for a third party who intervened during the appeal proceedings
- T 789/89 Respondent to appeal who withdraws opposition ceases to be party; status with respect to apportionment unaffected
- T 517/97 I Withdrawal of appeal is effective from moment of receipt of notice
- T 517/97 II Chronological order of notices of withdrawal of appeal and of intervention filed by fax must be taken into account

Guidelines, regulations

- OJ 2007, 303 Rules of procedure of the Enlarged Board of Appeal (consolidated)
- OJ 2007, 536 Amendments to the Rules of Procedure of the Boards of Appeal of the EPO (page Annex B, 14)
- C-VI 7.6 Refusal (page C-VI-22)
- D-VII 7. Intervention of the assumed infringer (page D-VII-5)
- E-X 8. Information as to means of redress (page E-X-6)
- E-XI 5. Persons entitled to appeal and to be parties to appeal (page E-XI-1)

Art.108 Time limit and form of appeal

Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within two months of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid. Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.

Related law

- Art.122(1) Re-establishment for loss of right in spite of all due care
- R.3 Language in written proceedings
- R.99 Content of the notice of appeal and the statement of grounds
- R.99(1) Content of the notice of appeal
- R.101 Rejection of the appeal as inadmissible
- R.111(1) Decision in oral proceedings may be given orally followed by written notification
- R.111(2) Decisions open to appeal must be reasoned and indicate possibility of appeal

General appeal aspects, admissibility

- G 2/91 2 No re-imbusement of appeal fees when several parties have paid them
- G 6/91 2 Essential item of the first act in appeal proceedings is the notice of appeal
- G 3/99 II Appeal by opposing party of a plurality of persons must be filed by common representative; if not, appeal considered not signed and common representative will be invited to sign
- G 3/99 III For a joint opposition or joint appeal it has to be clear throughout the procedure who belongs to the group
- G 1/99 In principle, an amended claim, which would put the opponent and sole appellant in a worse situation than if it had not appealed, must be rejected. However, an exception to this principle

may be made in order to meet an objection put forward by the opponent/appellant or the Board during the appeal proceedings, in circumstances where the patent as maintained in amended form would otherwise have to be revoked as a direct consequence of an inadmissible amendment held allowable by the Opposition Division in its interlocutory decision. In such circumstances, in order to overcome the deficiency, the patent proprietor/respondent may be allowed to file requests, as follows:

- in the first place, for an amendment introducing one or more originally disclosed features which limit the scope of the patent as maintained;
- if such a limitation is not possible, for an amendment introducing one or more originally disclosed features which extend the scope of the patent as maintained, but within the limits of Article 123(3) EPC;
- finally, if such amendments are not possible, for deletion of the inadmissible amendment, but within the limits of Article 123(3) EPC.

- G 2/04 II If, when filing an appeal, there is a justifiable legal uncertainty as to how the law is to be interpreted in respect of the question of who the correct party to the proceedings is, it is legitimate that the appeal is filed in the name of the person whom the person acting considers, according to his interpretation, to be the correct party, and at the same time, as an auxiliary request, in the name of a different person who might, according to another possible interpretation, also be considered the correct party to the proceedings.
- J 19/82 Partial withdrawal of appeal is possible
- J 16/94 Appeal filed as subsidiary request is inadmissible
- T 13/82 I Appeal inadmissible if no Statement of Grounds filed
- T 153/85 1 Alternative claims to be filed with grounds of appeal or as soon as possible thereafter
- T 389/86 An appeal may be filed before notification of the appealed decision
- T 105/87 Appeal may be based on amended claims which are not consistent with reasoning of decision
- T 22/88 Statement that appellant will complete omitted act is not sufficient
- T 459/88 1 Opponent's appeal admissible if solely based on proprietor's request for revocation
- T 501/92 2 Procedural request to first instance not effective in appeal, must be repeated
- T 460/95 A notice of appeal is inadmissible if it does not contain an explicit and unequivocal statement of intention to appeal
- T 298/97 I Appeal is inadmissible if notice is filed by adversely affected party but grounds are filed by different party (even if there is an economic relationship)
- T 298/97 III Commercial interest in revocation is not a requirement for opposition. Commercial interest not sufficient to allow transfer of opposition (must be transfer of related business assets)
- T 298/97 IV Transfer of business assets to two separate persons can only give one and only one the right to take over the opposition, upon providing of evidence
- T 656/98 For a transferee of a patent to be entitled to appeal, the necessary documents establishing the transfer, the transfer application and the transfer fee (R.22; R20 EPC1973) must be filed before the expiry of the period for appeal

Time limit

- G 1/86 Re-establishment in 4-month time limit for opponent as appellant
- T 210/89 1 No re-establishment for opponent missing 2-month time limit for filing appeal (no reliance on equality before the law)

Appeal fee

- Note Reductions if essential item (G6/91) filed in an official language of a Contracting State and a translation in the language of proceedings is also filed (A-XI 9.2.1). For appeal fee, the essential item is the notice of appeal (independent of language of statement of grounds) (G 6/91, A-XI 9.2.5)
- R.6(3) Reduction in filing fee, examination fee, opposition fee or appeal fee
- Rfees.2, Item 11 Fee for appeal
- Rfees.14(1) Reduction of fees laid down in R.6(3)
- G 2/97 Good faith principle does not oblige to notify missing appeal fee if no indication that time limit would be missed
- J 21/80 Repayment of appeal fee if appeal deemed not to have been filed
- J 16/82 II Automatic reimbursement if an appeal is deemed not to have been filed
- J 12/86 No reimbursement if appeal withdrawn before expiry of period for filing grounds
- T 13/82 III No refund of appeal fee when statement of grounds filed late
- T 41/82 r.1 Reimbursement of appeal fee if notice of appeal deemed not filed
- T 89/84 I No reimbursement of appeal fee for inadmissible appeal (Statement of Grounds deliberately not filed)
- T 778/00 I Merely sending the EPO a debit order for the appeal fee constitutes no valid means of filing the appeal

Grounds, material content of appeal

OJ 2007, 536 Rules of Procedure of the Boards of Appeal Art.12(1): Appeal proceedings shall be based on:

- (a) the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC;
- (b) in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal;
- (c) any communication sent by the Board and any answer thereto filed pursuant to directions of the Board.

Art.12(2): The statement of grounds of appeal and the reply shall contain a party's complete case. They shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on. All documents referred to shall be

- (a) attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;
- (b) filed in any event to the extent that the Board so directs in a particular case

Art.12(3) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit in (1)(b)

Art.12(4) Without prejudice to the power of the Board to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings, everything presented by the parties under (1) shall be taken into account by the Board if and to the extent it relates to the case under appeal and meets the requirements in (2)

Art.12(5) Extension of time limits may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request.

- G 9/91 Opposition (and opposition appeal) limited by extent indicated in notice of opposition; claim dependent on fallen claim may be examined if validity prima facie in doubt
- G 10/91 1 Opposition grounds not covered by notice of opposition need not be considered in opposition or appeal
- G 10/91 2 Only properly submitted and substantiated grounds of opposition must be considered in opposition; exceptionally prima facie relevant grounds under Art.114(1)
- G 10/91 3 Fresh grounds of opposition in appeal only with consent of proprietor
- G 10/93 Consideration of new ground or re-consideration of met ground allowed in grant appeal
- G 1/94 r.13 Case remitted to Opposition Division if intervener raises new grounds in opposition appeal
- G 1/95 Novelty, inventive step and Art.52(2) unpatentability are separate grounds
- G 1/95 r.4.2 Grounds of Art.100(b) and (c) are separate grounds
- G 1/95 r.4.3 Art.52 to 57 define specific requirements "invention", "novelty", "inventive step" and "industrial application" and therefore form separate grounds for opposition
- G 7/95 Inventive step and novelty are separate grounds. Lack of inventive step allows assessment of novelty in view of closest prior art
- J 2/87 1 If circumstances have changed, Art.108 is met if rectification requested on grounds that conditions were now fulfilled
- T 220/83 Grounds must give legal or factual reasons, not only general terms
- T 213/85 Grounds of appeal must dispute grounds of contested decision (opposition was dismissed on the grounds of insufficient substantiation and the grounds for appeal merely disputed patentability without elaborating on the admissibility of the opposition, the appeal was inadmissible for lack of adequate substantiation)
- T 611/90 Appeal entirely based on new reasons and not discussing reasons of decision is admissible if within same opposition ground
- T 986/93 Board of Appeal may consider late-filed ground, erroneously disregarded by Opposition Division
- T 274/95 II Substantiated, but not maintained opposition ground may be reintroduced in appeal without proprietor's agreement, under the board's discretion (not a fresh ground of G 10/91).
- T 1007/95 An appeal unconnected with the reasons of the appealed decision and directed to a new opposition ground based on a new document is inadmissible
- T 131/01 Lack of inventive step is not a fresh ground for opposition if a patent has been opposed on the grounds of lack of novelty and inventive step having regard to a prior art document, and only the ground of lack of novelty has been substantiated pursuant to R.76(2)(c) (R55(c) EPC1973)

New matter, documents, evidence - late filed

- G 10/93 Consideration of new ground or re-consideration of met ground allowed in grant appeal
- T 94/84 Parties have right to be heard; subsequent translation into official EPO language of document cited during opposition period must be allowed (R.3(3)) (R.1(3) EPC1973)
- T 406/86 The Opposition Division and Board of Appeal have a discretion to allow amendments in opposition appeal, and may refuse them if filed at a late stage, or if neither appropriate nor necessary
- T 295/87 Board of opposition and appeal have duty to refuse observation/supporting documents if not necessary nor expedient

T 328/87 1	Facts, evidence and arguments of prior use may be filed after opposition period
T 185/88	Opposition supported by document published after filing/priority date but referring to prior publication
T 198/88 1	Document used in grant procedure not automatically examined in opposition
T 536/88 II	Closest or important prior art cited in patent forms part of opposition proceedings
T 387/89 1	Documents cited in search report need not be examined on own motion in opposition
T 387/89 2	Documents cited in search report may be introduced in opposition if relevant
T 516/89	Non-R.144 (R.93 EPC1973) papers marked 'confidential' are returned
T 17/91	Assertion of public prior use by opponent himself and submitted after the expiry of the opposition without good reasons for the delay disregarded under Article 114(2) EPC irrespective of its potential relevance
T 1002/92 1	New matter in opposition exceptionally admitted if prima facie prejudicial to maintenance
T 501/94 II	Closest or important prior art of citation not part of the opposition (or appeal) proceedings

Guidelines, regulations

OJ 2007, 303	Rules of procedure of the Enlarged Board of Appeal (consolidated)
OJ 2007, 536	Amendments to the Rules of Procedure of the Boards of Appeal of the EPO (page Annex B, 14)
C-VI 7.6	Refusal (page C-VI-22)
E-VIII 2.2.2	Extension of re-establishment of rights to opponents (page E-VIII-5)
E-X 8.	Information as to means of redress (page E-X-6)
E-XI 6.	Time limit and form of (page E-XI-1)

R.99 Content of the notice of appeal and the statement of grounds

Art.108	Time limit and form of appeal
R.101	Rejection of the appeal as inadmissible
J 2/87 1	If circumstances have changed, Art.108 is met if rectification requested on grounds that conditions were now fulfilled
J 16/94	Appeal filed as subsidiary request is inadmissible
T 7/81	Extent of appeal sufficiently identified if lodged against decision refusing application
T 220/83	Grounds must give legal or factual reasons, not only general terms
T 213/85	Grounds of appeal must dispute grounds of contested decision (opposition was dismissed on the grounds of insufficient substantiation and the grounds for appeal merely disputed patentability without elaborating on the admissibility of the opposition, the appeal was inadmissible for lack of adequate substantiation)
T 22/88	Statement that appellant will complete omitted act is not sufficient
T 611/90	Appeal entirely based on new reasons and not discussing reasons of decision is admissible if within same opposition ground
T 501/92 2	Procedural request to first instance not effective in appeal, must be repeated
T 501/92 3	Extent in notice of opposition defines legal framework of appeal
T 460/95	A notice of appeal is inadmissible if it does not contain an explicit and unequivocal statement of intention to appeal
T 97/98	Correction of the name of the appellant to substitute a natural or legal person other than the one indicated in the appeal allowable, if it was the true intention to file the appeal in the name of said person and if it could be derived from the information in the appeal, if necessary with the help of other information on file, with a sufficient degree of probability that the appeal should have been filed in the name of that person

R.99(1) Content of the notice of appeal

The notice of appeal shall contain:

(a) the name and the address of the appellant as provided in Rule 41, paragraph 2(c);

(b) an indication of the decision impugned; and

(c) a request defining the subject of the appeal.

Art.108	Time limit and form of appeal
R.101	Rejection of the appeal as inadmissible
J 2/87 1	If circumstances have changed, Art.108 is met if rectification requested on grounds that conditions were now fulfilled
J 16/94	Appeal filed as subsidiary request is inadmissible
T 7/81	Extent of appeal sufficiently identified if lodged against decision refusing application
T 220/83	Grounds must give legal or factual reasons, not only general terms
T 213/85	Grounds of appeal must dispute grounds of contested decision (opposition was dismissed on the grounds of insufficient substantiation and the grounds for appeal merely disputed

	patentability without elaborating on the admissibility of the opposition, the appeal was inadmissible for lack of adequate substantiation)
T 22/88	Statement that appellant will complete omitted act is not sufficient
T 611/90	Appeal entirely based on new reasons and not discussing reasons of decision is admissible if within same opposition ground
T 501/92 2	Procedural request to first instance not effective in appeal, must be repeated
T 501/92 3	Extent in notice of opposition defines legal framework of appeal
T 460/95	A notice of appeal is inadmissible if it does not contain an explicit and unequivocal statement of intention to appeal
T 97/98	Correction of the name of the appellant to substitute a natural or legal person other than the one indicated in the appeal allowable, if it was the true intention to file the appeal in the name of said person and if it could be derived from the information in the appeal, if necessary with the help of other information on file, with a sufficient degree of probability that the appeal should have been filed in the name of that person

R.99(2) Content of the statement of grounds

In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based.

R.99(3) Rules Part III applies

Part III of the Implementing Regulations shall apply mutatis mutandis to the notice of appeal, the statement of grounds and the documents filed in appeal proceedings.

Art.109 Interlocutory revision

R.103	Reimbursement of appeal fees
R.103(1)	Conditions for reimbursement of the appeal fee
R.103(2)	Department deciding on reimbursement
OJ 2007, 303	Rules of procedure of the Enlarged Board of Appeal (consolidated)
OJ 2007, 536	Amendments to the Rules of Procedure of the Boards of Appeal of the EPO (page Annex B, 14)
C-VI 2.4	Re-examination, refusal, appeal, interlocutory revision (page C-VI-4)
E-XI 1.	Suspensive effect (page E-XI-1)
E-XI 7.	Interlocutory revision (page E-XI-2)

Art.109(1) Rectification by department whose decision is contested

If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

J 32/95 I	The department who performs an interlocutory revision has no power to refuse a requested reimbursement of the appeal fee
J 32/95 II	Only the board of appeal can refuse a reimbursement of appeal fee
J 32/95 III	A department, who intends to perform an interlocutory revision, and who considers the requirements for reimbursement not fulfilled must remit the request for reimbursement to the board
T 63/86 3	Rectification of decision under Art.109 irrelevant to exercise of discretion under (R.137(3) R.86(3) EPC1973)
T 139/87	Appeal is well-founded if the main request included amendments which clearly met the objections
T 79/91	Only reimbursement of appeal fee following interlocutory revision if substantial procedural violation

Art.109(2) Remittance to Board of Appeal if not allowed within three month

If the appeal is not allowed within three months of receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

T 473/91	Only Board of Appeal competent in re-establishment in appeal time limit
T 898/96	Remission to Board of Appeal whereas interlocutory revision was possible is a procedural violation, but does not result in a refund
T 939/95	If further separate issues - such as reimbursement of the appeal fee - arise out of the appeal, a separate decision on rectification must be taken before the end of the one month time period
T 939/95 r.3.3	Decision to rectify taken out of term only under exceptional circumstances not to be declared null and void ab initio