A decision refusing a request for correction is appealable (see e.g. **T850/95b** and **T1093/05**).

The correction of the decision under **R.140** has a retrospective effect; hence, cancellation of the incorrect decision and issue of a new one is unnecessary and inappropriate; moreover, a body cannot cancel a decision it has issued. The body will issue a further decision giving the ground of correction or refusing the correction. (**T212/88** r.1)

Case **G1/10**, pending as a referral from **T1145/09**, is to decide whether the absence of a time limit in **R.140** makes a request for correction of the grant decision during opposition proceedings admissible and whether the opposition division can examine the correction decision on allowability of the amendment.

2 Corrigible errors

According to **R.140**, the correction may relate only to linguistic errors, errors of transcription and obvious mistakes. For reasons of legal certainty of third parties the error must be obvious, i.e. it must be clear not only that the deciding body did not intend to decide as appears from the decision, but also in what form it did intend to decide. The intended decision can usually be derived from the file of the case. (**T1093/05** r.7)

Examples of obvious errors are a published patent specification where a part of the text of the granted application has fallen away or where a wrong set of claims has been attached to the description, or a mistake in signing the decision (see for the latter **T212/88** r.1). See also the notes to **Art.98.**

In **T965/98** the board allowed a correction under **R.139** of an obvious error in claims submitted during oral proceedings, the request for correction being filed during the preparation of the written reasons. The decision of the board given during the oral proceedings was amended under **R.140** to take into account the correction.

It should be noted that a correction of a decision under **R.140** is a remedy directed only against the form in which a decision is expressed, whereas an appeal against a decision under **Art.106** is directed against the substance of the decision (**T1093/05** r.10). An error in the substance of the decision or in a procedural principle cannot be corrected under **R.140** (**G1/97** r.2(c)). If the decision to be corrected has been given in first instance, a correction in substance can be requested in an appeal according to **Art.106,** in as far as the decision does not meet the request of the appellant (**Art.107**).

Chapter VII *Information on prior art*

R. 141 Information on prior art

Amended by decision of the Administrative Council of 28.10.2009, which entered into force on 01.01.2011. Amended **R.141** applies to all European applications and international applications filed on or after 01.01.2011. (OJ 2009, 585)

Implementation of: **Art.124(1)**
EPC 1973: **Art.124(1)**

1 Transitional provision

For applications filed before 01.01.2011, **R.141** as in force before 01.01.2011 continues to apply:

The European Patent Office may invite the applicant to provide, within a period to be specified, information on prior art taken into consideration in the examination of

national or regional patent applications and concerning an invention to which the European patent application relates.

The practice for applications filed before 01.01.2011 as set out in the previous version of **R.141** will continue for applications filed on or after 01.01.2011 as set out in **R.141(3)** below. The EPO will request search results of priority applications only for European applications, including divisional applications, and international applications filed on or after 01.01.2011. (OJ 2009, 585)

R. 141(1) An applicant claiming priority within the meaning of Article 87 shall file a copy of the results of any search carried out by the authority with which the previous application was filed together with the European patent application, in the case of a Euro-PCT application on entry into the European phase, or without delay after such results have been made available to him.

Art.87 Priority right

1 Prior art information of priority application

Any applicant claiming priority must file a copy of any search results of the priority application and prepared by or for the patent office with which the priority application was filed (**R.141(1)**). Where multiple priorities are claimed, the obligation applies to all priority applications. The priority application may be a patent application, a utility model or a utility certificate, as allowed by **Art.87**. If priority of an international application is claimed, the search result is the international search report.

The copy must be a copy of an official document issued by the patent office. A translation of documents not drawn up in an EPO language is not required. Copies of documents cited in the search results need not be provided. (Not. EPO OJ 2010, 410 §2.1)

2 Procedure

The copy of the search results must be filed together with the direct European application or on regional entry of a Euro-PCT application. If not available at the date of filing or the date of national entry, the applicant must supply the copy immediately after he has received the search results (**R.141(1)**). The EPO prefers to receive the copy before drawing up the European search report, although a more independent search can be expected if the copy is submitted after the EPO has drawn up its search report. The obligation to submit exists as long as the application is pending.

The applicant need not submit search results if they are available to the EPO. In that case the EPO will include a copy in the file (**R.141(2)**).

When the EPO notes at the start of the substantive examination that no copy of the search results has been filed and that the copy is not deemed to be filed under **R.141(2)**, it will send the applicant an invitation under **R.70b** to file within two months the copy or a statement that the copy is not available, e.g. where the search results are not yet available to the applicant or where no search has been carried out on the priority application.

If the applicant states in response to the **R.70b** invitation that the copy is not yet available, the EPO may invite the applicant again later on under **R.141(3)** to file it. Within two months the applicant should respond by providing the copy or statement.

The EPO will always issue a **R.70b** invitation for a divisional claiming priority if no copy or statement has been provided on filing the divisional. If all relevant search results have already been filed for the parent, the applicant need not respond to the invitation. If the applicant has filed a state-