

comprehensible to the board, it must provide the translation used in the examination proceedings of at least the relevant sections of the document (or even of the whole document, if this is necessary for its overall understanding) into an official language of the EPO. Otherwise, the board is unable to examine the reasons for the decision, and in certain cases even whether the decision was justified or not, which amounts to a violation of the legal requirement for reasoned decisions under R. 111(2) EPC.

In T. 1787/16 the board decided that there was only very limited room for using a language other than the language of the proceedings in the decision, namely only in so far as answering questions of fact or evidence and points of law relevant to the proceedings demanded it. According to Art. 125 EPC, in the absence of procedural provisions in the EPC, the principles of procedural law generally recognised in the contracting states of the European Patent Organisation were to be taken into account. This applied in particular to the general legal principle of a fair trial, which was also enshrined in, for example, Art. 6(1) ECHR and which served as a general guiding standard for the organisation of proceedings. It also included a requirement to draft the decision in such a way that it could be understood by a party with a command of the language of the proceedings.

In T. 1840/13 the board held that including additional reasoning into the proceedings, to which the applicant had not had the opportunity to react constituted a violation of his right to be heard. Furthermore, these new arguments still did not provide a comprehensible reasoning according to the board, resulting in a substantial procedural violation.

In T. 1929/12 the board found that a decision was fundamentally flawed if it did not indicate the features or combination of features in the claims in question that were considered to extend beyond the content of the originally filed application (Art. 123(2) EPC). However, it decided against remitting the case in hand because the opposition division would probably take the same decision again, albeit with better reasoning.

In T. 1351/12 the examining division had not appreciated that the main request was different from the auxiliary request. The reasoning of the examining division or parts of it might have been envisaged to also apply to the main request, however it could not be inferred from the decision whether this was the case and, if so, which arguments would apply correspondingly.

In T. 1029/16 the Examining Division's reasoning of the decision in respect of the main request seemed to be copied from the summons to oral proceedings. The only three paragraphs concerning the main request which had not been directly copied appeared to be a paraphrased version of what had been said in the summons. In its written submissions, the applicant had already replied to the arguments raised in the summons. Furthermore, it was clear that the decision had very little in common with what had actually been discussed at the oral proceedings. The board held that while the reasons of a decision may, in the interest of procedural economy, refer in appropriate cases to previous communications, it must be clear from the decision which considerations led the Division to its conclusions. The fact that preliminary opinions or arguments which may be applicable to these requests have been expressed in previous communications or in the minutes of oral proceedings cannot replace reasons in the decision itself. Hence, the Examining