

In T.798/95 the board held that a request for amendment filed after the completion of the proceedings up to grant before an examining division was to be disregarded even if the filing of the request and the completion of the proceedings occurred on the same date.

2.3. Date European patent takes effect and jurisdiction after pendency

Under Art. 97(3) EPC the decision to grant a European patent takes effect on the date on which the mention of the grant is published in the European Patent Bulletin (see also chapter IV.B.3.10. "Entry into force of a decision to grant a European patent"). A request under R.139 EPC for amendments to the description or claims can only be filed during the pendency of application or opposition proceedings. In J.42/92 the board held that there was no reason why, once no application or opposition proceedings were pending before the EPO, decisions on the question of corrections should not fall within the sole jurisdiction of the national courts or other authorities responsible for proceedings in which this question might arise (see also T.777/97).

3. Form of decisions

R.111 EPC governs the form of decisions issued by the EPO. It must first of all be established whether a "decision" – as distinct from e.g. notices and communications (see in this chapter III.K.3.1.) – has in fact been taken. Decisions are to be put in writing – even those that have been announced at oral proceedings – and accompanied by a communication pointing out the possibility of appeal (see in this chapter III.K.3.2.). R.113 EPC also stipulates that a signature is required, although this may be replaced by a seal in the case of computer-generated decisions (see in this chapter III.K.3.3.). Under R.111(2) EPC, appealable decisions must be reasoned (see in this chapter III.K.3.4.). Decisions must also be notified to the parties (see chapter III.S.).

3.1. When is there a decision?

On when a decision is open to appeal before the boards, see chapter V.A.2.2.2 "Decisions".

Determining whether there is a decision depends on the **substance** of the document content and not its **form** (J.8/81, OJ 1982, 10; J.26/87, OJ 1989, 329; J.43/92; T.222/85, OJ 1988, 128, T.713/02; J.14/07 and T.165/07). The criterion of substance has to be assessed in its procedural context (see T.713/02, OJ 2006, 267). The decisive question was whether the document at issue, when objectively interpreted in its context, could have been understood by its addressees as a final, i.e. not merely preliminary, and binding determination of substantive or procedural issues by the competent organ of the EPO (T.165/07). A decision of the EPO may be, but ought not to be, given in a document which in form appears to be merely a communication (J.8/81, OJ 1982, 10).

In T.1093/05 (OJ 2008, 430) the board expressly deviated from the view held in T.971/06 that a flawed decision was void. A flawed decision could be set aside only following an admissible and allowable appeal (as in G.12/91, OJ 1994, 285; G.4/91, OJ 1993, 707; T.371/92, OJ 1995, 324; T.1081/02; T.830/03; T.222/85).