

proceedings up to the first decision, it did not contain any direct reference to the important issues of dispute raised in the first statement of grounds of appeal and failed to comment upon the other issues of dispute. It thus did not meet the requirements of R. 68(2) EPC 1973.

e) Dealing with issues that go beyond the decision itself

In T. 473/98 (OJ 2001, 231) the board held that it is entirely appropriate and desirable in the interests of overall procedural efficiency and effectiveness that an opposition division should include in the reasons for a revocation decision pursuant to Art. 102(1) EPC 1973 employing the standard decision formula, by way of obiter dicta, findings which could obviate remittal in the event of the revocation being reversed on appeal. By contrast, the board in T. 615/95 decided that an examining division's decision should not normally be supplemented by annexes dealing with issues having no relation to the issues dealt with in the reasons for this decision.

3.5. Decisions according to the state of the file

3.5.1 Request for decision "according to the state of the file"

Applicants may request a decision "according to the state of the file" or based "on the file as it stands" during examination proceedings, e.g. when their arguments have already been sufficiently put forward and they are interested in a speedy appealable decision. In such a case, a decision can be issued by way of a standard form (EPO Form 2061), simply referring to a previous communication (see Guidelines C-V, 15 – March 2022 version).

The Guidelines (C-V, 15.2 – March 2022 version) explain that a standard form referring to a previous communication (EPO Form 2061) can be used only where the previous communication properly identifies the application documents on file, is well reasoned and complete with respect to the grounds and the reasons for refusing the currently pending request and addresses all the arguments raised by the applicant. A further condition is that the applicant has submitted no new arguments or amendments since the previous communication.

According to the boards' case law, a standard form may be used to issue a decision only if all the arguments put forward have already been sufficiently addressed in one or more previous communications and, moreover, no new objections have been raised since those communications were transmitted (T. 1093/13, T. 2364/09).

3.5.2 No absolute right to a decision issued by way of EPO Form 2061

In T. 62/13 the board observed that a decision to refuse based on the file as it stands could be issued either by way of a form (EPO Form 2061) referring to an earlier communication, or alternatively by way of a fully reasoned decision. In T. 1360/05 the board stated that the examining division is not obliged to restrict itself to a decision by reference using the standard form when the necessary reasons in relation to the latest filed claims have not been formulated in any document on file.