

In T.655/13 the board held that the examining division would need to provide the translation of at least the referenced larger section of document D1 on which it based its reasoning, or identify the relevant passage as clearly as possible, to enable the appellants (and if necessary the board) to understand and verify whether the examining division had taken their arguments into account, thereby respecting their right to be heard.

In T.1385/16 there was no discussion in the decision under appeal of the appellant's submissions made in letters of 12 December 2012 and 17 August 2012 regarding application of the Guidelines H-V, 3.2.1 and H-V, 3.1 at that time, which it regarded as being relevant to the question of assessing whether the amendment constituted an unallowable intermediate generalisation. Indeed the board held that there did not appear to have been any adequate discussion of these submissions at any point during the examination procedure. Since the examining division had failed to address fundamental submissions made by the appellant in the decision under appeal, the board found that a substantial procedural violation had occurred.

In T.1230/15 the board found that the appellant's (opponent's) apparent understanding that there existed an absolute right to present all possible inventive-step attacks orally before the opposition division – and that anything else constituted a violation of the right to be heard – was in fundamental contradiction to the problem and solution approach as applied by the departments of the EPO for assessing inventive step. That the discussion to establish the (single) closest prior art had not taken place with the necessary clarity of purpose, or may have even been omitted, was, on its own, not sufficient for the board to decide that a violation of the right to be heard had occurred, let alone a substantial one.

2.4.3 No obligation to address each and every argument

Provided that the reasons given enable the parties concerned to understand whether the decision was justified or not, the deciding organ is under no obligation to address each and every argument presented by the party concerned (see chapter V.B.4.3.10 "Consideration of the parties' arguments in the written decision"; see also T.1898/11 and T.1557/07 quoted in T.1969/07, T.698/10, T.1199/10 and T.1961/13). Moreover, a party has no absolute right to be heard separately on each and every one of its auxiliary requests (see also chapter V.B.4.3.12 "No right to be heard separately on all requests").

2.4.4 Failure to consider submissions made after a communication

In T.1709/06 it was held that, not only must an opportunity to present comments be given, but these comments must actually be taken into account (see also in this chapter III.B.2.4.2). The decision "on the state of the file" expressly stated that the applicant had filed no submissions after the final communication, which was incorrect. Because the examining division had therefore ignored potentially significant arguments presented in a reply following a communication containing a new objection, the applicant had been denied its right to comment on all the grounds for refusing the application.

The board in T.1997/08 held that for an examining division not to violate an applicant's right to be heard, its decision had to actually address the arguments put forward by the