

## d) Illegible signature

In D 8/82 (OJ 1983, 378) the surname of the signature appeared only as a mark in which one could still discern the first letter and which was recognisably intended as a signature. The board held that it was valid since in several contracting states of the EPO there is no requirement that a signature be legible or recognisably composed of letters. It is enough that it serves to identify the signatory.

## e) Draft decisions

In T 225/96, only the first examiner on the opposition division had signed the contested decision. The board sent the case back to the division for regularisation, but the three non-signing members replied that they were not prepared to put their names to a text issued without their knowledge or approval. The board observed that, in general, the decision as notified to the parties was presumed to be authentic. See also T 837/01, where it was clear that the document sent to the parties was merely a draft. This amounted in the board's view to a substantial procedural violation. Had the signatures simply been missing, this could have been corrected under R 89 EPC 1973 (now R 140 EPC).

### 3.4. Reasons for the decision

R 111(2) EPC expressly stipulates that appealable decisions are to be reasoned.

#### 3.4.1 Purpose of the duty to provide reasons

R 111(2) EPC (formerly R 68(2) EPC 1973) embodies the general principle of law that decisions must be reasoned and states: "Decisions of the European Patent Office which are open to appeal shall be reasoned ...". This principle is intended to ensure fairness between the EPO and parties to proceedings and enable the decision to be reviewed on appeal (T 70/02). The EPO can only properly issue a decision against a party if that decision is adequately reasoned (T 652/97). In T 292/90 the board found that the reasoning given in a decision open to appeal has to enable the appellants and the board of appeal to examine whether the decision was justified or not. In T 265/03, and in T 1356/05 and T 1360/05, both referring to T 278/00 (OJ 2003, 546), the boards held that also from the point of view of the practical functioning of the system envisaged in the EPC, they could not examine the appeal in the absence of a reasoned decision.

#### 3.4.2 Right to be heard – right to have submissions taken into consideration

The right to be heard is enshrined in Art. 113 EPC and reads: "The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments." The boards refer to this right in their case law on the duty to provide reasons under R 111(2) EPC. The right to be heard under Art. 113(1) EPC is not just a right to present comments but also to have those comments **duly considered** (see, e.g. R 8/15; J 7/82, OJ 1982, 391; T 508/01; T 763/04; T 1123/04 and T 246/08). The comments presented must be considered in the ensuing decision (J 7/82, OJ 1982, 391 and T 246/08). In R 8/15 the Enlarged Board held that