

In J.18/16 the appealed decision merely referred to a preceding communication on deficiencies in the application, and the section of the form headed "Further comments on the remaining deficiency" gave no information on why the Receiving Section had considered the subsequently filed documents not to have corrected the deficiencies noted or to what extent those documents made amendments going beyond what would have been sufficient to correct them, thereby infringing R. 58, second sentence, EPC. That, the board held, breached R. 111(2) EPC. The board remitted the case to the department of first instance on account of a substantial procedural violation.

In T.353/11 the decision under appeal referred solely to a communication annexed to a summons to attend oral proceedings. The communication did no more than to identify the closest prior art and the distinguishing feature of the invention, indicate that it was "not clear" whether the examples of the application illustrated the distinguishing feature of the invention, state it would be examined whether or not the process was inventive, and invite the appellant to file a comparative example. It neither gave an explicit conclusion with respect to inventive step, nor any reasons as to why the claimed process was not inventive. Thus, the examining division did not issue a reasoned decision within the meaning of R. 111(2) EPC.

The board in T.1998/10 held that the use of the standard form could be considered appropriate for decisions on the state of the file in exceptionally plain cases. In the case at hand, the decision under appeal referred to a communication of the examining division, which in turn referred to the Written Opinion of the ISA. Although the board in would have preferred an independently, fully-reasoned, self-contained decision, it concluded that the objections leading to the refusal could be identified and understood from the references in an unambiguous manner and without undue guesswork.

b) Reference to more than one communication

The Guidelines (C-V, 15.2 – March 2022 version) state that reference can be made to more than one communication only in exceptional cases and that, especially if the various communications deal with different sets of claims and it is therefore unclear which of the reasons given in them by the examining division might be essential to its decision to refuse, a fully reasoned decision should be issued instead.

In T.897/03 the board held that a decision that leaves it to the appeal board and the appellant to speculate as to which of the reasons given by the examining division in different communications might have been decisive for the refusal of the application, could not be considered to meet the requirements of R. 68(2) EPC 1973 (see also T.177/15, T.652/97 and T.278/00, OJ 2003, 546).

In T.180/10 two communications had been referred to. However, contrary to what was stated in the second communication ("the applicant's explanations ... have been carefully considered"), it was apparent that the examining division had ignored all the appellant's arguments since this communication and, therefore, the decision were silent on them. The requirements of R. 68(2) EPC 1973 were not fulfilled.