

In T.1257/08 the board, referring to T.830/03 stated that under the presumption of legal validity, the first written decision notified constitute the opposition division's only legally valid written decision. The opposition division was bound by it and could not itself set it aside. Furthermore, only the first written decision as legally valid decision was appealable.

In T.1972/13 the board held that the second decision issued by the examining division, refusing the applicant's request for refunding an additional search fee, was null and void. It held that it is not relevant whether or not a separate appeal against the second decision was filed, given that an appeal against a legally void decision could logically have no legal effect.

3.1.2 Inconsistency between oral and written decisions

In T.425/97 the sole ground of appeal was the inconsistency existing between the written decision and the form of the patent held to be patentable by the opposition division at the oral proceedings. The board observed that R.68(1) EPC 1973 (now R.111(1) EPC) laid down that the decision announced at the oral proceedings and the written one had to be the same and so any discrepancy between the two was a procedural flaw (see also T.318/01, T.1590/06 and T.1698/06).

In T.850/95 (OJ 1997, 152) the board held that in examination proceedings, where the decision to grant the patent referred to the documents approved by the applicant under R.51(4) EPC 1973 (now R.71(3) EPC) these documents became an integral part of that decision.

In T.740/00 the board found that in opposition proceedings the documents referred to in the decision to maintain the patent in amended form also formed an integral part of that decision. Differences between the decision pronounced at the oral proceedings and the written decision were not mistakes which could be corrected under R.89 EPC 1973, but amounted to a substantial procedural violation requiring immediate remittal of the case to the department of first instance.

3.2. Pointing out the right to appeal in accordance with Rule 111(2) EPC

Under R.111(2) EPC appealable EPO decisions must be accompanied by a communication pointing out the possibility of appeal and drawing the attention of the parties to Art.106 to 108 EPC, which specify how to file appeals.

However, the parties cannot invoke any omission to communicate this possibility; see R.111(2), second sentence, EPC. According to T.42/84 (OJ 1988, 251), the EPO's failure to enclose the text of Art.106 to 108 EPC with the decision neither invalidated the decision nor amounted to a substantial procedural violation. See also T.231/99 and T.493/08.

3.3. Signatures on a decision under Rule 113 EPC

Under R.113 EPC EPO decisions must be signed by, and state the name of, the employee responsible. Under R.113(2) EPC a seal may replace the signature when a decision is