

Division had failed to provide adequate reasoning. This was also a substantial procedural violation.

In T 899/17 the board held that the reasons for the failure of auxiliary requests which were skipped in the discussion during the oral proceedings before the opposition division in favour of more promising lower-ranking auxiliary requests and which were explicitly not withdrawn by the patent-proprietor had to be set out in the written decision.

c) No reasons for decision

In T 493/88 (OJ 1991, 380) the board held that a decision of an opposition division rejecting an opposition had not been correctly reasoned within the meaning of R 68(2), first sentence, EPC 1973 if, after giving the reasons why it, unlike the opponent, considered the subject-matter of the patent to be new, it failed to state the reasons why it considered that the subject-matter also involved an inventive step.

In T 1411/07 the board found that the opposition division's failure to make any reference to its thinking on the factual and legal circumstances of the case, and the total absence of a logical train of thought, had left both the parties and the board in the dark as to what considerations had led it to the conclude that the opposition was to be regarded as adequately substantiated. The board was thus of the view that the contested decision was not reasoned within the meaning of R 68(2) EPC 1973 (see also T 2245/12).

In T 1553/07 the opposition division had not explained why it believed that there had been public prior use and how it had arrived at this conclusion. Nor was it apparent what its considerations had been in arriving at its conclusion regarding novelty. The board was thus precluded from reviewing whether or not its conclusions were justified and so ruled that the decision had not been reasoned within the meaning of R 68(2), first sentence, EPC 1973.

Where there was no explanation of how the examining division had arrived at its conclusion that the claimed process was an obvious juxtaposition of certain documents, this was held insufficient (T 292/90).

In T 708/00 (OJ 2004, 160) the board found that neither the communications nor the examining division's decision went beyond a list of the features appearing or lacking in the claimed inventions, which was obviously not an appropriate way to substantiate the lack of unity of invention. Since lack of unity was a central issue in these proceedings and an important reason for refusing the application, this lack of substantiation had to be regarded as a substantial procedural violation.

In T 153/89 the examining division had given no reasons for finding in its decision that the subject-matter of the dependent claims was not inventive. The board of appeal took the view that the perfunctory statement in the contested decision did not permit the board to judge whether this issue had been sufficiently investigated, or investigated at all. The examining division's decision on such grounds did not amount to a reasoned decision.