

d) Identical decision after remittal for further prosecution	952
e) Dealing with issues that go beyond the decision itself	953
3.5. Decisions according to the state of the file	953
3.5.1 Request for decision "according to the state of the file"	953
3.5.2 No absolute right to a decision issued by way of EPO Form 2061	953
3.5.3 No waiver of right to a reasoned decision	954
3.5.4 Reasons for a decision by way of EPO Form 2061	954
a) Requirements	954
b) Reference to more than one communication	955
3.5.5 Documents included in the "state of the file"	956
4. Loss of rights within the meaning of Rule 112(1) EPC	956
4.1. Purpose of notification of loss of rights under Rule 112(1) EPC	957
4.2. Form of notification of loss of rights under Rule 112(1) EPC	957
4.3. Request for a decision under Rule 112(2) EPC subsequent to a communication	957
4.4. Responsibility for issuing decisions under Rule 112(2) EPC	957
4.5. Right to a decision under Rule 112(2) EPC	958
5. Notification of decision under Rule 111(1) EPC	958

## 1. Composition of the competent departments of first instance

Art. 18(2) and Art. 19(2) EPC respectively govern the composition of examining divisions (see in this chapter III.K.1.2.) and opposition divisions (see in this chapter III.K.1.3.). Both examining and opposition divisions can add a legally qualified member to their number where they deem this to be necessary. General comments on changes in their composition appear in the next section (III.K.1.1.).

### 1.1. General comments on changes in composition of the competent departments of first instance

In T 390/86 (OJ 1989, 30) the board held that a decision given orally at the oral proceedings must be written up on behalf of – and represent the views of – the members appointed to decide the proceedings. The written reasons for a decision delivered during oral proceedings can only be signed by members of the deciding body who took part in the oral proceedings. The same principle applies if between the orally delivered decision and the written decision proceedings in accordance with R. 58(4) EPC 1973 have taken place. If the written decision is signed by persons who did not constitute the opposition division during the oral proceedings, the decision is invalid. In T 1652/08 the board held that where the change in the composition of the opposition division occurs **prior** to the oral proceedings, this is not by itself a breach of the right to a fair hearing (see also T 2365/11, T 2344/16 and T 1090/18). Similarly, the board in T 160/09 read T 390/86 to mean that it did not prohibit the composition being changed. There was nothing to preclude changing the composition of an examining division, nor was the EPO required to follow a particular procedure to do this. In T 1207/09 the board went along with this reading of T 390/86,