

that reasoned decisions contain, in addition to the logical chain of facts and reasons on which every decision is based, at least some motivation on crucial points of dispute in this line of argumentation in so far as this is not already apparent from other reasons given.

In T 1123/04 the board was of the view that it was not enough if a board of appeal had to reconstruct or even speculate as to the possible reasons for a negative decision in the first-instance proceedings. As a rule, a decision within the meaning of R. 68(2) EPC 1973 should be complete and self-contained. The reasons were inadequate if the only arguments advanced by the examining division were unsubstantiated claims.

3.4.4 Deficient reasons

a) Deficient reasons sufficient for the purposes of Rule 111(2) EPC?

According to established case law (T 292/90; T 951/92; T 740/93; T 698/94; T 278/00, OJ 2003, 546, T 70/02; T 963/02; T 897/03; T 763/04; T 316/05; T 1366/05; T 1612/07; T 1870/07; T 1997/08; T 2366/11 and T 1787/16), a decision should consider the essential facts, evidence and arguments in detail and contain the logical chain of reasoning which led to the conclusion drawn.

However there are isolated decisions where deficient reasons have been treated as being sufficient as long as they amounted to some form of reasoning at all. In T 856/91 the board regarded incomplete and poor reasoning as being sufficient for the purposes of R. 68(2) EPC. In T 1231/03, it was decided that the contested decision contained an assessment of the main points in dispute and was therefore sufficiently reasoned. The decision's defects in terms of its content (incoherent line of argument, inaccurate formulation of the technical problem and allegedly erroneous assessments) were not an infringement of R. 68(2) EPC 1973 in this case. In T 647/93 (OJ 1995, 132) the board found that the reasons cited by the examining division in its refusal decision were somewhat "enigmatic" and without basis in the EPC 1973. However, even if those reasons were therefore ill-founded, this did not mean that the decision did not contain any at all within the meaning of R. 68(2) EPC 1973 or that there had been a substantial procedural violation. In T 374/12 the board found that no consideration whatsoever had been given to a line of attack considered to be important by the opponent, as distinct from T 856/91 and T 1231/03, where in each case there had been a gap in the reasoning. Also in T 1747/06 the board distinguished the case before it from that in T 856/91 because no reasons of any kind had been given. For other cases in which nothing akin to reasons were given, see in this chapter III.K.3.4.4 c) "No reasons for decision".

In T 2461/10 the board held that a distinction had to be made between cases where the examining division made an error of judgement on substantive issues and those where it based its decision without any legal basis on a non-existent ground for refusal. Only in the latter case was there a substantial procedural violation.

This distinction between acceptable but deficient reasoning and non-existent reasoning is not always made. The prevailing view in the case law is that the requirement of sufficient reasoning set out under chapter III.K.3.4.3 applies (T 292/90; T 951/92; T 740/93;