

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 and T. 2366/11).

b) Deficient reasoning insufficient for the purposes of Rule 111(2) EPC

In T. 70/02 the board found that simply stating "no convincing arguments have been found in your letter" in response to letters in which the objections put forward were exhaustively discussed by the applicant, did not comply with R. 68(2) EPC 1973. Whilst reasoning did not mean that all the arguments submitted should be dealt with in detail, it was a general principle of good faith and fair proceedings that reasoned decisions should contain at least some reasoning on crucial points of dispute, in order to give the party concerned a fair idea of why its submissions were not considered convincing and to enable it to base its grounds of appeal on relevant issues. In T. 1291/13 the decision did not deal with crucial (and, on the face of it, plausible) counter-arguments presented by the applicant. The board referred to T. 70/02 and held that the decision must contain at least some reasoning on crucial points of dispute, i.e. deal with at least the main counter-arguments presented by the applicant to be sufficiently reasoned.

In T. 1366/05 the board held that the mere summary of a party's submissions does not constitute sufficient reasoning.

In T. 534/08 it was not clear from the wording of the contested written decision why the opposition division had come to its conclusion, whether or not it had adopted the respondent's arguments entirely, or whether or not it had had its own objections. This too was regarded by the board as being insufficient.

In T. 548/08 the board found that unsubstantiated assertions were made by the examining division. Instead of a logical chain of reasoning as to why e.g. the claims were not supported by the description, the entire burden of analysis and argument was put on the applicant and the board, who were expected to work out for himself the true nature of the examining division's objections.

In T. 405/12 the board held that a decision is not reasoned if it is not unambiguously clear from it (possibly after consulting other parts of the file) which request(s) – including any items such as claims, description pages and drawings – it is based on.

In T. 278/00 (OJ 2003, 546) the board decided that it was not up to it or the appellant to speculate as to what the intended meaning of unintelligible and therefore deficient reasoning might be. The reasoning of a decision under appeal had to be taken as it stood. The board had to be in a position to assess on the basis of the reasoning given in the decision under appeal whether the conclusion drawn by the department of first instance was justified or not. That requirement was not satisfied when the board was unable to decide which of the various inconsistent findings indicated in and justifying the decision under appeal were correct and which were false (see also T. 316/05).

In T. 655/13 the board held that in order for the examining division to make its reasoning on the basis of a pertinent prior-art document in a non-official EPO language