

3.5.3 No waiver of right to a reasoned decision

A request for a decision on the state of the file thus cannot be construed as a waiver of the right to a fully reasoned first instance decision (T 265/03, T 583/04, T 1182/05, T 1356/05, T 1360/05, T 1309/05 and T 750/06). T 1356/05 goes further and states that even if an applicant were to waive his right to a reasoned first instance decision expressis verbis, it hardly authorises the examining division to dispense with it.

In T 952/07 the board made it clear that the duty to provide reasons in administrative decisions was a fundamental principle in all contracting states, R. 68(2) EPC 1973 simply being an expression of this principle. The losing party must be in a position to understand the reasons for the negative decision taken against it so that it can consider the option of filing an appeal.

In T 2187/17 the impugned decision did not contain any reasons as to why the arguments presented by the appellant were not relevant and it was left to the appellant and to the board to speculate on the reasons for the refusal. It should be noted that a request for a decision based on the current state of the file is not to be understood as a waiver by the party of its right to a fully reasoned decision. The departments of the European Patent Office cannot omit to give reasons for their decisions when the EPC requires them to do so.

3.5.4 Reasons for a decision by way of EPO Form 2061

a) Requirements

In accordance with the boards' case law (e.g. T 278/00 (OJ 2003, 546), T 861/02, T 897/03, T 276/04, T 1182/05, T 1309/05, T 1356/05, T 1360/05, T 1709/06, T 952/07, T 1612/07, T 1442/09, T 177/15 and T 180/10), a standard decision based "on the state of the file" which refers to one or several communications only meets the "reasoned" requirement of R. 68(2) EPC 1973 (now R. 111(2) EPC) if the board of appeal is not left to reconstruct the applicable reasons by piecing together various arguments from the file and if it leaves no doubt as to which claim version the arguments relate to.

In T 963/02 the board held that a decision issued by way of EPO Form 2061 and referring to one or more earlier communications only met the criteria for a reasoned decision if the cited communication itself met those criteria as defined in T 897/03 and T 278/00 (see above), i.e. the reasons for the decision were clear (similarly T 1182/05).

In T 583/04 the board held that the decision by reference using a standard form is appropriate when the communication incorporated by reference contains a fully reasoned exposition of the examining division's objections to the current application text and refutation of any rebuttal by the applicant. This makes it transparent that the decision is being taken on the agreed text and that nothing is being said in the decision which has not already been communicated to the applicant with an opportunity to present comments, thus guaranteeing that the right to be heard is observed (Art. 113 EPC).