

In T.737/11 the board concluded that considerable uncertainty existed as to the precise reasons on which the contested decision was based. The claims were amended substantially between the two communications to which the written reasoning of the contested decision referred. Furthermore, oral proceedings had taken place in absence of the applicant, despite the applicant withdrawing the respective request and the minutes of these oral proceedings were not mentioned in the decision. This was held to amount to a substantial procedural violation and insufficient reasoning. In both T.406/15 and T.62/13 the examining division had refused an application based on the file as it stood, using a form referring to two earlier "communications". However, the file in each case revealed that these had not been "communications" as such. The examining division had issued only one formal communication that raised just one briefly reasoned objection to lack of novelty and did not clearly explain why the application had been refused. The board nevertheless held that it was just enough to fulfil the obligation to substantiate decisions, but only having taken into account that the appellants themselves had not argued on appeal that the reasoning was insufficient.

In T.1946/17 the board held that a blanket statement like "arguments were carefully considered" but "no new evidence" was provided, in the communications to which the decision refers cannot be considered to address the arguments raised and thus constitutes insufficient reasoning.

3.5.5 Documents included in the "state of the file"

The "state of the file" is not restricted to those documents on file which were issued by the EPO, but also includes all those documents and arguments which were filed by the applicant prior to (or even simultaneously with) his request for a decision "on the status of the file" (T.265/03, T.1360/05). It does not include the note of a telephone conversation (T.583/04). This was the summary record of a conversation. Whereas the phone call note is a record of a dialogue, a communication under Art. 96(2) EPC 1973 constitutes a unilateral legal notice to a party. This does not exclude the possibility of the statements made orally by phone being confirmed and adopted in a formal communication from the examining division inviting observations with a term set for reply. See also T.750/06. In T.1356/05 the board held that minutes of oral proceedings are most probably not meant to be included in the term "previous communications" and it is thus not appropriate to refer to them in the standard decision.

4. Loss of rights within the meaning of Rule 112(1) EPC

If a party to the proceedings or a third party fails to comply with a time limit laid down in the EPC or fixed by the EPO, this will result in a loss of rights in certain cases specified in the EPC. Pursuant to R.112(1) EPC (formerly R.69(1) EPC 1973), if the EPO notes that such a loss of any rights results from the EPC, it must communicate this to the party concerned. If the party disagrees with the finding of the EPO it may apply for a decision on the matter by the EPO (R.112(2) EPC, formerly R.69(2) EPC 1973) or it may request further processing or re-establishment of rights, as the case may be (J.14/94, OJ 1995, 824). By decision of the President of the EPO dated 12 December 2013 (OJ 2014, A6), responsibility for issuing the communication within the meaning of