

applicant in its reply to the communication. It may be assumed that the right to be heard has been contravened if the reasons given for the examining division's decision merely repeat the reasons given for the communication issued before the said reply (see also **T.116/12**).

In **T.921/94** the board held that the appellant's bona fide submissions and the technical information provided in reply to a communication substantially changed the points at issue, and that the examining division had an obligation under **Art. 96(2) EPC 1973** (**Art. 94(3) EPC**) and **113(1) EPC** to inform the appellant of the objections arising in the new situation and to invite it to file further observations before refusing the application. A decision which only comprises a mere formal acknowledgement of the applicant's submissions, without dealing with them in substance, contravenes the general principle of good faith and fair proceedings that reasoned decisions contain at least some reasoning on the crucial points of dispute in order to give the party concerned a fair idea of why his submissions were not considered convincing (see also **T.1154/04**).

In **T.296/96** the applicant had submitted unconvincing arguments in his reply to the first and only communication. The examining division refused the application on the basis of the objections mentioned in the first communication, and did not issue a second one. Since, however, the main arguments for refusing the application were a mere repetition of those mentioned in the first communication, the contested decision was based on grounds on which the applicant had had an opportunity to present his comments (see also **T.2316/10**).

In **T.452/16** the board found that just indicating that the applicant's arguments filed in response to a communication were unconvincing, without addressing them in detail, might be sufficient in a communication preparing oral proceedings. However, the mere reference to such a communication could not suitably replace the grounds for a decision to refuse the application, because the reasons why the examining division upheld its opinion were obscure.

#### 2.4.5 Failure to consider evidence

According to **T.1536/08** it is well-established in the jurisprudence of the boards of appeal (see e.g. **J.7/82**, **T.94/84** and **T.135/96**) that the right to be heard enshrined in **Art. 113(1) EPC** also guarantees the right to have relevant grounds that could potentially influence the outcome taken into account in the written decision. A decision rejecting the opposition must therefore take into account the ground(s) for opposition raised as well as facts and evidence put forward in support of these grounds, including the cited prior art documents. Failure to consider evidence will normally constitute a substantial procedural violation of this fundamental right as it deprives the party of the right to have its case fully heard (see also **T.1098/07** below). In the case at issue, the opposition division had completely ignored the unambiguous offer by the opponent in the notice of opposition to provide the original printed versions of crucial prior art documents. The failure to consider this offer constituted a violation of the right to be heard.