

1.2.3 Examples where documents were excluded from file inspection

In T 811/90 (OJ 1993, 728) the board ordered that documents that would not normally be excluded from public inspection pursuant to Art. 128(4) and R. 93(a) to (d) EPC 1973, but which were issued as an immediate consequence of a substantial procedural violation, be withdrawn from that part of the file available to public inspection. It was further ordered that the documents had to be returned to the filing party if it so requested. Similarly in T 516/89 (OJ 1992, 436), the board ordered that documents marked "confidential" which did not belong to classes of documents to be excluded from file inspection be returned to the party concerned without note being taken of their contents. See also T 760/89 (OJ 1994, 797).

In T 264/00 two internal documents, belonging respectively to the appellant and to the respondent and concerning the outcome of a confidential meeting between two of their employees, contained confidential information on the conception, manufacture and marketing of some of the respondent's products. The board held that the dissemination of this information might effectively be prejudicial to legitimate economic interests. In agreement with both parties, the board excluded the documents from file inspection pursuant to R. 93(d) EPC 1973.

In T 1401/05 of 20 September 2006 the board took the view that documents containing company-internal details could deprive the applicant and its domestic agent of valuable commercial assets, could be used by competitors to obtain a competitive edge over the appellant, and that a number of additional details could adversely affect the career opportunities of certain employees of the applicant and its domestic agent. It concluded that public inspection of essential parts of the documents would be prejudicial to legitimate economic interests of legal persons, and to legitimate personal and economic interests of natural persons. As the documents in question did not furnish patent information, the board excluded the relevant documents from file inspection.

In T 99/09 the document for which inspection had been requested contained precise technical details, particularly as to the source of the constituents of a medicinal product available on the market and certain specifications for the product's manufacture. Given the technical nature of the document, the board concluded that its disclosure might indeed be prejudicial to the appellant's economic interests. Since the respondents had not objected to or commented on the request to exclude the document from inspection, it was excluded under Art. 1(2)(a) of the EPO President's decision of 12 July 2007 (OJ SE 3/2007, 125) in the light of Art. 128(4) and R. 144(d) EPC.

In J 23/10 it could be gathered from the document in question that the applicant paid the renewal fees for certain applications for which they were not the registered applicant. These applications had been transferred to them but this had not been made public. It was still the assignor who was mentioned in the Register. In the Legal Board's view, this was information about internal relationships between the parties concerned, the publication of which could be prejudicial to their economic interests, while being irrelevant for the assessment of the patent application as such and therefore was to be excluded from file inspection.