

## How I detect 'interesting' Board of appeal decisions

by Oliver Randl

DG3 publishes lots of decisions (about 1500 per year), but obviously not all of them are interesting. By 'interesting' decisions I mean decisions that shed light on legal or practical questions encountered in proceedings before the EPO and which might be of use in other cases. Such decisions often contain interpretative statements or discussions of existing case law. Here is how I search for such decisions:

- I systematically **read all G, J, and R decisions**. G and J decisions are almost always interesting. R decisions are mostly boring, but they often contain an interesting paragraph or two.
- I almost **never read D decisions**, unless they deal with disciplinary problems – which is extremely rare. Exam-related decisions tend to be boring.
- **T decisions** come in much greater numbers, and one cannot possibly read all of them. Here is the method I employ to detect decisions containing interesting information:
  - I have a look at the “Internal distribution code” (on top of the first page of the pdf file). I systematically **read decisions which are to be published or which are sent to Chairmen and members**. This criterion is rather reliable: most of those decisions are worth reading.
  - Regarding decisions sent to chairmen only, or decisions that are not distributed at all:
    - First, I have a **look at the keywords** provided by the Board. Keywords such as “Novelty (no)” do not excite me but if I find something like e.g. “Applicability of sharia (no)” or “Prior use by extra-terrestrial beings (yes)”, I will have a closer look.
    - Secondly, if the keywords do not provide any incentive to read the decision, I have a look at the **cited case law**. If there is a certain number of decisions cited, I read the decision. When I see both G 1/03 and G 2/10 cited, I am interested. If, however, the only decision cited is, for instance, T 2/81, or G 10/91, or T 641/00, then I do not feel compelled to read the decision. As a matter of fact, with some experience, you will be able to detect cases where only “standard” decisions are cited and which, as a rule, are not worth reading.
    - Thirdly, whenever a Board bothers to provide a **headnote**, there are chances the decision is worth reading.
    - According to my experience, decisions sent to the chairmen only, and which do not cite any case law, almost invariably are of little interest. Consequently, I have some compassion for chairmen.
    - When a decision mentions “No distribution”, has no keywords out of the ordinary or headnote and does not cite any case law, I do not read it.
- This method makes me have a closer look at a quarter to a third of the decisions. See the document “How I read Board of appeal decisions” to find out how this can be done efficiently.
- Do I miss interesting decisions? Of course, but only a few. In order to minimise this risk:
  - I have a look at **case law sites or blogs**. As a matter of fact, they very rarely cite case law I had not found myself (which might mean that my colleagues have similar ways of identifying relevant decisions). But every now and then, they find something useful that had escaped my scrutiny. The same holds true for **IP journals and case law conferences** etc.
  - I study the **case law report published by DG3** once a year. I check whether it cites interesting decisions which I had not identified. As a rule, there is always a handful.