

1. Introduction

The principle of the protection of legitimate expectations is a general principle well established in European Union law and generally recognised in the EPC contracting states and board of appeal case law (G 2/97, OJ 1999, 123; see also R 4/09). Its application to procedures before the EPO implies that measures taken by the EPO should not violate the reasonable expectations of parties to such proceedings (G 5/88; G 7/88; G 8/88, OJ 1991, 137). The term "good faith" is also used to describe this concept (J 10/84, OJ 1985, 71; J 38/97; J 19/13; J 19/16).

The protection of the legitimate expectations of users of the European patent system has two main principles. It requires that the user must not suffer a disadvantage as a result of having relied on erroneous information or a misleading communication received from the EPO (see in this chapter III.A.3). It also requires the EPO to warn the applicant of any loss of right if such a warning can be expected in good faith. This presupposes that the deficiency can be readily identified by the EPO (see in this chapter III.A.4).

Users of the European patent system, who are parties in proceedings before the EPO, must also act in good faith (G 2/97, R 4/09, T 861/12). An alleged violation of the principle of the protection of legitimate expectations is in itself not a ground for a petition for review under Art. 112a EPC (R 13/11, R 1/16).

On reimbursement of the appeal fee due to a violation of the principle of protection of legitimate expectations see chapter V.A.11.14.

2. Applicability of the principle of the protection of legitimate expectations

The principle of the protection of legitimate expectations applies to all procedural actions – whether formal or informal – taken by EPO employees vis-à-vis parties to proceedings (T 160/92, OJ 1995, 35; see also T 343/95; T 460/95 of 16 July 1996; T 428/98, OJ 2001, 494).

It applies to both ex parte and inter partes proceedings (T 923/95).

The requirements in connection with the principle of good faith to be observed by the EPO are the same vis-à-vis all parties involved in proceedings before the EPO, be they applicants, patent proprietors or opponents (T 161/96, OJ 1999, 331, see also J 12/94).

The principle of the protection of legitimate expectations also applies to acts performed by other authorities concerned in Euro-PCT proceedings during the international phase such as the US Patent Office acting as receiving Office or as International Preliminary Examining Authority (J 13/03). It applies also to the conduct of national authorities when dealing with European patent applications filed with them under Art. 75(1)(b) EPC (J 34/03). It can also apply in situations in which, while there is no erroneous information from the EPO, the outcome is the same in that a party receives erroneous information as a result of another party's actions (see T 353/18, in which the respondent had mistakenly filed differing clean and annotated versions of the claim).