

4.2. Examples of cases addressing the obligation to draw attention to easily remediable deficiencies

4.2.1 Language issues

In J 3/00 the appellant filed an international patent application at the EPO as receiving Office under the PCT (RO/EPO). The description and claims were filed, by mistake, in Swedish, a language which the RO/EPO did not accept for filing international applications. The board held that this deficiency in the application was immediately and readily identifiable by the receiving Office on the face of the application in the course of the Art. 11(1) PCT check. The appellant could in good faith have expected a warning.

In T 1152/05 the notice of appeal was filed in Dutch and thus not in one of the official language of the EPO; this document was, in accordance with Art. 14(4) EPC, deemed not to have been filed. In the board's view, there was prima facie no reason for the formalities officer to consider that the patent proprietor would not be entitled to file its notice of appeal in Dutch. As the deficiency was not readily identifiable, the EPO was not obliged to warn the patent proprietor of the fact that it could not benefit of the provisions of Art. 14(4) EPC.

In T 41/09 the appellant (patent proprietor), a legal entity having its principal place of business in Spain, filed the notice of appeal in Dutch. The appellant argued before the board that, since the EPO was aware of its nationality, the language deficiency was readily identifiable. The board held that there was no breach of the principle of legitimate expectations of the appellant. It distinguished the situation in the case in hand from the facts of J 13/90. In this decision, the deficiency had been readily apparent from the request itself whereas in the case in hand it was not readily apparent from the notice of appeal, which only referred to the name of the appellant, without any indication of the location of its principal place of business.

See also the following cases, in which the notice of appeal was filed by a Swiss company in Dutch: T 642/12 (appeal was deemed not to have been filed) and T 595/11, T 1037/11, T 2554/11, T 707/12 (appeal was deemed to have been filed and considered admissible).

4.2.2 Missing or insufficient fee payments

J 2/94 involved a letter comprising a request for re-establishment without the necessary payment. According to the board the appellant could not have expected to be informed of the missing fee immediately after receipt of his request for re-establishment by the EPO. There had been no evident indication in the appellant's submission which made a clarification or reminder necessary. Indeed, the EPO could, in practice, often establish whether a specific fee had been paid only after the relevant time limit had expired, once the complete data on all payments made during that period was available (see also T 1815/15).

In G 2/97 (OJ 1999, 123) the Enlarged Board of Appeal held that the principle of good faith did not impose any obligation on the boards of appeal to notify an appellant that an appeal fee was missing when the notice of appeal was filed so early that the appellant could react