

The Legal Board suggested in J 17/04 that it was the EPO's responsibility to provide **forms** which catered for all procedural possibilities in a clear and unambiguous manner. In the case in hand the applicant was allowed to rely on a possible interpretation of the text of the EPO form in accordance with the principle of the protection of legitimate expectations even if another interpretation was more current.

3.2. Information provided as courtesy service

The principle of the protection of legitimate expectations also applies to courtesy services provided by the EPO where these are not worded so as to rule out any misunderstanding on the part of a reasonable addressee. However, an applicant cannot rely on the EPO systematically providing certain courtesy services and therefore is not entitled to base a claim on their omission (J 12/84, OJ 1985, 108; J 1/89, OJ 1992, 17; J 27/92, OJ 1995, 288; G 2/97, OJ 1999, 123), or on the fact that the communication was not sent to the correct addressee (J 23/10).

In J 1/89 the board held that the applicant was entitled to rely on the accuracy and completeness of information provided as a courtesy service. He could not, however, rely on courtesy services not required by the EPC being systematically provided. If an applicant paid a renewal fee late as a result of a misleading reminder, he had to be treated as if he had paid in time.

In J 34/92 the fifth-year renewal fee had not been paid in full. The professional representative did not receive the communication the EPO usually issues drawing attention to the fact that late payment of the renewal fee was possible upon payment of an additional fee. The loss of rights communication under R 69(1) EPC 1973 (R 112(1) EPC) made, however, reference to such communication. The board held that the communication drawing attention to the possibility of a late payment plus surcharge was only a courtesy service of the EPO. The applicant could not draw any conclusions in his favour from the fact that this communication was not sent.

In J 27/92 (OJ 1995, 288) the appellant's representative had relied on the advice given by the Information Office by telephone as to the amount of the examination fee payable. The board held that where such a service had been rendered, an applicant was entitled to rely upon its content if the – written or oral – communication from the EPO was the direct cause of the action taken and, on an objective basis, it was reasonable for the appellant to have been misled by the information. See also J 10/17.

3.3. Contradictory acts

In J 27/94 (OJ 1995, 831) the board decided that if a declaration which was subject to a condition and therefore invalid was treated as a valid procedural act by the EPO, the EPO was not allowed later to go back on its own earlier conduct which served as a basis for the applicant's decision on how to proceed, because this would have represented "venire contra factum proprium" and thus offended against a generally recognised legal maxim (see also T 1825/14).