

In J. 8/18 the appeal fee had been paid twice: once the reduced amount (for SMEs) and once the regular amount. The latter was refunded. A notice from the EPO suggested that it was enough, to benefit from the reduced fee for appeal, if the appellant simply declared that it was a SME at the latest by the time of payment of the reduced fee. Although not binding on the Legal Board, the notice of the EPO could, at least based on the principle of protection of the legitimate expectations, be relied on by the appellant in assuming that its appeal would either be deemed filed or admissible following the refund of the regular appeal fee before the file was transferred to the boards of appeal. See also J. 10/20, in which the board held that users could rely on the information on the extension of time limits provided in the notices of the EPO without suffering any disadvantages. This was so regardless of whether there was in fact a dislocation in the delivery or transmission of mail due to COVID-19, in the sense of R. 134 EPC (on which the relevant notice was based).

3.4. Information provided by telephone

In T. 160/92 (OJ 1995, 35) the board did not deny that the principle of legitimate expectations should govern all the actions of EPO employees towards parties to the proceedings, including telephone conversations which were not provided for in the EPC and did not, as such, form part of the formal procedure before the EPO. However, since telephone conversations did not form part of the said formal procedure, the board did not consider it necessary to conduct a detailed investigation seeking to clear up what had been said in the relevant telephone conversations, the sequence of procedurally relevant facts having been clearly established in the file.

In T. 428/98 (OJ 2001, 494) the board held that an appellant might rely on information which the board's registrar could be proved to have provided by telephone concerning the method for calculating a time limit the appellant had to observe before the board if the point of law on which that information was based had at that time not yet been clarified in the case law of the boards of appeal.

In T. 1785/15 the appellant had been led to believe in a telephone conversation with a formalities officer that an appeal against the decision to grant would be possible. The board held that the appeal was inadmissible. Suggesting a legal remedy where there was none was at best misleading. The board considered it was likely that the applicant had filed the appeal based on incorrect advice from the Office. The applicant thereby had at least a legitimate expectation that the appeal would be found admissible and examined as to its substance, which led the board to order the reimbursement of the appeal fee.

3.5. Decisions of the department of first instance

In T. 1448/09 the board held that the appellant was not at fault in failing to address, in its statement of grounds of appeal, a reason which, in the circumstances, could genuinely have been misunderstood. The principle of good faith required adverse decisions not to contain any ambiguity that could affect their comprehensibility.