

The principle of legitimate expectations only protects parties from disadvantageous procedural consequences of the omission of procedural steps, in relying on erroneous information from the EPO. It has no bearing on substantive law and cannot render patentable what otherwise would not be. This applies, in particular, when the information – even if it were wrong – was issued by a department of the EPO that was not competent to examine patentability (T 2239/15).

2.1. Sources of legitimate expectations

Sources of legitimate expectations include information provided by the EPO in individual cases (e.g. in the form of communications to the party), information contained in official statements of general applicability and published by the EPO (e.g. the Guidelines and the Official Journal), established practice of departments of the EPO, and decisions taken by the Enlarged Board because of its special role (see J 25/95, J 13/05; see also T 905/90, OJ 1994, 306, Corr. 556). The case law of the boards of appeal may also be a source of legitimate expectation, in particular, if it is established case law which has become enshrined in the consistent practice of the department of first instance (see J 27/94, OJ 1995, 831; see also in this chapter III.A.6.). Courtesy services provided by the EPO may also be a source of legitimate expectation (see J 1/89, OJ 1992, 17; see also in this chapter III.A.3.2.).

2.2. Limits of the legitimate expectations principle

2.2.1 Knowledge of the relevant legal provisions and the case law

Parties to proceedings before the EPO – and their representatives – are expected to know the relevant provisions of the EPC, even when such provisions were intricate (J 27/92, OJ 1995, 288; T 578/14; J 10/17; J 1/19), as well as all notices published by the EPO which are relevant to patent practice (T 267/08). In general, the parties to EPO proceedings are presumed to know the law relating to the EPC, including the relevant decisions of the boards of appeal (R 17/09).

The board decided in J 17/98 (OJ 2000, 399) that the principle of protection of legitimate expectations according to which communications of the EPO, including official forms, must be clear and unambiguous, did not extend so far as to require comprehensive legal advice to be contained in such forms. While forms must be clear and unambiguous, they need not contain detailed explanations of the law. This was especially true for legal issues which directly follow from the provisions of the EPC (see also T 778/00, OJ 2001, 554).

The board decided in J 5/02 that it was not a violation of the principle of the protection of legitimate expectations if the EPO provided a professional representative with incorrect information on the basis of which he concluded that the relevant legal provisions – in this case Art. 122 EPC 1973 – were no longer applicable. If he did not realise the information was incorrect, he was guilty of fundamentally inexcusable ignorance of the law; if he did realise it was incorrect, he was not misled.