

In T.267/08 the board held that professional representatives must be expected to be acquainted with all notices published by the EPO which are relevant to patent practice. The new representative should have realised that the decision of the President of the European Patent Office dated 12 July 2007 on the filing of authorisations (OJ SE 3/2007, L.1) explicitly required an original version of the authorisation to be filed and that the decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile (OJ SE 3/2007, A.3) forbade the filing of authorisations by fax. The fact that the new representative had previously been notified that the change of representative had been registered should not have misled him into believing that a faxed version of an authorisation would suffice. Only a "fundamentally inexcusable ignorance of the law" (referring to J.5/02) could lead him to this conclusion.

In T.590/18 of 4 July 2018 the board held that a debit order filed on paper (EPO Form 1010) after 1 December 2017 could at most be accepted as a valid payment of the appeal fee if the appellant could successfully claim to have seen still current information clearly indicating the option of paying this way on the EPO website after the entry into force of the change to fee payment methods, to have been entitled to entertain a legitimate expectation as to that information's accuracy, and indeed to have acted in reliance on it. Finding a PDF version of a brochure published before the change's entry into force was not sufficient to establish such a legitimate expectation, especially when the appellant had anyway known about the change.

The Enlarged Board held in R.4/09, in the context of an alleged breach of the principle of legitimate expectation, that a party to the proceedings, at least where it was represented by an authorised representative, was deemed to know the case law, and cannot plead lack of such knowledge as an excuse, "ignorantia legis non excusat" (see also T.736/14 and J.6/19). According to J.19/10, the professional representative could be expected to be familiar with procedural matters in general, and the boards' detailed and consistent jurisprudence in particular.

In T.1086/09 the board held that the representative's expectation that a refund of 50% of the appeal fee would be available was not legitimate as it was the consequence of an error in law, i.e. an incorrect reading of the new R.103(2) EPC, which did not apply to the appeal in question.

### 2.2.2 Interpretation of substantive patent law

In G.2/07 and G.1/08 (OJ 2012, 130 and 206) the Enlarged Board of Appeal held that there could be no "legitimate expectation" that an interpretation of a substantive provision governing patentability given in a decision of the boards of appeal will not be overruled in the future by the Enlarged Board, since recognising such an expectation as legitimate would undermine the function of the Enlarged Board. This holds particularly true for issues on which there is no solid body of decisions all to the same effect but where instead the relevant jurisprudence consists only of a very limited number of individual decisions.