

### 3.6. Correction of already issued decision

In T 1081/02 the board held that the communication issued by the opposition division's formalities officer during the period for appeal, stating that the decision already issued had been sent by mistake and should therefore be disregarded, could not constitute a legally sound basis for regarding the decision's validity as so doubtful that it could be considered void. According to the applicable principle of the protection of legitimate expectations, however, the parties could not be deemed to have failed to comply with the time limit for filing a notice of appeal (Art. 108 EPC) (see also T 1176/00, T 466/03).

In T 830/03 the opposition division had issued a second written decision together with a communication which suggested that the first written decision was superseded. The opponent filed a notice of appeal outside the period of four months after the date of the notification of the first decision, but within the time limit after the notification of the second decision. The board held that the only legally valid written decision was the first decision but that, in application of the principle of protection of legitimate expectations, the appeal was deemed to have been filed in time (see also T 993/06).

In T 124/93 the opposition division, after having delivered its decision, re-delivered the same with an additional enclosure under a new mailing date. This had misled the parties about the time limit for filing the notice of appeal and statement of grounds. Applying the principle of the protection of legitimate expectations, the board ruled that the appeal was to be considered as filed in due time (see also T 130/07, T 972/05).

In T 105/11 the examining division, following a request of the applicant, had re-issued the written decision, in corrected form, with a new date. The board established that the date of the notification of the decision refusing the application remained the date of notification of the first written decision. Whilst the notice of appeal was received in time, the statement of grounds of appeal was not. The professionally represented appellant, who had explicitly requested that the written decision be corrected, should have been aware that the second decision intended to correct the first written decision under R 140 EPC. Moreover, different from other cases, in the case in hand there had been no explicit statement by the EPO that the first decision was to be ignored. Nevertheless, it was still imputable to the EPO that the second written decision had not been correctly and unambiguously identified as being a correcting decision. The board held, in application of the principle of the protection of legitimate expectations, that the statement of grounds of appeal was deemed to have been filed in time.

### 3.7. Information provided in the Guidelines

The board in T 1607/08 recalled that the Guidelines published by the EPO were one of the sources of legitimate expectations. Therefore, where the Guidelines gave the clear indication that the continuation of the opposition proceedings had to be communicated to the patent proprietor, the latter was entitled to expect that such information would be given before a decision on the substantive issues was issued. Otherwise, as in the case in hand, the decision to revoke the contested patent would come as a surprise to the patent proprietor.