

### 2.2.3 Weighing of interests in inter partes cases

In T 1644/10, the EPO had published an incorrect patent specification B1 and subsequently corrected it as B9. The appellant had relied on the accuracy of the published specification B1 and consequently failed to file notice of opposition within the prescribed period. The board held that whether the protection of legitimate expectations could be applied in an inter partes procedure where there had been a failure to meet the opposition deadline was subject to a weighing-up of interests. There was no general rule that the patentee's legitimate expectation that the grant decision had become final had to be considered subordinate to the opponent's legitimate expectation that the content of the published patent specification was correct. That would run counter to the rule of equal procedural treatment of the parties. In the case in hand, the appellant could not rely on the applicability of the principle of legitimate expectations in relation to its failure to meet the opposition deadline.

In T 595/11 the appellant had enclosed a debit order for a reduced appeal fee with the notice of appeal. It is only four years after expiry of the time limit for filing the appeal that the Office first made the appellant aware of an issue with this. The board acknowledged the appellant's legitimate expectations that the fee payment was in good order. After weighing up the legitimate interests of all the parties the board concluded that the original error might have had serious and inequitable consequences through the Office's failure to discover it. Therefore, it was equitable that the Office' failure was made good and the error was now allowed to be remedied, as far as possible. Some adverse effect was inevitable. Nonetheless, the possibility of a real, but otherwise in itself not necessarily decisive setback for a party (here the non-occurrence of an immediate success) was more preferable than a certain decisive loss of all rights for another party (see also T 1037/11, T 2554/11, T 707/12).

### 2.2.4 Area of party's own responsibility

The EPO is generally obliged to draw the party's attention to easily remediable deficiencies. However, the principle of good faith does not impose an obligation to warn a party of deficiencies within the area of the party's own responsibility (for more information, see in this chapter III.A.4.3.1).

### 2.2.5 Administrative notice with no legal consequences

The Enlarged Board observed in G 2/97 (OJ 1999, 123) that the notice sent by the registry of the boards of appeal was a standard form, nothing more than an administrative notice to inform the parties of the reference number of the appeal proceedings. It had no legal consequences; it was not a "communication" within the meaning, for example, of Art. 110(2) EPC 1973 (R. 100(2) EPC). Such a notice could not be considered to give rise to any misunderstanding.

In T 642/12 the board held that in inter partes appeal cases, the completion of EPO Form 2701 by the formalities officer of the department of first instance does not establish