

In J.14/94 (OJ 1995, 824), the applicant had failed to pay the third renewal fee. Nevertheless, the EPO continued the examination procedure for several years without informing the applicant of any loss of rights. The board held that if, during a long period of time, the EPO by its conduct led the parties and the public to the legitimate belief that no loss of rights had taken place, the EPO could not later refer to a loss of rights which occurred several years previously as this would constitute "venire contra factum proprium" and therefore contravene the principle of legitimate expectations. In such circumstances, the late payment of a renewal fee might – by way of exception – be considered as having been made in time if the EPO had not informed the applicant of the outstanding payment, had accepted later renewal fees without objection and had continued the examination proceedings for several years.

In J.1/08 the Legal Board concluded that the mere fact that for an admittedly extremely long time period (from August 2004 to March 2007) the EPO had simply not dealt with the application was not sufficient to justify a legitimate expectation on the applicant's side that the application would be regarded by the EPO as still pending. The situation before the board therefore differed from the facts in J.14/94, where the EPO had actively continued the examination proceedings for several years (see also J.19/16).

In J.18/96 (OJ 1998, 403) the board accorded a filing date to protect an applicant's legitimate expectations, although he had not fulfilled a requirement under Art. 80 EPC 1973 (R. 40 EPC). By issuing a communication under R. 85a EPC 1973 (deleted in EPC 2000), the Receiving Section had given him the impression that his application was validly filed (see also J.5/89).

In T.926/09 the board treated the claims in question as if they had been originally filed with the application whereas they had in fact been filed in the period before receipt of the European search report and thus in breach of R. 86(1) EPC 1973 (R. 137(1) EPC). The appellant was entitled to rely on the communication by the Receiving Section indicating that the set of claims was admitted.

In T.2364/12 the board set aside the opposition division's decision holding the opposition inadmissible on the grounds that the notice of opposition was deemed not to have been filed in due time. The board found that the opponent could, on the basis of the opposition division's communication informing the appellant that the opposition fee was considered to have been validly filed, reasonably assume that the opposition had been validly filed. See also chapter III.B. "Right to be heard".

In T.2246/13 the board held that the letter by which the EPO cancelled the oral proceedings and announced that the procedure would be continued in writing in itself resulted in a legitimate expectation on the part of the appellant that it would have the opportunity to file observations, if only to be able to react to the changed situation resulting from the other party's withdrawal of its request for oral proceedings. The appellant thus could not expect that a decision revoking the patent would be issued on the same date. The board set the opposition division's decision aside. See also T.1423/13.