

and pay the fee in time, if there was no indication – either in the notice of appeal or in any other document filed in relation to the appeal – from which it could be inferred that the appellant would, without such notification, inadvertently miss the time-limit for payment of the appeal fee.

Prior to G 2/97, the boards had held in a number of decisions that the EPO had a duty to warn the parties of missing or insufficient fee payments. These included T 14/89 (OJ 1990, 432), J 13/90 (OJ 1994, 456), J 15/90 of 28 November 1994 and T 923/95. The Enlarged Board held with regard to T 14/89 that the case turned on its particular facts and that there was no generally applicable principle to be derived therefrom. The board in T 642/12 suggested that the approach in T 923/95 was no longer tenable as it plainly contradicted the findings of G 2/97.

In T 296/96, only 50% of the appeal fee was paid before the expiry of the time limit under Art. 108, first sentence, EPC 1973. However, since the formalities officer invited the appellant to pay the remainder of the appeal fee and accepted its subsequent payment without comment, the appellant could assume in all good faith that the appeal was deemed to have been filed (Art. 108, second sentence, EPC 1973) and that, as a consequence, it was not necessary to file a request for re-establishment. The appellant, who was misled by the action of the formalities officer, must, in accordance with the principle of the protection of legitimate expectations, be treated as having paid the appeal fee in time.

In T 161/96 (OJ 1999, 331) the board came to the conclusion that there was no basis for assuming an obligation on the part of the EPO to warn the party of an impending loss of rights relating to an underpayment of 40% of the opposition fee.

In T 445/98 the board considered that, because the department which cashed the fee was not the same as the one which received the notice of appeal, the deficiency was not easy to identify and the time between payment of the appeal fee and expiry of the non-observed two-month time limit for filing the notice of appeal was too short, so that the opponent could not expect a warning.

In T 642/12 the board held that a potential possibility of discovering the error (80% instead of 100% of the appeal fee had been paid) was not sufficient to establish the legitimate expectation that a registrar of the boards of appeal would warn an appellant within seven working days before the expiry of the time limit that a reduced appeal fee had been relied on in error. The appeal fee was thus deemed not to have been paid (but see T 595/11 in this chapter III.A.2.2.3). See also T 2422/18 and T 1060/19 on payment of a reduced fee by persons not fulfilling the criteria of the relevant notice from the EPO dated 18 December 2017 (OJ 2018, A5).

In T 703/19 the board considered that EPO users could legitimately expect a plausibility check to be carried out on the filing of an appeal. On filing its notice of appeal, the appellant had stated in it that the appeal fee had thereby been paid via the Online Fee Payment service. The letter accompanying subsequently filed items, however, contained information on the kind of fees and the amount payable but nothing on the method of payment, for which "not specified" appeared. The bank account number was missing too.