

In T.250/89 (OJ 1992, 355) the opponent claimed that he could not have filed the statement of grounds in due time because he would have needed to refer to documents withheld by a third party. The board confirmed the line taken in earlier decisions (see G.1/86, OJ 1987, 447; T.287/84, OJ 1985, 333). When determining whether all due care required by the circumstances had been taken, the word "all" was important and failure to observe a time limit had to be the result of an oversight, not a **culpable error**. The board rejected the application for re-establishment of rights on the ground that the opponent had had sufficient material at his disposal to be able to draw up the statement of grounds in due time in accordance with Art. 108, third sentence, EPC 1973 and R. 64 EPC 1973.

4.2.2 Financial difficulties

In J.22/88 (OJ 1990, 244) the Legal Board held that financial difficulties experienced through no fault of one's own and leading to failure to observe time limits for the payment of fees could constitute grounds for granting re-establishment of rights. A prerequisite for granting the request was that the applicant should have tried with all due care to obtain financial support. The board also made it clear that for "all due care" to be proven, it had, of course, to be clear that the financial difficulties were genuine and were due to circumstances beyond the reasonable control of the applicant (see also J.31/89, T.822/93). In J.9/89 the Legal Board noted that there was no evidence before the board of any effort having been made by or on behalf of the appellant to find financial support during the critical period.

In J.11/98 the applicant requested re-establishment in respect of the time limit for paying the renewal fee, on the grounds that at the relevant times the appellant had been seeking protection under Chapter 11 of US bankruptcy law. The Legal Board confirmed the examining division's decision refusing the request. The applicant had not shown that at the relevant time it had been so lacking in funds as to be absolutely unable to make the payment (see also J.26/95, OJ 1999, 668, in chapter III.D.4.7. "Interruption of proceedings because of insolvency (Rule 142(1)(b) EPC)").

In J.6/14 the Legal Board held that it was clear from the events described and from all the evidence adduced that the appellant, an individual applicant who had been faced with serious health problems, had been in a very difficult financial situation for several years. He had proven the genuine existence of his difficulties to justify his failure to pay the renewal fee plus additional fee. The board consequently found that he had satisfied the requirements of Art. 122 EPC.

4.3. Making good the omitted act

The omitted act must be performed within two months from removal of the cause of non-compliance (R. 136(2) EPC; Art. 122(2), second sentence, EPC 1973).

According to T.167/97 (OJ 1999, 488), the requirement of Art. 122(2), second sentence, EPC 1973 implies that the completed act likewise must meet the requirements of the EPC - i.e. in the case at issue that the statement of grounds of appeal be admissible for the purpose of Art. 108, last sentence, EPC 1973. Where the statement of grounds