

representative: In **J xx/xx** (=J 900/85, OJ 1985, 159) and **J ../87** (=J 903/87, OJ 1988, 177) the Legal Board held that the capacity of the **applicant or patent proprietor** to carry out legal transactions relating to his application or patent must be determined in accordance with the relevant **national law** because the interest in the patent application or the patent is an interest in property (see Art. 74 and Art. 2(2) EPC; see also **J 49/92**). On the other hand, **J xx/xx** (=J 900/85, OJ 1985, 159) states that a **uniform standard** of judging legal incapacity of **representatives** shall apply in order to avoid differences in the application of R. 90(1)(c) EPC 1973 (R. 142(1)(c) EPC) depending on the nationality of domicile of the representative.

4.4. Determining legal incapacity of the applicant or patent proprietor for the purpose of Rule 142(1)(a) EPC

In **J ../87** (=J 903/87, OJ 1988, 177) the board ruled that a brief medical certificate attesting that the applicant had been in a state of physical and mental exhaustion and depression, was not sufficient to establish incapacity within the meaning of R. 90(1)(a) EPC 1973 since the certificate said nothing about the seriousness and duration of this condition. Cf. **T. 1680/13**.

In **J 49/92** the Legal Board had no evidence – such as a medical certificate – to suggest that the applicant's health, according to German legal practice, was in such a condition as to exclude the rational exercising of his will, since he had still managed to transfer the fees for the application, even if they had been sent by mistake to the German Patent Office instead of the EPO.

4.5. Determining legal incapacity of the representative for the purpose of Rule 142(1)(c) EPC

The basic consideration for a decision on R. 142(1)(c) EPC is whether the representative concerned was either in a fit mental state to do the work required of him at the material time or whether he lacked the capacity to make rational decisions and to take the necessary actions, see **J xx/xx** (=J 900/85, OJ 1985, 159), **J 7/99**, **J 7/16**. In **J 5/99** the Legal Board stated that that meant carefully weighing up all reliable relevant information. Also indispensable was a reliable medical opinion taking account of all material facts (see also **J 7/16**).

In **J xx/xx** (=J 900/85, OJ 1985, 159) the Legal Board noted that, although there were differences in the national laws of contracting states as to the concept of "legal incapacity" and as to its consequences, there seemed to be a broad agreement that a person of full age was legally incapacitated when he was suffering from such a disturbance of his mind that he was unable to form the necessary voluntary intention to carry out legal transactions which would be binding upon him, e.g. to make valid contracts. Such a disturbance of his mind could be recognised by national law even if it was temporary only (e.g. a disturbance caused by physical injury or by the influence of alcohol or other drugs) or occurred from time to time, as was the case with some mental illnesses in which the patient had lucid intervals. Disturbance of the mind causing legal incapacity was always recognised by law if it was of long duration, a fortiori if it was permanent and irreversible. Since there was a