

non-contracting states. The difference in the wording of R. 90(1)(c) EPC 1973 (R. 142(1)(c) EPC) from that of R. 90(1)(a) EPC 1973 (R. 142(1)(a) EPC) was deliberately chosen so as to create equal treatment between applicants in the contracting and in non-contracting states. The board observed that Art. 133(2) EPC 1973 provided a limited exception to the normal requirement for professional representation within the meaning of Art. 134 EPC 1973 in the case, and only in the case, of the filing of the European patent application. Such a filing could validly be made by the applicant himself or by any representative duly authorised by him. Once the processing of the international application had properly started in the EPO, any interruption in proceedings occasioned by the death or legal incapacity of the American patent attorney would no longer be covered by R. 90(1)(c) EPC 1973.

#### **4.7. Interruption of proceedings because of insolvency (Rule 142(1)(b) EPC)**

According to R. 142(1)(b) EPC (R. 90(1)(b) EPC 1973) proceedings before the EPO shall be interrupted in the event of the applicant for or proprietor of a patent, as a result of some action taken against his property, being prevented by legal reasons from continuing the proceedings before the EPO. An interruption under R. 142(1)(b) EPC serves the protection not only of the interests of the patent proprietor but also those of its creditors. This rule protects these interests by preventing any measure with legal effect from being taken, be it by the proprietor or the EPO, that is liable to adversely affect the patent's value as an asset (T. 1389/18). For cases in which an **opponent** requested interruption of proceedings because of insolvency, see T. 1533/07 and T. 516/14 (the application of R. 142(1)(b) EPC to an opponent by analogy is not justified).

In J. 12/19 the board was of the view that, the opponent (appellant) was party to the resumption proceedings. Where opposition proceedings were interrupted and the Legal Division intended to resume proceedings or where it refuses to resume the proceedings, the outcome of the resumption proceedings has an immediate impact on the opponent's legal position. In resumption proceedings, the opponent is party to the main opposition proceedings. Any decision taken in the intermediate resumption proceedings may (adversely) affect the opponent's legal position. The opponent cannot be required to defend its rights only subsequently in the main (opposition) proceedings, after they have been resumed. Such a requirement would delay proceedings and might cause additional costs.

The decisive criterion for interruption under R. 142(1)(b) EPC is whether the action against the property was such as to make it legally impossible for the applicant to continue with the proceedings (J. 26/95, J. 16/05).

In T. 854/12 the board held that R. 142(1)(b) EPC was applicable where a proprietor initially unrestricted in his procedural conduct was later "prevented from continuing the proceedings", but not where a patent was transferred with the administrator's consent to another proprietor who was already insolvent and therefore did not become a party to the proceedings but was instead represented from the outset by the administrator, whose powers of disposal were unlimited.