

## 9.2. Reimbursement where request for re-establishment found to be redundant

In both T 1198/03 and T 2317/13 the respective requests for re-establishment of rights were found to be redundant (see also in this chapter III.E.6.6. above for details on these cases).

In T 1198/03, distinguishing the case in hand from other cases where an application for re-establishment of rights was equally redundant but the boards did reimburse the corresponding fee, the board stated that, in the case in hand, restitutio was not, as a matter of principle, applicable as a remedy, and that a party should not be able to reap cost benefits from the redundancy of a restitutio request filed on an auxiliary basis. Otherwise parties might be encouraged to file such inapplicable requests.

In T 2317/13 the board decided to reimburse the fee for re-establishment. It compared the case with the one in T 152/82 (OJ 1984, 301), in which the fee had been reimbursed after it became apparent that the re-establishment request would not have become effective.

## 9.3. Request for re-establishment due to mistakes made by EPO

In J 7/93 the EPO did not tell the appellant to ignore its previous communications issued in connection with a time limit supposed to have been missed; this would have enabled the appellant to recognise that its request for re-establishment was unnecessary. Instead, the EPO continued the proceedings for re-establishment of rights and finally refused restitutio without taking into account the fact that these proceedings had been unnecessary from the very beginning. The Legal Board found that this amounted to a substantial procedural violation within the meaning of R 67 EPC 1973. The Legal Board held that it was equitable to order reimbursement of the appeal fee, even though the appellant had not applied for this (J 7/82, OJ 1982, 391). The Legal Board held that since there was no longer any legal ground to request re-establishment of rights, the fee for re-establishment was wrongly accepted by the EPO and, therefore, had to be refunded to the appellant (confirming J 1/80 and T 522/88).

In T 971/06 as the appealed decision of the examining division did not comply with Art. 97(2) EPC 1973, it was considered invalid by the board. The examination should therefore have been re-opened without an appeal. Furthermore, the appellant was misled by the examining division for several months as to the procedure for remedying the mistake. When the examining division finally issued a communication refusing its request to correct the decision, the appellant filed an appeal, a statement of grounds of appeal and requests for re-establishment. The board considered these requests unnecessary, but an understandable reaction. It found that the fees paid in respect of these requests had to be refunded.

## 9.4. Reimbursement where more than one fee for re-establishment has been paid

In T 315/87 of 14 February 1989, the appellant's former representative had paid two fees for re-establishment of rights, one in respect of the time limit for filing notice of appeal and the other in respect of the time limit for filing the statement of grounds. The board, however,