

In T 1381/11 the board referred to T 555/08 and held that a loss of rights due to the non-payment of renewal fees automatically terminated the appeal proceedings. The issue of whether or not an appeal was pending was therefore directly linked to a request for re-establishment of rights regarding failure to pay the renewal fee made at the appeal stage. The formalities officer should therefore have acted on behalf of the board of appeal rather than the examining division, before which the case was no longer pending. The board thus took the view that it had jurisdiction to decide over the request for re-establishment of rights according to Art. 111(1), second sentence, EPC (see also T 649/13).

In T 1815/15 the appellant (patent proprietor) filed a request for re-establishment of rights with respect to the non-observation of the time limit according to R. 82(3) EPC. In line with the reasoning in G 1/90 and by making use of the discretion provided by Art. 111(1) EPC, the board stated it would decide on the request for re-establishment of rights filed while the appeal was pending.

In J 22/86 (OJ 1987, 280) the Legal Board stated in relation to the **failure to pay grant and printing fees** and to file translations that the examining division was in the first instance competent to decide upon such omitted act. However, in view of the special circumstances of this case, the Legal Board decided, pursuant to Art. 111(1) EPC 1973, to exercise the power of the examining division to decide upon the application for restitutio (see also J 9/86).

In T 26/88 (OJ 1991, 30) the appellant failed to comply with the request (pursuant to R. 58(5) EPC 1973) to pay the printing fee and to file translations of the claims within three months of notification of the request. The board found that the circumstances of decision J 22/86 were quite different from the case at issue and justified the exceptional exercise of the power of the examining division to decide on the application for re-establishment. In the case before the board the **opposition division's formalities officer** was responsible (see also T 522/88).

In J 10/93 (OJ 1997, 91) the Legal Division not only decided on the request for recording the transfer of a patent application, for which it was competent according to Art. 20(1) EPC 1973, but also dealt with the appellants' application for re-establishment of rights which it rejected as inadmissible. Since the omitted act was the applicant's **failure to reply to a communication of the examining division** issued pursuant to Art. 96(2) EPC 1973, the department competent to decide on the application for restitutio was the **examining division** (Art. 122(4) EPC 1973). The Legal Board set aside the decision finding that the Legal Division had exceeded its powers. It stated that this could not be justified by any need to decide on the request for restitutio as a preliminary issue to be answered before examining the request for registering the transfer.

6.2. Request for re-establishment as auxiliary request

In J 23/96 the applicant had applied for a decision under R. 69(2) EPC 1973 (R. 112(2) EPC) and, as an **auxiliary request**, asked for re-establishment of rights. The examining division issued a brief communication saying that the request for re-establishment would be decided once the decision under R. 69(2) EPC 1973 was final, or