

wording of R. 14(3) EPC that this is a discretionary decision (J 33/03; see also J 2/14, J 3/18).

In J 10/02 the Legal Board, exercising its discretion under R. 13(3) EPC 1973 took into account the fact that the entitlement proceedings only concerned part of the invention and the duration of the suspension.

In parallel decisions J 6/10 and J 7/10 the Legal Board held that some aspects of the exercise of discretion under R. 14(3) EPC were (i) how long the proceedings before the national courts/authorities have been pending (with a period of more than four years held to be considerable both for grant proceedings to be stayed and for entitlement proceedings to be pending in first instance) (ii) the duration of the suspension of grant proceedings, and (iii) requests for suspension of grant proceedings filed at a late stage.

In J 15/13 the Legal Board held that the filing of the request under R. 14(1) EPC at the last possible moment may only be taken as an argument for the resumption of the grant proceedings if such behaviour appeared to be a misuse of the respondent's right to a stay of the grant proceedings.

In J 4/17 the Legal Board held that the legislator had left it to practice and jurisprudence to define the circumstances that justify setting a date for resumption on a discretionary basis. Resumption of the proceedings was not limited to cases involving misuse or delaying tactics. The possibility that the EPO sets a date for resumption upon staying the proceedings for grant hints towards a broader construction. However, an applicant cannot justify its request for resumption based on the length of the entitlement proceedings where this duration has been significantly caused by the applicant's procedural conduct.

In J 13/12 the Legal Board decided that in exercising its discretion under R. 14(3) EPC, the EPO had to weigh the interests of the applicant up against those of the third party which had brought a national action to determine rights against the applicant. The Guidelines for Examination, as internal administrative guidelines, could also be consulted; but they gave no indication that the national proceedings had to be finally determined, where applicable after exhaustion of all legal remedies, before a date for resuming the grant proceedings could be set, or at any rate before they could actually be resumed. See also J 14/19.

In J 1/16 the Legal Board held that where, when deciding not to resume proceedings, the Legal Division had properly identified and exhausted its scope for discretion and weighed up the situation in the light of all the relevant factors, without being influenced by anything irrelevant and without making any logical mistakes in its assessment of the facts, it was not open to the Legal Board to exercise its own discretion in the Legal Division's place. Where a decision is basically to be upheld, a subsequent change in circumstances (in the case in hand: an appeal court ruling in national entitlement proceedings) can nevertheless present a ground for adapting it.

In J 3/18 the Legal Board agreed with the decision of the Legal Division not to set a date for resumption of the grant proceedings pursuant to R. 14(3) EPC. The appellant had