

first sentence, EPC 1973 but on the day which was equivalent to this due date by virtue of its being the "last day of the month". For the purposes of calculating the additional period under Art. 86(2) EPC 1973, therefore, R. 83(4) EPC 1973, in the context of R. 37(1), first sentence, EPC 1973, resulted in a period running "from the last day of the month to the last day of the month". The additional period started on the last day of the month specified in R. 37(1), first sentence, EPC 1973 even in the circumstances mentioned in R. 85(1), (2) and (4) EPC 1973. The occurrence of such circumstances at the beginning of the period did not result in the end of the period being postponed beyond the end of the sixth month and into the seventh month.

1.4.2 Period of grace for payment of fees under Rule 85a EPC 1973

In the context of the EPC revision exercise (EPC 2000), R. 85a and 85b EPC 1973 were deleted to take account of the extended application of further processing under Art. 121 EPC (OJ SE 1/2003, 190). See "Case Law of the Boards of Appeal", 5th ed. 2006, VI.D.1.3.2, for a detailed, or "Case Law of the Boards of Appeal", 6th ed. 2010, VI.D.1.4.2, for a short, overview of the case law on this provision.

1.4.3 Fiction of fee payment in due time pursuant to Article 7(3) and (4) RFees

Reference is made to chapter III.U.3.1.

2. Date of receipt of documents transmitted by fax

In T 858/18 the board held that if a facsimile transmission of a document within the meaning of R. 50(3) EPC begins on an earlier date and extends beyond midnight to a later date, the entire document is accorded the later date as the single date of receipt. There was no legal basis for according the earlier date as the date of receipt for the part of the document arriving at the EPO before midnight.

In T 2307/15 the board pointed out that although some paragraphs were missing in the statement setting out the grounds of appeal filed by the appellant on 15 February 2016, when compared with the version filed on 16 February 2016, the former still allowed the reader to understand the reasons according to which the appellant requested the impugned decision to be set aside and the facts and evidence on which the appeal was based. The board held that the statement setting out the grounds of appeal received by fax on 15 February 2016 was therefore to be seen as being complete, since it fulfilled the purpose which it was meant to achieve. Hence, the board confirmed the approach taken in T 2061/12 and T 2317/13 (last page of statement of grounds was received minimally late). The dissenting decision in T 858/18 remained an isolated decision in an individual case based on a factual basis different from the case in hand.

This point was also addressed in the following decisions, reported elsewhere in the present publication: J 7/97 (one page missing from the description), T 683/06 (some application documents received before and some after midnight) and T 2061/12 (part of the notice of opposition received before and part of it after midnight).