

treated differently from the patent proprietor as that would result in unjustifiable discrimination against him.

In T 181/14, the appellant (opponent), having filed notice of appeal and a statement of grounds of appeal but failed to pay the appeal fee in due time, was seeking re-establishment of its rights in respect of the time limit for payment. The board saw no reason to depart from the settled case law that Art. 122(1) EPC was applicable only where an appellant-opponent had failed to observe the time limit for filing its statement of grounds of appeal. When it came to re-establishment of rights, there was good reason to treat such a failure to file the statement of grounds of appeal differently from late payment of the appeal fee. Appellants-opponents who failed to observe the time limit for filing the statement of grounds of appeal could have their rights re-established because there was an appeal having legal effects; that is to say, appeal proceedings had been validly initiated. By contrast, if the appeal fee was not paid on time, there was no appeal. It made no difference, the board held, that, in this case, the patent proprietor had replied to the statement of grounds of appeal.

## **2.2. Re-establishment only in cases of failure to observe a time limit for which it was for the applicant to observe**

In J 3/80 (OJ 1980, 92) the Legal Board made it clear that if the **national industrial property office** concerned **failed to forward a European patent application** filed with that national office to the EPO **in time**, with the result that the application was deemed to be withdrawn (Art. 77(5) EPC 1973), the applicant could not claim restitution of rights, since the EPC provided only for restitution of rights where there had been a failure to observe a time limit which it was for the applicant to observe. See also J 1/12.

## **3. Non-observance of time limit directly causing a loss of right**

### **3.1. The meaning of "time limit"**

For re-establishment of rights to be possible, there must be a failure to meet a time limit vis-à-vis the EPO (Art. 122(1) EPC), i.e. a time limit given specifically to the applicant pursuant to the Convention or by an official of the EPO within which he must accomplish a certain act (consolidated cases J 11/91 and J 16/91, OJ 1994, 28; J 21/96). Not every "time limit", "time limitation" or "time restriction" under the EPC is also a time limit pursuant to Art. 122 EPC (J 10/01).

Time limits in the EPC have **two conceptual elements**: (1) a period of time determined in years, months or days, and (2) a relevant date, which serves as the starting date of the time limit, and from which the period of time is counted. Time restrictions imposed on applicants by the EPC, but not having these conceptual elements cannot be regarded as time limits for the purposes of Art. 122 EPC 1973 (J 18/04, OJ 2006, 560).