

application ceases to be pending on the day before the mention of its grant is published, G 1/09 (OJ 2011, 336). The request for further processing was thus filed at the stage when the patent application was no longer pending. The board accepted that the remedy of further processing did not require a pending application at the time the request is filed. But already the term "further processing of an application" indicated that it required an application. An application that is deemed withdrawn can return to the stage of a pending application once the request for further processing is successful, but an application that has been granted cannot.

#### **4. Interruption of proceedings under Rule 142 EPC**

##### **4.1. Application of Rule 142 EPC by the EPO of its own motion**

The EPO must apply the provisions of R. 142 EPC (R. 90 EPC 1973) of its own motion (J 1/87=J 902/87, OJ 1988, 323; J 23/88; T 315/87 of 14 February 1989; J 49/92; T 854/12; J 7/16; T 54/17). Entering an interruption in the register is not constitutive and is merely declaratory in effect (T 854/12). The consequence of an interruption in the proceedings is that the time limits in force as regards the applicant or patentee at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings were resumed (see R. 142(4) EPC). However, the time limit for making the request for examination and the time limit for paying renewal fees are only suspended (see in this chapter III.D.4.8. "Consequences of interruption of proceedings (R. 142(4) EPC)").

In T 54/17 the board took the view that, in cases where an appeal was pending, the Legal Division did not have exclusive competence to decide on an interruption. It thereby endorsed the view taken in T 854/12 that a board could decide on this for itself in any proceedings before it because, otherwise, a department outside the boards of appeal could deprive it of its power over those proceedings without it being able to do anything about it, especially if interrupting them retrospectively.

In T 1389/18 the board held that the Legal Division generally had the power to establish that proceedings had been interrupted under R. 142(1)(b) EPC with retrospective effect too.

##### **4.2. Amended Rule 142(2) EPC**

By decision dated 27 March 2020, the Administrative Council of the European Patent Organisation amended the R. 142(2) EPC provision on resuming interrupted proceedings (OJ 2020, A76). The newly inserted second sentence permits the EPO to set a date on which it intends to resume proceedings of its own motion if, three years after publication of the date of their interruption in the European Patent Bulletin, it still has not been informed who is authorised to continue them.

##### **4.3. Concept of legal incapacity (Rule 142(1)(a) and (c) EPC)**

The EPC does not define the concept of "legal incapacity", which is assessed differently according to whether the person concerned is the applicant or patentee or a professional