

In contrast to the situation under the EPC 1973, re-establishment in respect of the priority period (Art. 87(1) EPC) is possible under the EPC 2000. This change to the EPC has no implications for the interpretation of Art. 122(5) EPC 1973, which clearly rules out the time limit under Art. 87(1) EPC 1973 (see J 9/07). The case law which excluded the grace periods under R. 85a and R. 85b EPC 1973 from re-establishment is now obsolete as these provisions have been deleted. Issues concerning the exclusion of PCT time limits under Art. 122(5) EPC 1973 are no longer likely to arise since the coming into force of the EPC 2000; for a detailed summary of the case law (G 3/91, OJ 1993, 8; G 5/92 and G 6/92, OJ 1994, 22 and 25; G 5/93, OJ 1994, 447; J 1/03; T 227/97, OJ 1999, 495) see "Case Law of the Boards of Appeal", 5th ed. 2006, VI.E.3; for a short summary see "Case Law of the Boards of Appeal", 6th ed. 2010, VI.E.4

### 3.3. Time limits concerning the PCT proceedings

Art. 48(2)(a) PCT states that any contracting state shall, as far as that state is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit (see also R. 82bis.2 PCT). Consequently, a Euro-PCT applicant who has not carried out a certain procedural act within the time limit prescribed in the PCT can take advantage of the relevant provisions of the EPC concerning re-establishment of rights in all cases where the direct European applicant too may invoke them if he fails to observe the relevant time limit (see G 3/91, OJ 1993, 8; G 5/93, OJ 1994, 447; J 13/16).

In J 13/16 the Legal Board held that it would be inconsistent with the well-established principle of equal treatment between direct European applicants and Euro-PCT applicants if Euro-PCT applicants could be re-established in respect of the period under R. 49ter.2(b)(i) PCT for filing a request for restoration of the right of priority when, for direct European applicants, re-establishment is ruled out in respect of the period for requesting re-establishment under Art. 122(4) and R. 136(3) EPC. Therefore, in proceedings before the EPO, re-establishment of rights under Art. 122 EPC is ruled out in respect of the period under R. 49ter.2(b)(i) PCT for filing a request for restoration of right of priority.

In J 6/79 the Legal Board held that *restitutio in integrum* was not excluded, so far as the time limit for presentation of the request for examination is concerned, in the case of an international application transmitted to the EPO.

In W 4/87 (OJ 1988, 425) the board decided that an application for *restitutio in integrum* could be submitted in cases where the statement of grounds supporting the protest under R. 40.2(c) PCT was submitted late, since Art. 122 EPC 1973 applied in conjunction with Art. 48(2) PCT.

In T 227/97 (OJ 1999, 495), the board held that the provisions of Art. 122 EPC 1973 were applicable to the time limit set by R. 13bis.4 PCT. For re-establishment in respect of the time limit, set under former R. 40.3 PCT, for the protest against the invitation to pay an additional search fee, see W 3/93 (OJ 1994, 931).