

unified European profession of representatives before the EPO, there should be a uniform standard of judging legal incapacity, in order to avoid differences in the application of R. 90(1)(c) EPC 1973 (R. 142(1)(c) EPC) depending on the nationality or domicile of the representative. The question of determining the legal incapacity of a representative for the purposes of R. 90(1)(c) EPC 1973 (R. 142(1)(c) EPC) was one for the EPO, applying its own standards, developed in the light of experience and taking into consideration principles applied in the national laws of the contracting states. See also J 5/99, J 7/99.

The legal incapacity had to be of a persistent nature (J ..86 = J 901/86, OJ 1987, 528). For the purposes of R. 90(1)(c) EPC 1973 (R. 142(1)(c) EPC), the EPO must establish whether and if so when the representative was legally incapacitated, and in the light of its findings specify the time limits which might have been interrupted (J ..87 = J 902/87, OJ 1988, 323).

In J 7/99 the Legal Board held that legal incapacity pursuant to R. 90(1)(c) EPC 1973 (R. 142(1)(c) EPC) meant a mental state in which the representative was so totally or nearly totally unable to take rational decisions that all his professional duties, and not just one isolated case, were affected by his mental state. In the case in hand, legal incapacity was not established. See also J 2/98, J 7/16.

In T 315/87 of 14 February 1989 the board accepted that the previous representative had been suffering from physical and mental disorders. Indeed, the medical documents submitted by the previous representative himself pointed to a psychosomatic condition.

In J 7/20 the Legal Board noted that the criteria for interruption of proceedings under R. 142(1)(c) EPC are framed, word for word, as a closed list of triggering events (i.e. grounds): death of the representative; legal incapacity of the representative; prevention of the representative for legal reasons resulting from action taken against his property from continuing the proceedings. The list of interruption-triggering events of proceedings under R. 142(1)(c) EPC is exhaustive. It follows that any other events, including any encompassed by the notion of force majeure, fall outside the scope of this Rule. External, practical and one-off kind of events (inter alia heavy snow, cancelled flights and failed communication) do not constitute "legal incapacity of the representative" under R. 142(1)(c) EPC.

4.6. Legal incapacity of a representative from outside the contracting states

In J 23/88 the Legal Board accepted the finding of the Receiving Section that an American patent attorney was not covered by R. 90(1)(a) EPC 1973 (R. 142(1)(a) EPC), being neither the applicant nor the proprietor of a European patent, nor a person authorised by national law to act on his behalf. "Person authorised by national law" covered legal representatives of the applicant or proprietor, but did not extend to a patent attorney authorised under the laws of a non-Contracting State. However, the board held that the US patent attorney in the case in hand was, at the relevant time, a legally incapacitated representative of the applicant within the meaning of R. 90(1)(c) EPC 1973 (R. 142(1)(c) EPC). This interpretation was fully consonant with the preparatory documents regarding the desirability of equal treatment of applicants from contracting and