

filed with the request for re-establishment is insufficient for the appeal to be declared admissible, the request for re-establishment must itself be declared inadmissible.

4.4. Substantiation of the request for re-establishment

Under R. 136(2) EPC (Art. 122(3) EPC 1973) the request for re-establishment has to state the grounds on which it is based, and set out the facts on which it relies. The boards consider this requirement in relation either to the admissibility of the request or to the submissions that must be taken into account when analysing the merits of the request (see in this chapter III.E.5.1. "Submissions to be taken into account").

It is a condition for the admissibility of a request for re-establishment of rights that a duly substantiated statement of grounds be submitted within the time limit for filing the request (J 15/10, see also J 19/05). A request for re-establishment of rights complies with the requirement of R. 136(2), first sentence, EPC if a conclusive case is made, setting out and substantiating the grounds and facts on which the request relies (J 15/10; T 13/82, OJ 1983, 411). Thereby it is ascertained that the factual basis for the requested decision is not altered after the expiry of the time limit for the request (J 15/10, J 19/05, T 585/08, T 479/10). Therefore, the request for re-establishment of rights must set forth the precise cause of non-compliance with the time limit concerned, specify at what time and under which circumstances the cause occurred and was removed, and present the core facts making it possible to consider whether all due care required by the circumstances had been taken in order to comply with the time limit concerned (J 15/10, T 479/10, see also J 18/98). A request for re-establishment of rights which relies on general statements only and contains no specific facts does not satisfy the requirement for a duly substantiated request under R. 136(2), first sentence, EPC (J 19/05, T 1465/08, J 15/10). The mere payment of the fee does not meet the requirements of R. 136(2) EPC (T 1465/08).

In J 19/05 the Legal Board held that the request for re-establishment of rights was not sufficiently substantiated. The request was couched in purely general terms and contained no concrete facts identifying a reason for non-observance, the chronological sequence of events or the causes underlying the action or inaction of the persons involved concerning non-payment of a renewal fee.

In T 13/82 (OJ 1983, 411) the board held that a conclusive case must be made, setting out and substantiating the facts, for the probability - at least - that a wrongful act or omission on the part of an assistant was the cause of the failure to meet the time limit: the mere possibility was not sufficient to exculpate the applicant.

In T 287/84 (OJ 1985, 333) the board decided that an application for re-establishment of rights could be considered as complying with the requirement that it had to set out the facts on which it relied (Art. 122(3) EPC 1973) if the initially filed application in writing, which did not contain such facts, could be read together with a further document, which contained them and was filed before the expiry of the period within which the application had to be filed.