

A request for restoration of the right of priority is admissible if:

- (a) the international filing date of the application is within the two-month period following the expiry of the priority period; where a priority claim in respect of the earlier application is not contained in the international application, the priority claim must be added (Rule 26bis.1(a)) within the same time limit;
- (b) the request is submitted within the two-month period following the expiry of the priority period and is supplemented by a statement of reasons;
- (c) the fee for requesting restoration of the right of priority (see also GL/PCT-EPO A-III. 4.6) is paid within two months of the date on which the priority period expired; this time limit may not be extended before the EPO as RO.

Where the applicant makes a request for early publication under Art. 21(2)(b), the request for restoration and the statement of reasons or evidence (Rule 26bis.3(b)(iii)), or any notice under Rule 26bis.1(a) adding the priority claim, must be filed, and the pertinent fee be paid (Rule 26bis.3(d); GL/PCT-EPO A-III. 4.6), before the technical preparations for international publication have been completed (Rule 26bis.3(e)).

R. 26bis.3(a)(i)
OJ EPO 2007, 692
GL/RO 166F
GL/RO 166J -166M

The EPO as RO grants a request for restoration of the right of priority only if the due care required by the circumstances has been taken ("due care" requirement). To satisfy this requirement, the applicant must show to the RO's satisfaction that the failure to file the international application within the priority period occurred in spite of due care required by the circumstances having been taken. The standard of having exercised "due care" can only be met if the applicant has taken all measures which a reasonably prudent applicant would have taken. The statement of reasons accompanying the request should describe in detail the facts and circumstances that have led to the late filing as well as any remedial or alternative steps taken to attempt on-time filing of the international application. Due care is considered to have been taken if non-compliance with the time limit results either from exceptional circumstances or from an isolated mistake within a normally satisfactory monitoring system.

The practice of the EPO as RO defines exceptional circumstances as ones that are unrelated to ordinary working procedures and arise either unexpectedly, as for example a sudden serious illness, or owing to some kind of upheaval, such as an internal reorganisation entailing a move. Whether exceptional circumstances occurred depends on the facts of the case, and the standard to be met for this is very strict. In particular, events of force majeure may be regarded as exceptional circumstances. An event of force majeure means an external, unforeseeable and/or unavoidable circumstance beyond the control of the applicant or agent. Disasters, such as hurricanes, volcanic eruptions, earthquakes, international conflicts and war, may be considered such events. Due care is generally regarded as having been taken if it is demonstrated that the consequences of the event could not have been predicted and/or avoided.