

### 6.5. Re-establishment in the context of the President's extension of time limits during general disruption

In T 192/84 (OJ 1985, 39) it was held that if the President of the EPO extended time limits expiring during a period of general interruption in the delivery of mail in a contracting state (R. 85(2) EPC 1973; now R. 134 EPC, reworded), a pending application for re-establishment of rights considered to have been lost during that period, which had been filed by a representative having his place of business within that state, had to be deemed to have been made without purpose ab initio, even though the non-observance of the time limit was due to causes other than the interruption in the delivery of mail. Accordingly, it could be declared that no rights were lost and the fee for re-establishment of rights could be refunded.

### 6.6. Redundant request for re-establishment

In T 1198/03 the respondent (opponent) sent his reply to the appellant's statement of grounds of appeal one day late and requested that, if the board did not otherwise consider the reply, he be re-established into the time limit for filing the reply. The board decided to consider the respondent's reply. The request for re-establishment was therefore redundant.

In T 2317/13 the board held that the re-establishment request was redundant since the delay in filing the statement of grounds of appeal had been only of minutes and the **lateness of the filing was truly minimal** (the first four pages of the statement of grounds were in fact received before the time limit expired). According to the board, the discretion given to the board by Art. 13(1) RPBA 2007 to admit and consider late-filed submissions which amended a party's previously filed written case extended to the late admission and consideration of the written case itself (see T 1198/03).

## 7. Rights of use under Article 122(5) EPC

In J 5/79 (OJ 1980, 71) the Legal Board stated that according to Art. 122(6) EPC 1973 (Art. 122(5) EPC), third party rights of use arose only where the restoration of rights related to an already published European patent application or a European patent; those whose commercial interests were at stake should be entitled to be sure that protection, the existence of which was public knowledge, and which had fallen into the public domain, no longer had effect. Third party rights to continue use of an invention where an applicant's rights have been lost and restored cannot arise if the loss and restoration of the applicant's rights occur before publication of the European patent application.

## 8. Principle of proportionality

In T 111/92 of 3 August 1992 the statement of grounds of appeal were filed two days late due to an error of calculation of the due date on the part of the representative. The board held that the mistake in calculating the ten-day period due to human error at a time when the person in question was under pressure was an isolated mistake in an otherwise satisfactory system. The board referred to the principle of proportionality and stated that,