

R. 112(1) EPC was entrusted to formalities officers working for the examining and opposition divisions.

4.1. Purpose of notification of loss of rights under Rule 112(1) EPC

In J 7/92 the board stated that the purpose of a notification under R. 69(1) EPC 1973 is not to give an applicant a chance to take at least remedial action by way of a request for re-establishment of rights. As stated by the Enlarged Board in its opinion G 1/90 (OJ 1991, 275), when, according to the EPC the European patent application shall be deemed to be withdrawn, the applicant must be "informed" of the loss of rights (R. 69(1) EPC 1973). According to R. 69(2) EPC 1973 he may then, within two months of notification of the communication, apply for a decision "if he considers that the finding of the EPO is inaccurate". Although it is the customary practice of the EPO to send renewal fee reminders, it is in no way compelled to issue such communications. By communicating such information, the EPO provides only a voluntary service from which no rights can be derived (following J 12/84 (OJ 1985, 108)). The EPC 1973 did not provide that the EPO should note the loss of rights mentioned in R. 69(1) EPC 1973 within a certain period. Nor did it provide any period of time for the ensuing communication. However, when incoming requests or documents contained clear deficiencies which were obviously easy to correct and could be expected to be remedied within the time limit to avoid a loss of rights, then the principles of good faith might require the EPO to draw attention to such deficiencies (on the principle of the protection of legitimate expectations see chapter III.A.).

4.2. Form of notification of loss of rights under Rule 112(1) EPC

The board in J 43/92 noted that R. 69(1) EPC 1973 did not prescribe any particular form for the communications provided therein, distinguishing them from other communications or notifications under the EPC. A reference to a time limit to apply for a decision was not necessarily decisive as to the true nature of the communication. Whether a document constituted a communication pursuant to R. 69(1) EPC 1973 should be derived from its substantive content and its context (see also J 8/81, T 713/02, J 24/01).

4.3. Request for a decision under Rule 112(2) EPC subsequent to a communication

If the party concerned considers that the finding of the EPO is inaccurate, it may, within two months of notification of the communication, apply for a decision on the matter. In J 43/92 the board noted that a decision pursuant to R. 112(2) EPC could be applied for only if it was preceded by a communication under R. 112(1) EPC. Otherwise, there was no basis for the EPO to issue such a decision.

4.4. Responsibility for issuing decisions under Rule 112(2) EPC

By decision of the President of the EPO dated 12 December 2013 (OJ 2014, A6), responsibility for issuing communications and decisions within the meaning of R. 112(2) EPC was transferred to formalities officers working for the examination and opposition divisions.