



## SPANISH PATENT AND TRADEMARK OFFICE

### INFORMATION ABOUT THE RE-ESTABLISHMENT OF RIGHTS

#### I.- Definition and applicability.

The re-establishment of rights or “*restitutio in integrum*” is regulated in Spain in Article 25 of the Law 17/2001, on Trademarks, whose tenor is: “the applicant for or the proprietor of a mark (patent) or any other party in a procedure before the OEPM (Spanish Patents and Trademarks Office) who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the Office, shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of this Law or of its Regulations, of causing the loss of a right”.

This legal figure is applied to patents by express remission of the additional provision number 7 of the above mentioned law, in everything not incompatible with the nature of patents and with the exception of certain time limits within the national patent granting procedure. In particular, the re-establishment of rights is applicable:

- When time limits established for the translation (validation) of European patents have not been met.
- When the due renewal fee has not been paid.

#### II.- Formal requirements.

The **requirements** to admit the request for the re-establishment of rights are as follows:

- The omitted time limit must be fulfilled when the re-establishment of rights is requested. I.e. the filing of the translation plus the payment of the fees prescribed for the publication of the translation; or the payment of the renewal fee, where appropriate.
- The request for re-establishment must be filed in writing, in Spanish language, on paper or on line, within two months from the date of removal of the cause of the failure to meet the applicable time limit, provided that the request is filed within twelve months from the date of the expiration of the applicable time limit.
- The request must state the grounds on which the non-compliance with the time limit is based, in spite of the due care, and it will be accompanied by any declaration or other evidence in support of the statement.



- Payment of the fee for the re-establishment of rights. (**106,40 €**). The request shall not be deemed to be filed until the fee for re-establishment of rights has been paid.
- If the Office refuses the re-establishment of rights, an administrative appeal may be lodged within one month after the publication of the final decision of the Office in the Industrial Property Bulletin.

### III.- Definition of “due care”.

The due care is an indeterminate legal concept to be considered in a case by case basis. Therefore, it is not possible to formulate generic rules. The OEPM interprets that legal concept under the light of Article 1104 of the Spanish Civil Code and taking into account the decisions of the Board of Appeals of the European Patent Office.

Under that Article, the concept of “due care” should be understood, in the matter of observing obligations, in the sense of “the indispensable diligence of a good family man”. On the other hand, the jurisprudence of the Board of Appeals of the European Patent Office has indicated multiple criteria about the due care that can be used in the decision following a joint criterion of interpretation.

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