



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

Resolution of the Executive Committee, Sorrento, Italy, 29 September – 02 October 2013

“Restoration of priority rights”

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee held Sorrento, Italy, 29 September to 02 October 2013, passed the following Resolution:

Emphasizing a standard of excellence of practice for IP attorneys in order to minimize the circumstances in which a loss of rights might occur,

Recognizing however that despite the use of normally-satisfactory monitoring systems, some isolated mistakes can occur which result in failure to comply with formal requirements such as a time limit vis-a-vis an IP Office,

Observing that provisions in certain laws or treaties, including the Patent Law Treaty, the Patent Co-operation Treaty and the European Patent Convention, allow restoration of priority rights for an applicant or proprietor who, unintentionally, or, alternatively, in spite of all due care required by the circumstances having been taken, failed to validly file an application within the priority period provided for in Article 4 of the Paris Convention,

Noting however that very strict and often unrealistic interpretation of the “in spite of all due care required by the circumstances” criterion by IP offices and judicial authorities has resulted in losses of rights that are out of proportion to the circumstances of the failure and are contrary to the intentions and reasonable expectations of the proprietor of the IP right,

And further noting that a loss of priority in the case of patent and design rights can be fatal to the validity of those rights,

Aware that the standard of unintentionality is applied under the laws of various territories,

Recognizing that any provisions on restoration of priority rights should be subject to conditions that safeguard the legitimate interests of third parties,

Urges the authorities in territories where priority right restoration is not available to introduce provisions enabling such restoration, and

Further urges the authorities in territories where the criterion for restoration of priority rights is “in spite of all due care required by the circumstances” or similar, to either:

1. change the interpretation of this criterion to take reasonable account of the intention of the proprietor in addition to the due care applied at the time when the failure occurred, or
2. change the criterion to the unintentional criterion.