



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

Resolution of the Executive Committee, Cape Town, South Africa, 13 to 17 March 2011

“Standard for Re-establishment of Rights”

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee held in Cape Town, South Africa, from 13 to 17 March 2011, passed the following resolution:

Emphasising 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 a time limit vis-a-vis an IP Office,

Observing that provisions in certain laws or treaties, including the Community Trade Mark Regulation, the Community Design Regulation and the European Patent Convention, allow re-establishment of rights for an applicant or proprietor “who, in spite of all due care required by the circumstances having been taken, was unable to comply with a time limit ...”,

Noting however that very strict and often unrealistic interpretation of this 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,

Observing that certain harmonization instruments contain provisions concerning reinstatement of rights which apply, at the option of the Contracting Party, if “the failure was unintentional”,

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

Recognizing that any provisions on re-establishment of rights should be subject to conditions that safeguard the legitimate interests of third parties,

Urges the Offices and legislators in territories where the criterion for re-establishment is “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 fact that the failure was unintentional.