

Table of Cases

Applicant(s)	Reference No.	Application No.	Decision Date	Subject area/keywords
Correction of errors				
Antiphon AB's Application	[1984]RPC 1	GB8002644	21.12.1981	s.117, s.15(2) Clerical error; use of general provision excluded by specific statutory provision.
Payne's Application	[1985]RPC 193	GB8333125	30.11.1984	s.117, s.15(5) Clerical error; priority date unintended; application taken to be withdrawn; general provision of s.117 cannot circumvent mandatory provision of s.5(5).
Berg, David E Harrison, Harold H Berg, Lois Hill	0/235/05	GB0409405.8	26.08.2005	s.117 Wrong specification filed, request to correct by replacing with priority application. Correction not obvious; a mistake in filing of a document is not a mistake in a document. Correction not allowable.
Melling, Nigel	O/401/10	GB2383533	18.11.2010	s. 117 A request to correct the Register to show Mr. Melling as sole proprietor refused as outside the scope of s.117.
Discretionary extensions of time				
Heatex Group Ltd's Application	[1995]RPC 546	GB8724300.2	08.11.1990	Extension of time; no continuing intention to proceed; change of mind. Extension refused.
Meunier, Jean Francois	0/013/01	WO 95/01045	08.01.2001	Extension of time; entry to NP; change of mind. Extension refused.
Pilat, James F. Jnr.	0/139/02	WO 99/47965	02.04.2002	Extension of time; entry to NP; change of mind. Extension refused.
Brooks,	0/206/02	GB9820519.8	14.05.2002	Entitlement s.8; extensions of time; rectification

Annex 1A

Lawrence Anthony and Robinson , Harry				of irregularities; reinstatement. Extension refused.
Warren , Adrian Neil	0/340/02	GB0024500.1 GB0024501.9 GB0024503.5	15.08.2002	Extension of time; continuing intention; benefit of the doubt. Extension allowed.
MacMullen , Paul Neil	0/307/03	GB0026317.8	14.10.2003	Continuous effort to obtain funds to pay fee indicated a continuing underlying intention to proceed. Extension allowed.
Chitolie , Dick Lucien	0/078/04	GB0106932.7	25.03.2004	Extension of time; 3 rd party terms imposed
Al Bahdaini , Al Pasha	0/356/04	PCT/IB99/00178	06.12.2004	No continuing intention, extension refused.
Rectification of irregularities, 3rd party terms, extension of time limits				
Kangaroos USA	0/136/85	GB8018653	04.10.1985	Rectification of irregularities; 3 rd party terms imposed
Coal Industries Patent	[1986]RPC 57	GB8002608	05.06.1986	Rectification of irregularities; 3 rd party terms imposed
Castolin S.A.	0/007/98	EP(UK) 0493695	18.02.1998	Renewal payment error; patent recorded as ceased; rectification of irregularities; 3 rd party terms imposed.
Tristram , David Ralph	0/133/98	GB2171750	24.06.1998	Renewal fee error; 3 rd party terms imposed
Eveready Battery Company Inc.	0/452/99	EP(UK) 0469776	20.12.1999	Renewal payment made but not recorded; rectification of irregularities; 3 rd party terms imposed. Overturned on appeal.
	..... <u>Appeal</u> [2000]RPC 852 (Appeal)	.....	..... 18.05.2000	..... Payment was properly made; Patent therefore did not cease; no power to impose terms.

Annex 1A

				Register rectified to remove ceasing entry.
Kaye, Steven	O/353/99	GB9401938.7	8.10.1999	Extension of time limit; non receipt of WR letter. Exercise of discretion refused.
Abbas, Ashraf Mahfouz	O/277/06	GB2317657	29.09.2006	Non receipt of reminder/ceasing letters. Discretion refused – no error, default or omission by the office.
Charalambous, Mario Joseph	O/408/10	GB2310274	29.11.2010	Rule 107 – correction of irregularities. Patent ceased, change of AFS not actioned so renewal reminder sent to wrong address. Patent restored but proprietor opposed imposition of 3 rd Party terms. Patent had ceased therefore 3 rd Party terms imposed.
The Administrators of the Tulane Education Fund	O/252/11	SPC/GB/99/033	20.07.2011	Rule 107 does not in the present case give the comptroller any discretion to accept a late payment of the fee in order to bring the SPC into effect. The Office followed procedures correctly in the present case and thus there was no error, default or omission on the part of the Office in relation to this matter.
	<u>Appeal</u> [2012] EWHC 932 (Pat) CH/2011/0449		17.04.2012	Upheld on appeal. There was an error but it was not sufficiently causative to enable rule 107(3) to be applied.
Section 89 cases, no GB designation				
Vapocure Technologies Ltd's Application	[1990]RPC 1 Patents Court Court of Appeal	PCT/AU86/00364	11.02.1988 25.07.1989	s.89(1) PCT designated states; obvious error; entry to National Phase refused.
Thiele Kaolin Company	O/279/98	PCT/US96/02776 GB9720181.8	9.12.1998	s.89(1), s.130 Any s.89 application without a GB designation has no foundation and cannot proceed.
Derivation of right				

Annex 1A

Nippon Piston Ring Co Ltd's Application	[1987] RPC 120)	GB8501649 GB8501650	17.11.1986	Inventor's name, entitlement, F7
Withdrawal				
Spectra-Tech Inc.	0/171/98	GB9718771.0	19.8.1998	s.14(9) Request to withdraw properly made cannot be revoked; no power to correct under s.117 or rules.
Effect of withdrawal between PPC date and publication on prior art				
Woolard, Leslie Adrian Alfred	0/513/01 Appeal [2002]RPC 39 (Appeal)	GB9711337.7 	16.11.2001 12.04.2002	Section 2(3) Prior art; withdrawn published application held to be prior art. Overturned on appeal. Withdrawn published application held <u>not</u> to be prior art under s.2 (3)
Late Declaration of Priority, section 5(2B), PCT rule 26bis.3				
Sirna Therapeutics Inc.	0/240/05	GB0507019.8	01.09.2005	s.5(2B), (2C)(b) The failure to file the 'application in suit' was not unintentional. Intention was to file a different application - a PCT. Request refused.
Abaco Machines (Australasia) Pty Ltd.	0/309/06 Appeal CH/2006/APP/0827 (Appeal)	GB0504687.5 	30.10.2006 28.02.2007	s.5(2B), (2C)(b) The failure to file the 'application in suit' was not unintentional. Intention was to file a different application - a PCT. Request refused. Upheld on appeal Appeal dismissed. Abaco had not unintentionally failed to file an application for a grant of a UK patent. The PCT is a complete code as must be taken as such. [Archibald Kenrick & Sons Ltd's International Application 1994 RPC 635]

Annex 1A

Investigen, Inc.	0/009/08	GB0608059.2 GB0608060.0	14.01.2008	s.5(2B), s89, 89A, 89B Failure to file the GB application GB0608060.0 was not unintentional, intended to file a PCT application. Request refused. National Phase application GB0608059.2 did not enter the NP in time to make a late declaration of priority. Request refused.
Gordon, John Michael	0/374/07	PCT/GB2007/003189	02.01.2008	PCT Rule 26bis.3 The failure to file the PCT application within the 12 month priority period was unintentional in accordance with PCT Rule 26bis.3(a)(ii). Request allowed.
Crilly, Terence John	O/182/10	PCT/GB2009/051092	04.06.2010	PCT Rule 26bis.3 Late priority Applicant failed to appreciate the consequences of successful entitlement proceedings and delayed filing the PCT application until these were concluded. This was not unintentional. Request refused.
Reinstatement, section 20A, Restoration s.28, Unintention, removal of cause of non-compliance				
Anning, Bernard Edgar	0/374/06	GB0028762.3	27.12.2006	s.20A reinstatement The applicant's failure was in not replying to the exam report not failing to get the application in order at the compliance date. Applicant had not intended to reply to exam report. Unintentional is not the same as continuing underlying intention. Reinstatement refused. Upheld on appeal.
	..... Appeal CH/2007/APP/0040 [2007] EWHC 2770 (Pat). .....	.....	..... 26.11.2007	..... Appeal dismissed.
	O/264/10 Ali et al	GB0225836.6	26.07.2010	..... In order to comply with s.18(3) an extension to

Annex 1A

				the compliance period is necessary. See Practice Notice http://www.ipo.gov.uk/pro-types/pro-patent/p-law/p-pn/p-pn-reinstate.htm for revised practice on reinstatement and extension of compliance period.
Tannoy Limited	O/083/07	GB0102280.5	22.03.2007	s.20A reinstatement The unintentional failure of the CEO to inform staff of the assignment of this application led directly to the failure of Tannoy to reply to the examination report and to the refusal of the application. The intentions of the CEO best reflected the intentions of the applicant. Reinstatement allowed.
Matsushita Electric Industrial Company Limited (see also Roke Manor Research Limited and Morton I Hyson)	0/029/08 0/027/08 0/028/08 Appeal CH/2008/APP/0147 [2008] EWHC 2071 (Pat)	GB2288939 GB2322748 GB2322749 GB2322750 GB2368740 EP1054652 	01.02.2008 16.07.2008	s.28(3) restoration s.28(3) is met simply by a statement of unintentionation – no other evidence is required. Restoration refused – the determination of whether the Comptroller is satisfied must be based on the facts of each case, the evidence should be sufficient for the Comptroller to come to the determination himself. In this case the evidence was insufficient to establish the facts so as to satisfy the Comptroller. Upheld on appeal. Appeal dismissed.
Backhouse, Robert Vincent	0/049/08	GB0305884.9	20.02.2008	s.20A reinstatement, r.36A Failure to reply to examination report was not unintentional. Held that on balance of probability applicant was aware of need to reply and due date but decided not to bother.

Annex 1A

				Reinstatement refused.
Gradco (Japan) Ltd and KRDC Co. Ltd.	O/305/08	GB2378695	10.11.2008	s.28(1) restoration, s.101 Human Rights Act Time period for filing a restoration request. S.101 HRA does not bestow discretion to overlook a failure to meet statutory requirements. UK law provides for restoration, there was no limitation of the applicant's access to those provisions. Restoration refused.
Green, Derek Norman	O/087/09	GB0808277.8	27.03.2009	s.20A reinstatement, s.89A(3), rule 66(1)(b) Failure to enter NP in time. Applicant claimed lack of funds. Held that despite his underlying intention to enter the NP and despite his on-going attempts to secure finance the applicant's final decision not to comply with the deadline was a conscious one based on knowledge of his impecunious state. Reinstatement refused.
Porter, James Philip	O/144/09	GB2341616	22.05.2009	s.28 restoration Renewal fees not paid. Evidence submitted suggested lack of funds. However, evidence at hearing showed he did have funds available at the relevant time. Filing system had broken down and led to incorrect assumption that fee had been paid. On balance of probabilities failure was unintentional. Restoration allowed.
Smith, Edwin	O/166/09	GB2387536	17.06.2009	s.28 restoration, r.107 Request for restoration filed out of time. Applicant claimed he had been given incorrect dates and information by IPO. Evidence showed the erroneous information had no bearing on the late filing. Restoration refused.
Doyle, Stanley Patrick	O181/09	GB2341616	30.06.2009	s. 28 restoration Applicant decided to allow the patents to lapse for a while due to financial problems and his

Annex 1A

				wife's illness. He did not intend for them to lapse irrevocably. His decision to defer payment was a conscious one and could not therefore be unintentional. Restoration refused.
Orkli (UK) Ltd.	O/302/09	EP(UK) 1215473	30.09.2009	s.28 restoration, s.73(2) revocation EP (UK) not renewed as agent had instructed EPO to remove GB designation due to double patenting. This was not done and GB patent was revoked. Agent argued that removal of GB designation was their decision, proprietor was unaware of it. Proprietor fully intended to renew both of the patents and his intentions count rather than those of his representative. Restoration allowed.
Betson Medical (Ireland) Limited	O/355/09	EP0957878	12.11.2009	s.28 restoration – reasonable care. Proprietor in financial difficulty. The mere seeking of funds is not sufficient to show reasonable care. Restoration refused. Upheld on appeal.
	..... Appeal CH/2009/APP0720 [2010]EWHC 687 (Pat)	.....	..... 31.03.2010	..... Evidence does not establish reasonable care. Appeal dismissed.
Griffith, Carl Anderson	O/394/09	GB0708205.0	18.12.2009	s.20A reinstatement. Failure to file an abstract. Applicant used an agent who he expected to deal with filing required documents. Dispensed with agent, unaware abstract had not been filed or what it was. Consulted another agent but could not afford fees. Decision not to file the abstract was not made until after the relevant period had elapsed. Failure at the relevant time was unintentional. Reinstatement allowed.

Annex 1A

Ali, Ibrahim et al	O/399/09	GB0225836.6	23.12.2009	s.20A reinstatement. Rule 36A (now rule 32) Failure to respond to examination report. Whether the request for reinstatement was filed in time. Preoccupation with the serious illness of his father led to Mr. Ali's non compliance – this cause was removed on 4 th June 2007 and the request filed on 26 th July 2007 was filed in time. The failure to comply was for similar reasons, unintentional. Reinstatement allowed.
Daley, Michael	O/128/10	GB0312616.6	26.04.2010	s.20A reinstatement, r.107 Application terminated 9.6.05 for failure to file Form 10. Applicant complained that he had not been told of need to file F10 despite 2 letters issued to his address. Too late to reinstate and no procedural errors to invoke r.107.
Clifford, Adam Brooks	O/185/10 Appeal CH/2010/0523 2011 EWHC 1433 (Ch)	GB0919324.4 	07.06.2010 19.05.2011	s.20A reinstatement. Late entry to National Phase. Applicant knew the date but believed he could not afford the fee so did not proceed. Failure could not have been unintentional – the assertion that had he known the true cost he would have paid it was hypothetical and irrelevant. Request refused. Upheld on appeal. Mr. Clifford was aware of the date by which he needed to pay but decided to pay nothing because he believed the amount to be more than he was able to pay. His decision was intentional. Appeal dismissed.
Paunovic, Nenad	O/190/10	GB0907279.4 PCT/RS2007/000008	10.06.2010	s.20A reinstatement The applicant's final decision not to comply with the deadline for entering the National

Annex 1A

				Phase was a conscious one and cannot have been unintentional. Request refused.
Ali, Ibrahim et al	O/264/10	GB0225836.6	26.07.2010	s.20A reinstatement, s.18(3), s.20 Amendment following reinstatement. The application had been reinstated and the applicant must be given a chance to meet the requirement of s.18(3) – to make observations or amendments to bring the application into compliance. To do that properly a new period for overall compliance was necessary. See also Anning, Bernard Edgar.
Matwell Services Limited	O/091/11	GB0819802.0	02.03.2011	s.20A reinstatement, rule 32 The request for reinstatement was not filed within 2 months of the date when the applicant knew what had to be done and by when ie the removal of the cause of non-compliance. Request refused.
Virdee, Manjinder S.	O/104/11	GB0807755.4	15.03.2011	s.20A reinstatement, rule 32 The request for reinstatement was not filed within 2 months of the date of the removal of the cause of non-compliance. F10 filed late, F52 not filed in time to extend, F14 not filed within 2 months. Request refused.
The Administrators of the Tulane Education Fund	O/252/11	SPC/GB/99/033	20.07.2011	s.20A - when applied to patents section 20A is clearly limited to applications for patents. It does not apply to patents once they have been granted. In the case of SPCs it follows that it applies only to applications for SPCs. S20A cannot be used to reinstate the SPC in the present case as it does not apply to SPCs once they have been granted, but only to applications for SPCs. [Not appealed] s.28 - there are no provisions either in the

Annex 1A

				Regulation or in the Act that would allow restoration of rights in the present circumstances along the lines set out in section 28 of the Act in relation to patents. Section 28 cannot be used to enable the prescribed fee to be paid late so as to bring the SPC into effect in the present case.
	..... <u>Appeal</u> [2012] EWHC 932 (Pat) CH/2011/0449	.....	17.04.2012	..... Decision upheld on appeal. S.28 cannot be applied.
Robinson, Nicholas Paul	O/272/12	GB0813303.5	12.07.2012	s.20A reinstatement, rule 32 The applicant's failure to file Form 10 and fee was unintentional. His preoccupation with all the surrounding circumstances to this invention and other patent matters plus his other working commitments led him to inadvertently overlook the deadline.