Restoration (Section 37) (Rule 35)

Under Section 37 of the Patents Act, 1992 where a patent has lapsed by reason of a failure to pay any renewal fee within the prescribed period or within that period as extended under section 36 (3), an application may be made to the Controller for the restoration of the patent.

The owner of a patent may apply for a restoration within a given period of two years from the date on which the patent lapsed.

An application under Rule 35 (1) declares that a patent restoration which has lapsed shall include;

(a) the name and address of the applicant for restoration and the number of the patent or application in question;

(b) the amount of the renewal fee due;

(c) the date by which the fee should have been paid;

(d) the circumstances which led to the failure to pay the fee, and shall be accompanied by the prescribed fee and by evidence verifying any statement made in relation to the circumstances referred to in (d);

(e) the prescribed fee of €125 (Schedule of Fees Ref. No 15).

Rule 35 (2) states that if, upon consideration of the evidence, the Controller is not satisfied that a prima facie case for an order under Section 37 has been made out, he shall notify the applicant accordingly, and unless within one month the applicant requests to be heard in the matter, the Controller shall refuse the application.

Rule 35 (3) further states that if the applicant requests a hearing within the time allowed, the Controller, after giving the applicant an opportunity of being heard, shall determine whether the application may proceed to advertisement or whether it shall be refused.

Please complete and submit the application form available in order to ensure that all of the requirements under Rule 35(1) have been met.

The form is available to download at the following link: restoration form

The requisite form should be accompanied by a statement that must satisfy the Controller that the lapsing of the patent was unintentional, and that reasonable care had been taken to ensure the fee had been paid. The restoration application will be

published, and an opportunity afforded to persons to object to the restoration. If the restoration application is successful, the applicant will then be requested to pay the outstanding renewal fees.