EIP

Remember: A UK patent application may not finally lapse for many years!

In a recent decision of the UK Intellectual Property Office, an applicant for a UK patent was allowed to file a response to an examination report ("office action") more than 18 months after the due date for response originally set in the examination report. This is an extraordinary effective extension of time, obtained well after the initial due date for response had passed, but serves as a reminder that a UK patent application is not normally treated as formally lapsed until the end of the normal acceptance period of 4½ years from the priority/filing date. The applicant appears to have been representing himself throughout.

The initial due date for response set in the examination report was 23 July 2012. No response was filed by the applicant by that date. The UKIPO therefore sent on 10 December 2014 the usual letter warning that the end of the four-and-a-half-year acceptance period was approaching. (UK patent applications must normally be in order for grant by four-and-a-half years from the priority date or the filing date if there is no priority claim.) The applicant sent a letter of reply on 24 December 2014 in which he asked to be allowed to file a late response. This was initially refused by the UKIPO examiner, but allowed on appeal in the present decision.

Much of the evidence provided by the applicant was held to be confidential. It seems the applicant was ill, and, importantly, this was for the whole period from the initial due date to when he finally replied asking to be allowed to file the response late. The UKIPO hearing officer said "[the applicant] has experienced a series of unfortunate and unusual events that has spanned the vast majority, if not the entirety, of the period of time from before the specified response date to the present day. I accept that his reasons for responding late are peculiar to him and his application and that they are sufficient in

terms of severity and extent to justify the exercise of discretion in this case. I thus decide that the Office will accept a late response on this case." Interestingly, no provision appears to have been made to protect third parties who may have regarded the application as having been abandoned shortly after the initial due date in July 2012.

By Adam Flint