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Beware of late payments of renewal fees...

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In a recent decision by the Danish Maritime and Commercial Court (reported in the Danish Legal Gazette as U2011.2745S), the court ruled on the issue of restitution subsequent to default in making timely payment of a renewal fee.

A US company, acting through local patent counsel, failed to pay its 5 year renewal fee on time. The annual fee was due by the end of March 2007, but late payment could be effected until the end of September 2007 against an increased fee.

An application for restitution shall be filed within 2 months after the rights holder has realised – or should have realised – that payment should have been made. Within that same period the rights holder shall pay both the renewal fee and a separate fee for restitution.

In this case the application for restitution was filed together with patent counsel's instruction to the Danish Patents Office that the restitution fee be drawn from the account of the firm to which patent counsel belonged, whereas no instruction was given to withdraw the renewal fee also

The court held that the Danish Patents Office was under no obligation to inform the patent counsel of the requirement to pay both the renewal fee and the restitution fee as a precondition to restitution of the patent, especially as professional patent counsel in the opinion of the court must be assumed to know of the rules in as regards fees in connection with renewal and restitution.

The court did not accept patentee's defence that the acting patent counsel was under the (incorrect) assumption that the renewal fee would not be due until (and unless) the restitution were granted as the obligation to pay both renewal fee and restitution fee within the same period is clearly stated in the Danish Patents Act, Section 72.

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