

acting as instructed, had not properly handled the case. According to the Legal Board, if **fraud by an agent** were to be accepted as a reason for re-establishment of rights, by derogation from the general principle that an agent's behaviour was imputed to the applicant, the evidence presented must be so conclusive as to convince the board that a fraud took place as opposed to just unprofessional behaviour.

In T 742/11 the board held that the actions of an agent, who acted as an intermediary between the appellant and the professional representative, must be imputed to the party he is acting for, and the same level of care is expected from the agent as from a professional representative, or at least as from the party itself. Indeed, requiring a certain level of care from a professional representative and a party using his services would become utterly pointless if an intermediary acting between the party and the professional representative were not required to show the same level of care.

In T 1954/13 after the applicant (appellant) issued the US attorney with an order to "stop work", communication between the appellant and the US attorney was "reduced to a minimum". In the absence of evidence that the appellant had explicitly instructed the US attorney not to pass on any information about the status of the application to the appellant, the board could not establish that, by remaining inactive with respect to the application in suit, albeit having received relevant information from the European representative, the US attorney had complied with the requirement of "all due care". Although the appellant asserted an email had been sent by the US attorney to inform the applicant about the final deadline for filing an appeal shortly before the date both the US attorney and European representative considered to be the last date for filing an appeal, the mere sending of a single e-mail to the applicant without seeking confirmation of receipt or a follow-up enquiry, did not, in the board's view, meet the standard of all due care required by the circumstances (see also T 2274/11, J 15/14, J 19/04).

5.5.4 Due care in dealing with assistants

a) Introduction

According to the case law of the boards of appeal, where an assistant has been entrusted with carrying out routine tasks, such as typing dictated documents, posting letters and parcels and noting time limits, the same rigorous standard of care is not expected as is demanded of an applicant or his professional representative (J 5/80, OJ 1981, 343; see also J 33/90, J 26/92, T 43/96 of 5 July 1996, T 221/04 of 5 May 2004, T 1465/07, T 1663/12).

J 5/80 (OJ 1981, 343) is the key ruling in this regard. It established that a request for re-establishment of rights can be acceded to in the event of a culpable error on the part of the assistant, if the professional representative is able to show that he has **chosen** for the work a suitable person **properly instructed in the tasks to be performed**, and that he has himself exercised reasonable supervision over the work (see also T 191/82, OJ 1985, 189; T 105/85; T 110/85 of 10 September 1987; T 11/87 of 14 April 1988; T 176/91 of 8 April 1991; T 949/94 of 24 March 1995; T 221/04 of 5 May 2004; T 1149/11; T 1171/13).