

T.261/07 concerned a case in which an intermediary delivery service received and distributed mail within the patentee's premises. The board held that there had been no effective cross-check. Such a failsafe system would have required a regular comparison between the mail room database and the database of the Central Intellectual Property Department in order to discover discrepancies.

In T.1962/08 the representative argued before the board that an independent cross-check in the system for monitoring time limits was not obligatory. The board confirmed what had been said in T.428/98, namely that the requirements to be met by a system for monitoring time limits in general included making sure that monitoring duties were not left to one person alone, but that the system incorporated an overall checking mechanism which was independent of the person responsible for monitoring time limits. This checking mechanism could be provided within a single system for monitoring time limits. If the checking mechanism involved a second system for monitoring time limits, the latter had to be independent of the former ("redundant"). See also T.1465/07 in which the board held that the additional burden of an independent cross-check was not disproportionate for a large firm, where the cross-check can be organised more economically than in a smaller one. In T.1149/11 the board held that the duty of care concerning supervision of the assistant required that an effective cross-check was implemented, at least in a firm where a large number of time limits have to be monitored.

In T.836/09 of 17 February 2010 there was an isolated mistake by an assistant within an otherwise satisfactory system of **processing outbound mail**. The board held that in such a situation, irrespective of whether or not a large firm was concerned, the duty of having at least one effective cross check built into such a system was dispensed with. This applied even to important letters such as those whose improper treatment may entail the loss of a right or means of redress. The reason was that, in contrast to the monitoring of time limits, the risk of an error in the processing of outbound mail was low because such processing generally involved the execution of straightforward steps (with reference to T.178/07; see also T.1171/13 and T.2023/14 in relation to the sending of a fax by an assistant).

Concerning the need for an independent cross-checking mechanism and the form it should take, see also T.1172/00, T.785/01 of 30 September 2003, T.36/97, T.622/01, J.1/07, J.13/07.

b) Control mechanisms in small firms

In relation to small firms and offices, the boards have at times dispensed with the requirement for a cross-check (see e.g. J.31/90, T.166/87 of 16 May 1988, J.11/03, T.1355/09). As to the representative's own responsibility for performing an additional check when receiving the file to deal with, see T.1561/05, T.592/11, R.18/13 as summarised in this chapter III.E.5.5.4.e) "Ultimate responsibility of the representative".

In T.1355/09 the board held that no control mechanism had to be in place because the firm involved was very small and it had not overlooked a time limit, but rather the mistake had been made **during payment** of the appeal fee, i.e. whilst performing the act needed to observe the time limit. In these circumstances, no control mechanism was required, the