

on information provided voluntarily by PCT authorities and the EPO at various stages of the procedure, and instead had to ensure that he was normally able to comply with the basic PCT and EPC 1973 time limits even if he received this information late or not at all.

In T 601/93 the appellant was not aware of the need to file a statement of grounds within the time limit. The board held that any **legal error** which might have led the appellant to believe that the requirement was not to be observed would exclude the application of due care, considering the unequivocal provision in Art. 108 EPC 1973.

With regard to re-establishment in respect of disciplinary proceedings and the European Qualifying Examination, the board ruled in D 6/82 (OJ 1983, 337) that a mistake of law, particularly one regarding the provisions on notification and calculation of time limits, did not, as a general rule, constitute grounds for re-establishment of rights. The obligation to take "all due care required by the circumstances" meant that persons engaged in proceedings before or involving the EPO had to acquaint themselves with the relevant procedural rules.

#### d) Choosing a sufficiently competent representative

In J 23/87 the applicant failed to furnish a translation of an international application within the prescribed time limit. The appellant, a small Japanese firm with limited financial resources, submitted that a Japanese patent attorney without special knowledge of PCT matters had been consulted, and that this attorney had misinformed the appellant. The Legal Board held that for an applicant who lacked the necessary knowledge of the PCT and the EPC procedures, it was obviously necessary to consult a competent professional representative in order to cope with the procedures involved in such a patent application. Thus, the Legal Board was not satisfied that the appellant, being completely ignorant about the special procedure to be observed in this case, had chosen a sufficiently competent professional representative and let him properly advise the appellant on the matters involved having had an opportunity to study the details concerning the present application.

#### 5.5.2 Due care on the part of the professional representative

When an applicant is represented by a professional representative, a request for restitution in integrum cannot be acceded to unless the representative himself can show that he has taken all due care required of an applicant or proprietor by Art. 122(1) EPC (J 5/80, OJ 1981, 343). In other words, what Art. 122 EPC requires from an applicant also applies to an applicant's representative (T 1149/11).

The extensive case law on a professional representative's duty of care in **dealing with assistants** is dealt with below in this chapter III.E.5.5.4.