

the EPO, and had to **take the necessary steps to ensure payment** if intended (likewise J 1/07, J 4/07, J 12/10, J 5/13).

In J 4/07 the European representative had every reason to believe that it was the appellant's intention to continue prosecution of the application in suit. Under these circumstances the Legal Board did not consider that it was sufficient for the European representative only to send a single reminder more than four months prior to the expiry of the critical term.

In J 12/10 the Legal Board confirmed that it was established jurisprudence of the boards of appeal that a representative, once appointed – even if the renewal fees were paid by someone else – remained otherwise fully responsible for the application, and that this included a continuing obligation to monitor time limits, send reminders to the applicant, etc.

In J 5/13 the Legal Board considered that the extent of the duties of the representative depended on the agreement between the representative and his client. An appointed representative whose authorisation was silent concerning the payment of the renewal fees and who had not received any funds for this purpose was **not expected to pay the fee by advancing money** on behalf of the applicant out of his own pocket (J 16/93, J 19/04, J 1/07). Instead, he retained only a **"secondary responsibility"** (see J 1/07). Thus the representative's responsibility, above all, consists in finding out what his client really intends to do with respect to payment of the renewal fees (see J 16/93). The scope of duties of a representative who retains only such a "secondary responsibility" to inform and advise his client with respect to the due date for renewal fees cannot be the same as it would be if he were responsible for the payment itself. In the case in question, the representative had fulfilled his responsibility by sending repeated letters to the responsible person within the appellant's company.

In J 19/04 the board held that the representative's conduct has to be assessed according to the extent to which he has done all that is necessary to ascertain the **client's true wishes** (see also J 1/07, T 1426/14). It is not the number of (unanswered) reminders that is decisive, but when those reminders were sent in relation to the date on which the time limit expired, how the reminders were formulated and what the representative's duties were in relation to the client.

In T 942/12 the board held that if a European representative was **expressly instructed** that he was not required to monitor the payment of renewal fees, the duty of due care did not involve that he nevertheless monitored the payment. It could not be expected that the European representative monitors renewal fee payments at his own expense.

In T 629/15, the board distinguished the facts underlying it from T 942/12, as no express instruction to not monitor the payment of fees was given. In these circumstances, the board decided that the European representative remained responsible for ensuring the payment, despite the fact that the US applicant used a US representative as well as a service firm for the payment of renewal fees.