

For cases where the cause of non-compliance with a time limit involves some error in the carrying out of the party's intention to comply with the time limit, the case law has established the criterion that due care is considered to have been taken if non-compliance with the time limit results either from **exceptional circumstances** (see in this chapter [III.E.5.3.](#)) or from an **isolated mistake within a normally satisfactory monitoring system** (see in this chapter [III.E.5.4.](#)).

The party requesting re-establishment of rights bears the burden of making the case and proving that the requirements are met ([J 5/80](#), OJ 1981, 343; [J 18/98](#); [T 592/11](#); [J 3/13](#); [J 14/16](#); [T 2016/16](#); [T 2331/14](#); [T 2406/16](#)).

### 5.3. Exceptional circumstances

#### 5.3.1 Organisational restructuring

In [T 14/89](#) (OJ 1990, 432), due to internal reorganisation and removals, the [R. 58\(5\) EPC 1973](#) communication did not reach the responsible department of the patent proprietor. The board found that this fact, which led to non-observance of the time limit, constituted an isolated mistake such as could not be ruled out despite careful company organisation.

#### 5.3.2 Change to or withdrawal of representation

In [J 13/90](#) (OJ 1994, 456) the applicant, a small firm employing about 15 people, was in takeover negotiations with another company. In the course of the negotiations a change of attorney took place. As a result of the unforeseeable breakdown in negotiations plus the fact that action had already been taken to replace the previous attorney, payment of the fourth-year renewal fee had been overlooked. This isolated mistake in a special situation was, in the Legal Board's opinion, excusable.

In [J 11/06](#) the appellant submitted that, due to the removal and later change of the US representative, there was some confusion caused by this reorganisation. However, the Legal Board noted that no details at all had been given as to why this affected the payment of the renewal fee. Likewise in [J 4/07](#) the Legal Board did not recognise the presence of exceptional circumstances where the responsibility of the law firm for the payment of the renewal fee ceased to exist roughly one month before the end of the time limit. The board considered a period of about one month to be largely sufficient for effecting payment, even in the wake of an attorney's move from one firm to another. The representative's submissions were also inadequate.

In [T 1201/10 of 28 February 2018](#) the board was convinced that there were exceptional circumstances prior to the due date which could not reasonably have been foreseen by the appellant (applicant). In the period leading up to the due date the appellant was unrepresented, as the firm representing the firm had withdrawn from representation and with this withdrawal, the sub-authorisation for the person who eventually became the new representative also ceased. These circumstances, which were predominantly outside the