

In T.198/16 the representative did not notice that payment of the appeal fee had not been made. Different from an isolated mistake that an assistant may make, the board found that such a mistake was not excusable in a representative.

See also chapter III.E.5.5.4 e) "Ultimate responsibility of the representative".

5.4.2 A system operating efficiently for many years as evidence that it is normally satisfactory

The fact that a system had operated efficiently for many years has been put forward as evidence in many decisions that it was normally satisfactory (see J.31/90, J.32/90, T.309/88 of 28 February 1990, T.30/90, J.7/15). In T.130/83 of 8 May 1984 the board stated that if a proper reminder system was instituted by a representative in order to guard against the consequences of oversight in a busy office, this was itself strong prima facie evidence of the taking of care by the representative (see also T.869/90 of 15 March 1991, T.715/91, T.111/92 of 3 August 1992).

However, in T.1465/07, the board disagreed with the view that a monitoring system of time limits can be held to have been normally satisfactory because it worked without previous problems even though doubts existed. Evidence that such a monitoring system operated efficiently for many years will weigh in favour of a finding of a normally satisfactory character but will be counterbalanced by evidence that main features of such a satisfactory character, such as an independent cross-check, are missing. In that case a satisfactory character will be excluded (see also T.1962/08, J.14/16, J.9/16).

In T.1764/08 the board considered that the mere allegation that the case at issue was the first instance of unintended failure in filing an appeal does not show that all due care was normally observed and does not prove that a satisfactory system was in place in the representative's office.

5.4.3 Cause of mistake remains unclear

In T.529/09 the board allowed the request for re-establishment of rights. The board accepted that the representative's firm had a well-functioning and reliable system in place for processing incoming mail and monitoring time limits. The fact that in the case at issue the communication was apparently misplaced (since it did not reach the representative in charge and the time limit set in it was not entered in the computer system of the firm) had to be regarded as an isolated mistake in an otherwise satisfactory system. While the **precise circumstances of the mistake could not be elucidated any further**, this was not a sufficient reason for denying that all due care required by the circumstances had been observed in the present case. See also T.580/06, T.1355/09.

In J.7/15 the Legal Board could not determine with any degree of certitude what caused the non-payment of the renewal fee. The applicant had used the services of an external company for paying the renewal fees, a system which had worked flawlessly for more than 15 years, but failed in the case in hand. In the circumstances the board followed the