

**work continuously.** The case law on "an isolated mistake in an otherwise satisfactory system" could not be relied on to ignore a failure to act by the professional representative himself, unless there were special circumstances which made the failure to act compatible with taking all due care.

In T 592/11 the board held that, where a double check was carried out by the representative and an assistant, the former was liable for any negligence in performing his own part of this check. This was because, where double checks were carried out by assistants only, the representative had to perform an additional, third check (see T 439/06, T 1561/05). If, however, they were carried out by an assistant and the representative himself, the latter had to be subject to the same standard of care with respect to his part of the check. An isolated mistake by a professional representative in performing his check was then – as a rule at least – inexcusable.

In R 18/13 two "isolated" mistakes had been made, one by the professional representative, the other by his assistant. The Enlarged Board considered the travaux préparatoires and found that an "isolated mistake", such as assistants might make, was not excusable in a representative. If he was given a file to deal with, he could not simply assume that his assistants had reliably done all their work on it so far; he had to make sure, through appropriate control mechanisms before the file reached him, that time limits arising were complied with, or – at the latest when he was given the file to deal with – check for any time limits himself. The request for re-establishment was refused.

In T 600/18 the board held that Art. 122 EPC and the relevant case law (with reference to T 1095/06, T 592/11, R 18/13) did not excuse mistakes by the representative, even if the representative did not normally perform the duty of paying fees himself or herself.

#### 5.5.5 Due care in using mail delivery services

In T 667/92 of 10 March 1994 the board considered whether the appellant could be said to have taken all the due care required by the circumstances when allowing only two days for delivery from the UK to Germany and whether, in these circumstances, the choice of using a special carrier for the delivery was in keeping with the due care requirement. The board pointed out that a party who missed a time limit had also to show due care in its **choice of method of delivery** and that the use of outside agents might be held against the applicant under Art. 122 EPC 1973 owing to a lack of proper safeguards. The board added that in parallel situations telefaxing should preferably be used, but accepted the explanation of the appellant why this means was not used. The board took into account the very extraordinary circumstances regarding the withholding of the item by the customs in Munich for 36 hours, an incident which could not reasonably be foreseen, and allowed the request.

In T 381/93 of 12 August 1994 the problem arose from the failure of the private courier service to deliver the package containing the corresponding documents to the EPO as instructed. Referring to T 667/92 of 10 March 1994 the board held that once a reliable carrier had been chosen and commissioned for the delivery, a party was entitled to rely on