

complied with, which included awareness of the fact that nobody had taken care of the payment of fees.

In J 7/16 the Legal Board held that the relevant cause of non-compliance with the two-month time limit of R 136(1) EPC lay in the fact that the former representative was not in a position to act properly in the proceedings due to his state of health. Thus, the date of removal of the cause of non-compliance could only be the date on which the applicant had inspected the file and realised that its former representative had not acted properly.

In T 1547/20, the start of the two-month time limit was the appellant's receipt of a communication from the registry. The board received the request for re-establishment two months and ten days after the registry's communication was sent out. The appellant had submitted that it had filed the request for re-establishment within the time limit stipulated by R 136(1) EPC but there was no evidence as to the date of receipt of the communication. In the absence of proof that the actual date of receipt of the communication was within nine days after it was sent out, the board was satisfied that the request for re-establishment was submitted in time.

(iii) Time limit not observed due to an error of law

In T 493/08 the board considered that, where a time limit was not observed due to an error of law, the removal of the cause of non-compliance with that time limit occurs on the date on which the applicant actually became aware of the error of law (see also J 1/20). The board noted that, in an apparent contrast to this view, in T 1026/06 the date when the applicant should have made investigations was considered to be critical, even though the applicant apparently failed to undertake such investigations as a consequence of what was considered to be an error of law.

b) Responsible person

In several decisions the boards considered the question of the responsible person who could or should have detected the omission.

In T 812/04 the board held that the person to be taken into account for the purposes of establishing the point in time when the appellant was no longer prevented from carrying out an unperformed act was the duly appointed representative.

In T 32/04 the board considered that in the absence of a duly registered transfer of the application, the person responsible for the purpose of the EPO remained the applicant or his representative. Hence an alleged assignment of the application to a third party in the absence of such a registration was "res inter alios acta", i.e. outside the ambit of the legal relationship between the applicant and the EPO.

In T 191/82 (OJ 1985, 189) the board held that in a case in which non-compliance with a time limit was discovered by an employee of a representative, the cause of non-compliance, i.e. failure to appreciate that the time limit had not been complied with, could not be considered to have been removed until the representative concerned had himself