

been made aware of the facts, since it had to be his responsibility to decide whether an application for re-establishment of rights should be made and, if it was to be made, to determine the grounds and supporting facts to be presented to the EPO (see also J 7/82, OJ 1982, 391; J 9/86; T 381/93 of 12 August 1994).

In J 1/13 the Legal Board considered that within a law or patent attorney's firm the relevant person was the representative and not his or her employee (T 191/82); however, it was not up to the representative to extend the time period of R. 136(1) EPC at will by keeping him- or herself intentionally uninformed (see T 1985/11, where the board found it irrelevant that the representative had not read the letter when acknowledging its receipt). In addition, although most cases regarding the removal of the cause of non-compliance deal with the point in time when a representative discovered (or ought to have discovered) the error, the Legal Board stated it was recognised that the person whose knowledge was relevant might also be the applicant himself (see J 27/88; J 27/90, OJ, 1993, 422; T 840/94, OJ 1996, 680; T 32/04).

In T 840/94 (OJ 1996, 680) the board held that if a party instructed the authorised representative not to pass on any further communication from the EPO, it could not then rely on the fact that information notified to the representative and necessary for continuing the proceedings was lacking. See also T 1908/09.

In T 1588/15 the finding of the board differed from the line taken by J 1/13. The board saw no good reasons for the representative being uninformed and not taking immediate action in the knowledge (or merely belief) of being uninformed. It held that an applicant had a specific duty to positively inform its representative about an intended abandonment of an application. The board held that even when a representative was explicitly exempted from looking after a fee payment, at least he could be expected to be informed at all times about the applicant's intention as to whether or not the application was to be maintained. It decided that receipt of the noting of loss of rights by the representative triggered the time limit of two months foreseen in R. 136(1) EPC.

In J 27/88 the Legal Board held that the responsible person in the case at issue was neither the appellant nor the European representative but the **US patent attorney** who was the authorised agent of the appellant and was duly empowered to take all necessary measures. The date of removal of the cause of non-compliance was the date on which the US patent attorney became aware of the omission.

In J 27/90 (OJ 1993, 422) the applicant, a US company, properly appointed a European professional representative. For the payment of renewal fees it used a computerised service firm, a so-called "**renewal fee payment agency**". The Legal Board held that in the absence of circumstances to the contrary a communication under R. 69(1) EPC 1973 to the professional representative removed the cause of non-compliance. This also applied when parties instructed the (European) professional representatives via their (national) patent attorney. The appointment of an independent service firm for the payment of renewal fees did not constitute circumstances to the contrary.