In **T 632/95** the board pointed out that the burden of proving that a document had been received lay with the party submitting the document just as, vice versa, the EPO bore the burden of proving receipt of the documents it issued.

It has to be observed that a party submitting that something has not happened is faced with the difficulty of proving this allegation. The party can essentially presume what could have happened or what normally would have been done if a letter had been received, in order to cast doubt upon the EPO's evidence, but it is hardly ever possible to file compelling evidence that the letter was not received. The EPO is also in a difficult situation if an applicant submits that it has not received a communication. The EPO then has to start enquiries with the postal services and rely on the information obtained. Since details are not given, this information is usually unsatisfactory. After a certain period the relevant information may not even be obtainable at all. However, this ought not to be to the detriment of the applicant, specifically not where communication noting a loss of rights is concerned. These problems could be avoided if such communications were delivered by registered letter with advice of delivery (**J 9/05** and **J 18/05**).

According to the German version of R. 126 (2) EPC (former R. 78(2) EPC 1973), the EPO must in a case of doubt ("im Zweifel") establish the date on which the letter was delivered to the addressee. In **T 247/98** the board decided that, when establishing the meaning of the term "im Zweifel" in the German version, account should be taken of the French and English versions, which assumed that there was a dispute ("en cas de contestation", "in the event of any dispute"). From the general principles concerning the burden of presentation which fell on the parties, it followed that a party seeking the application of a legal provision favourable to its interests had to set out the facts justifying such application, even if it did not ultimately bear the burden of proof for those facts. Although, in the event of a dispute within the meaning of said rule, the burden of proof for the date of delivery fell on the EPO, this could not be taken to mean that a party wishing to rely on the late delivery of a letter from the EPO had no obligation to contribute to the clarification of circumstances within its own sphere of activity but could sit back, as it were, and wait to see whether the EPO succeeded in ascertaining when the letter had been delivered to the party. A dispute ("Zweifel" in the German version) within the meaning of this rule could only arise if it was maintained that a letter had in fact been received more than ten days following its posting.

In **J 3/14** the board stated that, in a situation where the representative submitted that he had not received a communication, the EPO bore the burden of proof. In the board's opinion, it had at least been **made plausible** that the postal authorities erroneously delivered the letter to an unauthorised person in view of an authorisation which seemed to allow the collection of "all registered mail". The appellant also brought evidence as to the absence of its representative from her place of business. The board concluded that, in cases where the EPO bore the burden of proof, the applicant had to be given the **benefit of the doubt**. If doubts remained about what had really happened, this could not be to the detriment of the applicant. This applied all the more in a situation like the one at issue where the refusal of the application was the immediate consequence for the applicant.

In **T 50/12** the board held that, by producing the advice of delivery, the EPO had fulfilled its duty under R. 126(2) EPC to assess the actual date of delivery to the addressee.