

According to T.316/13, a European patent attorney is expected to know the EPC provisions concerning the legal remedies available in the event of failure to observe time limits, even if he has never been faced with the problem before, without waiting for the board of appeal to tell him exactly what he needs to do.

(ii) Exceptions to the rule that an error of law or erroneous interpretation cannot be excused

In T.624/96 the board expressed doubts about the nature of the original mistake, which concerned calculation of the time limit for filing the statement of grounds of appeal. This was possibly a "mistake of law" caused by ignorance or misinterpretation of the provisions of the EPC, as in e.g. J.31/89 or T.853/90. The board found that in the circumstances of the case at issue, however, the agent had not made a "mistake of law" of this kind. The agent cited an earlier appeal in which he had represented the same applicant, showing that he indeed had some familiarity with the appeals procedure. He also submitted programmes of training courses, at which he had given talks on European patents and EPO proceedings. It could be therefore be ruled out that a legal error in calculating the period for lodging the statement of grounds of appeal might have arisen from his ignorance of the EPC.

In J.28/92 the Legal Board held that the misinterpretation of a provision of the EPC by a representative was not without basis or unreasonable and considered that there was no basis for penalising the representative for having arrived at a **not unreasonable interpretation** of a rule of the EPC, which subsequently turned out to be wrong. The representative's interpretation of a legal provision of the EPC was not the result of, and did not lead to, a failure to exercise all due care required by the circumstances. In T.493/08 the board shared the view expressed in J.28/92 and stated that there might be exceptions to the rule that an error of law could not be excused, which, however, could be acknowledged only under rigorous criteria.

In J.13/13 the Legal Board confirmed that an error of law could be excused if rigorous criteria were met, namely where there were genuine doubts and differences of opinion as to how a provision was to be interpreted. Such doubts and differences of opinion could be considered legitimate only if, after scrupulous attempts to clarify the matter, including by reference to the boards' case law, the right interpretation remained objectively unclear and the view later found to be erroneous was reasonable.

d) Requesting and acting on information from the EPO

In T.460/95 of 16 July 1996 the representative requested an extension of the time limit, although, in his professional capacity, he should have known that time limits under Art. 108 EPC 1973 could not be extended. The board noted that representatives were expected to be acquainted with the provisions of the EPC regarding time limits, and that the representatives in question had not been as vigilant as the situation demanded. In this specific case, however, the representative had taken the precaution of contacting the Registry of the Boards of Appeal beforehand, and had received information from that body which had led him to take action prejudicial to his interests. The board held that appellants