

f) Designation of receiving offices

In J 1/03 the Legal Board emphasised the paramount importance of the designation of receiving Offices and the difficulty or even impossibility, in many cases, of correcting wrong or missing designations. Consequently, the benchmark for what "all due care" meant in those cases, was very high. Likewise the check of the content of the international application on the basis of the "Notification of Receipt of Record Copy" issued by the International Bureau had to be made very carefully.

g) Abandonment of application

In T 1022/14 the board observed that abandonment of an application was a final action with serious consequences if misapplied. Thus for a decision to close a file and to abandon an application the utmost care had to be taken to establish whether the client had without any doubt issued instructions to that effect. The decision to abandon an application had to be taken by the representative himself, on the basis of his own observations and knowledge. This responsibility could not be delegated to employees, as decisions of this kind required the special knowledge of the representative for which he had to assume personal responsibility as a professional.

5.5.3 Due care on the part of a non-authorised representative

In determining whether all due care has been taken, the acts of all those persons the appellant has asked to act on its behalf must be considered, which also applies to non-authorised representatives instructed by the appellant (T 2274/11 with reference to J 4/07; see also J 5/80).

In J 25/96 the Legal Board held that where a US applicant availed himself of the services of a US patent attorney for matters which in relation to the EPO fell within the applicant's responsibility, the **US patent attorney** had to be regarded as the agent of the applicant. Thus, to meet the "all due care" requirement, the US patent attorney had to show he had taken the due care required of an applicant (see also J 3/88, T 1401/05 of 20 September 2006).

In J 4/07 the Legal Board pointed out that a non-European representative can be held responsible for meeting the obligations of any representative whose duty it is to care for his client's interests, irrespective of whether such representative is entitled to represent before the EPO or any other patent office (see J 25/96, J 5/18). The monitoring of specific time limits that were set expressly does not depend on knowledge of EPC law. Thus a non-European representative must also establish a reliable monitoring system for such time limits. Furthermore, any representative, whether European or non-European, moving from one law firm to another must take provisions upon entry in that firm that those filed that he carries over are integrated into a time limit monitoring system.

In J 3/08 the Legal Board held that according to the established jurisprudence, if an agent was appointed, the agent had also to observe all due care and if he did not act accordingly this was imputed to the applicant. In the case at issue, it was clear that the agent, by not