

The Legal Board further stated in J.5/80 that a representative cannot relieve himself of responsibility for carrying out tasks which, by reason of his qualification, fall upon him personally, such as, for example, the interpretation of laws and treaties. If a representative delegates such tasks to an employee and if the latter makes an error in the course of that work which results in the failure to observe a time limit, the representative cannot establish that he took all due care required by the circumstances (see also J.33/90 and T.715/91).

More recent decisions stress that responsibility in every respect passes to the representative as soon as he is presented with the file for processing, and that to that extent he is not justified in relying on an assistant's calculation of a time limit (see in this chapter III.E.5.5.4 e) "Ultimate responsibility of the representative"). For a case where an unrepresented individual applicant entrusted a third person with the payment of renewal fees and other administrative tasks, see T.555/08.

Regarding the **burden of proof** in the form of an adequately detailed statement in connection with the duty of care in the selection, instruction and supervision of assistants, see J.18/98.

b) Selection, instruction and supervision

It is incumbent upon the representative to choose for the work a suitable person, properly instructed in the tasks to be performed, and to exercise reasonable supervision over the work (J.5/80, OJ 1981, 343; J.16/82, OJ 1983, 262; J.26/92; T.2016/16). An "assistant" within the meaning of J.5/80 (OJ EPO 1981, 343) includes a **substitute replacing an assistant** who is on leave, ill or absent for some other reason. The same standard of care must be exercised as regards the choice, instruction and supervision of the substitute as of the assistant himself (J.16/82, OJ 1983, 262). New assistants must be supervised on a regular basis for a period of at least some months (see J.3/88, T.715/91).

The case law cited above applies equally to a **patent attorney residing in the USA** (or his assistants) if he acts in collaboration with the duly appointed professional representative. In J.3/88 the US patent attorney of a "non-resident" applicant acted in collaboration with the duly appointed professional representative. The "docket clerks" (assistants of the US patent attorney) were entrusted with the performance of routine tasks such as noting time limits and checking due dates. The Legal Board stated that in order to be able to carry out these admittedly rather simple tasks properly, they needed nevertheless some **basic knowledge**. The Legal Board concluded that, although no special qualifications were required, it was fairly impossible for a docket clerk to perform these routine tasks satisfactorily without having previously been given appropriate instruction and being supervised closely until he was familiar with the job. A reasonable **supervision** of the activity of a newly engaged docket clerk implied that his work be periodically checked. In order to be effective and avoid culpable errors, these periodic checks should be performed systematically, at least during an initial training period of several months.