

e) Ultimate responsibility of the representative

In J 25/96 the statement of grounds for the request for re-establishment of rights explained inter alia that non-observance of the time limit had been caused by the assistant entrusted with monitoring time limits. The Legal Board held that the case law according to which a representative could entrust suitably qualified and supervised personnel with monitoring time limits had been developed for routine tasks and normal cases. It did not mean that a representative could also entirely leave such staff to monitor cases which (i) were **particularly urgent**, (ii) needed **particular attention** and further steps by the representative himself to ensure that the necessary acts were still performed in time, and (iii) could result in an **irrevocable loss of rights** if any error or delay occurred.

In T 719/03 the board did not accept the appellant's argument that the failure to comply with the time limit had been an isolated mistake by the qualified secretary who had noted on the cover page of the revocation decision only the time limit for appeal but not the time limit for filing the statement of grounds of appeal. The board held that the appellant's representative had himself failed to exercise due care, since the contested decision had been shown to him twice without his noticing the incompleteness of the note concerning the mandatory time limit that had to be monitored. The board took the view that, with the **careful handling** of a dossier involving statutory time limits, a representative was so often faced with the time limits to be observed that **compliance with the time limit was ensured**.

In T 439/06 (OJ 2007, 491), the board emphasised that fulfilling the requirements of proper selection, instruction and supervision only meant that the assistant's error in dealing with the delegated task could not be imputed to the representative. It did not mean that the representative's responsibility ended once and for all with the proper selection, instruction and supervision of the assistant, and that he need not take further care with respect to the delegated task (see also T 1149/11). Once the representative gets the file on his desk for his own action, in order to comply with the relevant time limit, **responsibility** passes over to him **in all respects**. All due care under these circumstances requires the representative to verify the time limit calculated by his records department when he receives the file for dealing with it. He cannot simply rely on having delegated this task once and for all to his records department (see also J 1/07, T 719/03, T 473/07).

Likewise in T 1561/05 the board held that the representative was personally at fault in failing, when signing the statement of grounds for appeal, to check the calculation of the time limits by his support staff and therefore to notice that the calculation was wrong. A task forming part of the representative's **core duties**, such as performing a **final check** when signing a submission which is subject to a time limit, cannot be delegated in a way that absolves the representative of responsibility.

In T 1095/06 the board stated that if the professional representative failed to act because he had not received a reminder due to some error of a properly chosen, properly instructed, and reasonably supervised assistant this could be regarded as "an isolated error in an otherwise satisfactory system" which would still allow re-establishment to be granted. However, a professional representative must be presumed to be **supervising his own**