

reasoning of T.529/09 and gave the benefit of the doubt to the appellant, granting the request for re-establishment of rights.

5.4.4 Requirement for a cross-check

a) Cross-check should be independent in a large firm

In J.9/86 the Legal Board was of the opinion that in a large firm where a large number of dates had to be monitored at any given time, it was normally to be expected that at least one effective cross-check was built into the system (T.223/88, J.26/92, T.808/03 of 12 February 2004, T.1149/11).

In T.828/94 the board held that given the size of the representative's office, a proper monitoring system should have contained some form of cross-check, for example that someone would be responsible for checking independently of the representative and the assistant whether any notice of appeal had been filed or was being prepared, and for raising the alarm if no data concerning such a notice – or a decision not to appeal – had been entered into the computer near the due date. In T.257/07 the board emphasised that an independent cross-check must necessarily include either another person or an automated system alerting another person (see also J.9/16 on the meaning of "independent"; T.76/17).

In T.686/97 of 12 May 1998 the board held that the provision of a "redundant" or "failsafe system" was an essential component of a normally satisfactory reminder system in corporate patent departments. The failure to provide administrative reminders to the responsible patent attorneys of the time limits applying to the filing of statements of grounds of appeal was incompatible with the operation of a normally satisfactory system.

In T.428/98 (OJ 2001, 494) the board stressed the exceptional nature of the ruling in J.31/90 and T.166/87 of 16 May 1988 (which concerned cross check mechanisms in small offices; see in this chapter III.E.5.4.4.b) below) and said that according to the appellant's submission his representatives' office was staffed by two patent agents, two lawyers, a partly qualified patent lawyer ("Patentassessor") and a law graduate, i.e. six people dealing in their main professional capacity with cases relating to intellectual property rights. Such cases being commonly subject to time limits, with immediate negative legal consequences for the client if they were missed, time-limit monitoring in such an office was a major undertaking in terms of both significance and scale. The board therefore deemed a cross-checking mechanism to be essential. See also T.1962/08, T.1726/08 (a firm with 40 attorneys at four locations is not small), T.479/10.

In T.283/01 of 3 September 2002 the board pointed out that the applicant's system was not properly designed to handle the appeal in question, involving partial responsibility of an external representative. The deviation from the normal way of filing and prosecuting an appeal had been the applicant's deliberate decision in the particular circumstances of the case. Taking all due care required by the circumstances of the case should have implied installing an individual control mechanism, offering a realistic possibility of detecting and correcting the failure to note and calculate the time limit for filing the statement of grounds.