

In T 338/98 the appellant was first represented by professional representative A, but later asked him to transfer all files to a new representative B. One European patent application failed to be transmitted. Although the representatives were aware that the renewal fee was due for this application, they did not reach clear agreement about paying it, with the result that the fee was not paid and the application was deemed to be withdrawn. The board held that in these circumstances it did not appear appropriate formally to delimit the individual responsibilities of each of the representatives during a transfer of cases requiring, by its very nature, close co-operation between the persons involved and naturally leading to overlapping responsibilities. The fact that in these circumstances the representatives had been unable to reach agreement about the way to proceed and that the appellant had not been informed of the outstanding renewal fee and of the disappearance of the file in question was not an indication that all due care required by the circumstances had been taken at that moment.

In T 1426/14 the representative had been informed about the applicant's intentions to pay the renewal fee and could be sure that the applicant was aware of the running time limit. The board held that once the applicant had clearly indicated that he had taken note and that he would pay, the representative had fulfilled his obligations and the responsibility shifted to the applicant.

c) Ignorance of or erroneous interpretation of a provision of the EPC

(i) Error of law or erroneous interpretation cannot be excused

In J 3/88 the Legal Board noted that account should be taken of the fact that under Art. 134(1) EPC 1973 the contracting states had in principle confined representation of applicants before the EPO to "professional representatives" who, by virtue of their qualification should guarantee the best possible representation. The Legal Board stated that it followed that a representative could not relieve himself of responsibility for carrying out tasks which, by reason of his qualification, fell upon him personally, such as, for example, the interpretation of laws and treaties. If he delegated such tasks to an employee and if the latter made an error in the course of that work which resulted in the failure to observe a time limit, the representative could not claim that he had taken all due care required by the circumstances (see also J 33/90).

In J 31/89 the Legal Board confirmed that erroneous interpretation of the EPC owing to a mistake of law on the part of the duly authorised representative with regard to the rules for calculating time limits (in the case in point, regarding the late payment of a renewal fee together with the additional fee) could not be excused. The appellant and the representative failed to determine correctly the last date for valid payment of the renewal fee (see J 42/89, T 853/90, T 493/95, T 881/98, T 578/14).

In T 516/91 the board considered that by mistakenly believing that an extension of the time limits set by Art. 108 EPC 1973 was possible, the representative had failed to exercise due care (see also T 248/91, T 853/90, T 316/13).