

parent application after the filing of the divisional application should not influence the procedure concerning the latter (G 4/98, OJ 2001, 131). The parent application also does not have any procedural priority over the divisional application, which is like any other application and in particular does not have subordinate procedural status (T 1177/00, T 1176/00).

In J 12/18 the Legal Board recalled that only after the filing of a divisional application is its fate separated from changes concerning the earlier application. The nature of a divisional application, which is derived from a parent application thereby benefiting from the parent's date of filing and priority rights, implies that the divisional cannot be broader than the parent application, neither its subject-matter (Art. 76(1) EPC) nor its geographical coverage. Hence, in the case in hand, designated states forfeited in the parent application at the time of filing the divisional could not be revived in the divisional.

4.1.2 No preclusive effect of a decision with respect to identical requests in the other procedure

The consequence of the procedural independence of the divisional application can be seen in T 1254/06. In this case, the examining division had refused the divisional application and the applicant did not appeal. In the appeal proceedings concerning the parent application (in which the applicant had made the same requests as in the proceedings concerning the divisional application) the question arose whether the legal force of a **refusal decision** in respect of the divisional application also affected the parent application procedure to the extent that it could prevent the EPO (including the boards of appeal) from dealing with the substance of identical requests. The board stated that the principle that both proceedings were independent meant that a refusal decision in one procedure did not have a preclusive effect with respect to identical requests in the other procedure. This applied in particular when, as in this case, the refusal decision was made not by the board of appeal but by the examining division, because the first-instance administrative decision did not have true *res judicata* effect. For decisions dealing with the issue of a cross-procedural *res judicata* effect, see chapter II.F.2.4.3 above.

4.1.3 Filing a divisional application not a response to a communication under Article 94(3) EPC

In case J 5/07 the appellant had failed to file observations according to Art. 96(2) EPC 1973 (Art. 94(3) EPC). The appellant's request for further processing was rejected on the ground that the omitted act was not completed in due time (Art. 121(2) EPC 1973; R. 135(1) EPC). The appellant filed an appeal against this decision, arguing that the omitted act was in fact completed because in response to the communication a divisional application was filed by the appellant. The Legal Board held that, as a consequence of the principle that a divisional application was legally and administratively separate and independent from the grant proceedings concerning the parent application, the filing of a divisional application could not constitute a response to the invitation by the examining division in the parent application within the meaning of Art. 96(3) EPC 1973 (now Art. 94(4) EPC).