

be proven in a formal way, namely by a certificate issued by the authority which had received that application (see R. 53(1) EPC and Art. 4D(3) Paris Convention). Even if no such **formal proof** was prescribed for the timely withdrawal of a previous application pursuant to Art. 87(4) EPC (see Art. 4C(4) Paris Convention), it appeared appropriate to require an equally high standard of proof, for once there existed a previous application concerning the same invention both dates were equally relevant for establishing the validity of the claimed priority. However, in the case at issue, the timely withdrawal of the UK application for the purposes of Art. 87(4) EPC could not be established. Unlike facts barring patentability (see for example T. 219/83 cited by the appellant), the timely withdrawal of a previous application was a positive precondition for claiming a valid priority from a subsequent application for the same invention. Hence, the date of the effect of the withdrawal was a fact which could act in the applicant's favour, and she had relied on it just as she had relied on the filing date (and the content) of the subsequent UK application (this decision was cited and applied in T. 62/05)

Case T. 493/06 involved the issue of the valid transfer of a priority application. According to the board, the submitted statutory declarations and notarial certifications provided sufficient evidence that the copy of the transfer agreement was the same as the original.

In T. 205/14 the board disagreed with the reasoning of T. 62/05 that the transfer had to be proven in a formal way, applying an equally high standard of proof as that required by Art. 72 EPC 1973. Art. 72 EPC 1973 set out formal requirements for a valid assignment of a European patent application and thereby limited the means of giving or obtaining evidence for determining such a transfer. Having regard to Art. 117 EPC and the principle of free evaluation of evidence, the rule should not be extended beyond its scope of application. Since the provisions of the EPC did not lend themselves to an autonomous determination of the requirements for transfer of the right of priority, the validity of such transfer was a matter of **national law** (cf. T. 1008/96 (two pieces of evidence mutually exclusive: declaration before a notary public and decision of Italian Court); cf. also approach in T. 160/13 (transfer of priority right within a corporate group – emails), J. 19/87, T. 493/06). T. 205/14, T. 517/14 and T. 1201/14 deal with numerous issues of proof, standard of proof and burden of proof.

In T. 1201/14 the board stated that concerning the proof of a valid transfer of the right of priority, the probative value of the affidavits submitted was to be decided by the board in accordance with the established principle of free evaluation of evidence. As to the standard of proof to be applied, the board concurred with the respondent (opponent) that the circumstances of the case required proof "beyond reasonable doubt" (rather than proof based on the "balance of probabilities", as relied upon in T. 205/14, point 3.6.1 of the Reasons and the almost identical case T. 517/14, point 2.7.1 of the Reasons). This was because practically all the evidence lay within the knowledge and power of only one party to these inter partes proceedings within the meaning of T. 472/92 (OJ 1998, 161, point 3.1 of the Reasons (concerning public prior use), i.e. the patent proprietor (appellant) here, whereas the other party (respondent) was not in a position to present any counter-evidence. In any event, regarding the alleged second transfer of the right of priority, the appellant's case failed for lack of sufficient evidence.