

jointly with the latter, but it did require that the applicant for the first filing, or his successor in title, be among the applicants for the subsequent, priority-claiming filing. In such a case, if there was only one additional applicant for the subsequent filing, there was no need to provide proof of the transfer of the priority right to him. In the case at issue, sole applicant A2 for D1 was also one of the applicants for the application leading to the patent, so D1 was the first application (Art. 87(1) EPC). The fact that D0 and D1 designated different inventors made no difference. Some of D0's inventors were also designated as inventors in D1, so it could not be assumed that the two applications derived from two different inventive acts. Most importantly, identity of inventor was not relevant for Art. 87 EPC, which, for the purpose of claiming a right of priority, referred to the applicant (T 5/05).

5. Partial and multiple priorities

In cases where partial or multiple priorities can be validly claimed, the subject-matters of the subsequent application have two or more operative priority dates. In the case of a **partial priority** that part of the subsequent application's subject-matters disclosed in the previous application has the priority date of the previous application; for the remaining part the date of filing of the subsequent application applies. With **multiple priorities**, the priority of two or more previous applications is claimed. In this case, claims in the subsequent application have the priority date of the previous application in which the subject-matter subsequently claimed was disclosed (see also chapter II.D.5.2. below). Multiple priorities may be claimed for any one claim (Art. 88(2), second sentence, EPC), as long as several subject-matters are included (see also chapter II.D.5.3. below, and summary of G 1/15, OJ 2017, A82, in chapter II.D.5.3.2).

5.1. Publications during the priority interval – effect on elements of the European patent application not entitled to priority

As noted by the EPO President in the reasons for the referral in G 3/93 (OJ 1995, 18), on the one hand, it frequently occurs that in subsequent filings new elements and information are added in respect of prior applications of the same applicant and, on the other hand, inventors are often eager to publish the results of their research as soon as possible.

In its ensuing opinion, the Enlarged Board stated that a document published during the priority interval, the technical contents of which correspond to that of the priority document, constitutes prior art citable under Art. 54(2) EPC 1973 against a European patent application claiming that priority, to the extent that such priority is not validly claimed. This also applies if a claim to priority is invalid due to the fact that the priority document and the subsequent European application do not concern the same invention because the European application claims subject-matter not disclosed in the priority document. The Enlarged Board emphasised that the existence of a right of priority depends, inter alia, on the fulfilment of the requirement that the European patent application claiming the right of priority from an earlier application must be "in respect of the same invention" disclosed in the earlier application. Where priority is claimed but cannot be allowed because the essential condition precedent, that the inventions are the same, is not met, there is no right to priority. Consequently, any publication of the contents of a priority document during the priority interval constitutes prior art citable against **elements** of the European application