

when the subsequent application is filed. The board in T 577/11 already confirmed that a succession in title that occurred after the filing date of the subsequent application was not sufficient to comply with the requirements of Art. 87(1) EPC 1973. This finding was in line with Art. 4 Paris Convention and the legislative history of these provisions.

The board in T 969/14 held, with reference to Enlarged Board decision G 1/15 ("Partial priority", OJ 2017, A82), that once it is acknowledged that partial priority rights exist they must also be transferable separately. This, however, has consequences for the remaining priority right, because the assignor is left with a limited right. On partial and multiple priorities, see also in this chapter II.D.5. For decisions concerning the entitlement of co-applicants see in this chapter II.D.2.2.3.

### 2.2.2 Applicable law – proof of transfer

In T 844/18 the board held that it was not, as argued by the appellants, the national law of the place of filing of the priority application (here US law) that determined who qualified as "any person", but the Paris Convention, to which the US was a party and which was thus part of the "supreme Law of the Land" (Art. VI, clause 2, US Constitution). The board also concluded that this determination was a purely formal one. The Paris Convention and the EPC provided self-contained definitions of the person claiming priority. This person was defined by the action that they performed, i.e. filing a first application. With regard to the formal requirements for the transfer of the right of priority, the board in T 1201/14 observed that, as the EPC contained neither guidance nor conflict-of-law provisions for that purpose, national law was commonly relied upon by the departments of the EPO entrusted with the procedure. The board also acknowledged that there was no established jurisprudence of the boards as to the national law generally applicable to this question.

In T 1008/96 the European patent application resulting in the patent in suit and the two Italian utility model applications from which priority was claimed had been filed by different persons. The board held that the succession in title had to be proven to its satisfaction. It was a general principle of procedural law that any party claiming a right had to be able to show that it was entitled to that right (see J 19/87). This question had to be answered in accordance with national law. The board concluded that the respondent had failed to prove that it was the successor in title in respect of the two Italian utility model applications. Consequently, no priority rights existed for the patent in suit.

In T 62/05 the board pointed out that the EPC did not contain any regulations on the formal requirements that an assignment of priority rights for the filing of a European patent application should fulfil in order to be considered valid for Art. 87(1) EPC 1973. However, having regard inter alia to the crucial effect that a valid priority date has on patentability (cf. Art. 89 EPC 1973), such transfer of priority rights, in the board's view, had to be proven in a formal way (by analogy with T 1056/01 – also summarised in chapter III.G.4.3.5; see, however, T 160/13 and T 205/14 below). It hence appeared reasonable to apply an equally high standard of proof as that required for the assignment of a European patent application by Art. 72 EPC 1973, which, however, the board concluded was not met here. Furthermore, the appellant could not convince the board that an assignment had taken place implicitly and tacitly before the end of the twelve-month period.