

In T.591/05 the applicant had declared during the examination proceedings that he reserved the right to file a divisional application. The board found that this declaration created no obligation for the examining division to check the status of any possible divisional application or to postpone the grant of the patent. It was incumbent on the applicant to undertake the appropriate measures to ensure that any possible divisional application was filed in due time before the grant procedure was closed.

3.2. Filing date attributed to divisional application

According to Art. 76(1), second sentence, EPC, in so far as the subject matter of the divisional application does not extend beyond the content of the earlier application as filed, the divisional application shall be deemed to have been filed on the date of filing of the earlier application.

The characterising feature of a sequence of divisional applications each divided out from its predecessor is that each member of the sequence claims as filing date the date of the originating or root application in which the subject-matter divided out in sequences of divisional applications was first disclosed. The filing date of the root application is the **only filing date** which can be attributed to a divisional application, by way of the legal fiction contained in Art. 76(1), second sentence, second half sentence, EPC 1973, irrespective of whether the divisional application is a first divisional or a divisional further down in a sequence of divisionals (G.1/06).

In T.600/08 the Receiving Section had granted the request that the applicant's name in the divisional application be corrected (under R. 88 EPC 1973) on the ground that the wrong firm had been named as applicant by mistake. Before the board, the appellant (opponent) asserted that the request for correction under R. 88 EPC 1973 ought not to have been granted and that the divisional application was therefore invalid. As a result, the filing date relevant for the patent at issue was the date of receipt of the application on which it was based. The board found that there were only two alternatives for a European patent application filed as a divisional application: either it was not treated as a divisional application, in which case the grant procedure would not even start, or it was treated as a divisional application, in which case it could only be accorded the filing date of its parent application. Since the application on which the patent was based had been filed as a divisional application and then treated as such, there was no choice but to accord it the filing date of the parent application. The EPC does not provide for reviewing in opposition proceedings whether the correction of an applicant's name carried out by the Receiving Section was lawful (Art. 100 EPC 1973). See also T.196/10.

3.3. Language for filing divisional application

According to R. 36(2), first sentence, EPC, a divisional application shall be filed in the language of the proceedings of the earlier application. According to R. 36(2), second sentence, EPC, if the latter was not in an official language of the European Patent Office, the divisional application may be filed in the language of the earlier application; in such a case, a translation into the language of the proceedings for the earlier application shall be filed within two months of the filing of the divisional application.