

In T.1222/11 claim 1 had been amended to include six disclaimers for the purpose of restoring novelty over D4b, an earlier international (Euro-PCT) application of the same applicant, which had been published within the priority interval. The board found that the combination of features defined in positive terms in claim 1 (i.e. without any disclaimer) could not be distinguished from the disclosure of D4b and was not entitled to the claimed priority as far as it concerned the subject-matter already disclosed in D4b (Art. 87(1), (4) EPC). The compositions of D4b were therefore prior art under Art. 54(2) EPC. As the anticipatory disclosure of D4b was not an accidental anticipation (cf. G.1/03, OJ 2004, 413), the disclaimers based on it were not allowable under Art. 123(2) EPC. For further mention of this decision see chapter II.D.5.3.1.

In T.282/12 the board held that, for reasons of consistency, the rationale of decision G.1/15 (OJ 2017, A82 – concept of **partial priority**) must also apply in the context of deciding whether an application from which priority is claimed is the first application within the meaning of Art. 87(1) EPC. Indeed, just as a priority application and a patent claiming priority therefrom may partially relate to the same invention, the priority application and an earlier application filed by the same applicant may also do so. In that case, the priority application would be the first application in respect of only that part of the invention which is not the same as in the earlier application. Here, the board found that the earlier application filed by the applicant disclosed a range which was encompassed within the range of the priority document. Therefore, for that sub-range the priority document was not the first application. See also the summary of this decision in chapter II.D.5.3.3.

In T.1662/14 document D2 was a Euro-PCT application claiming priority from D3, an application of the predecessor in title of the applicant of D2. D3 had the same technical content as D2 and was filed before the date of filing of the patent in suit (which claimed no priority). D11 was also an application of the predecessor in title of the applicant of D2 and had the same technical content as the original application from which the patent in suit was derived. D3 was a continuation-in-part of D11. Hence D11 had left some rights outstanding within the meaning of Art. 87(4) EPC. It followed that D11, and not D3, was the first application in respect of the invention which it disclosed, and D2 could not validly claim priority from D3 for that invention. However, D2 contained more specific elements, i.e. it disclosed a system comprising additional technical features not disclosed in D11. As a consequence, D11 was not the first application for the more specific system, and the priority claim of D2 was valid in respect of such a system, for which D3 was the first application. That specific system belonged to the state of the art according to Art. 54(3) EPC and anticipated the subject-matter of claim 1.

4.2. Identity of applicant and joint applicants approach

In T.5/05 the opposition division had concluded that neither of the two claimed priority applications qualified as the first application within the meaning of Art. 87(1) and (4) EPC 1973 on the grounds that two inventors and part of the subject-matter were the same as in an earlier previous application. As the filing date of that application was more than twelve months prior to the filing date of the contested patent and the application had been "made public", the same invention of the same inventors could no longer serve as a basis for claiming priority.