

procedural right that derived from the applicant's status as applicant in the earlier application (with reference to J. 2/01).

In J. 34/86 the Legal Board allowed an application to be filed as a divisional application by a party other than the registered applicant for the parent application. This case concerned, however, a particular set of circumstances. The applicant for the parent application had been ordered by a US court to assign all property rights in the invention to the person who became the applicant for the divisional application, and the applicant for the parent application had already signed an assignment to that effect.

### 3.1.2 Filing of divisional application during stay of proceedings

In J. 20/05 application proceedings had been suspended under R. 13 EPC 1973 (now R. 14 EPC) because of pending national entitlement proceedings. The Legal Board decided that the applicant was not entitled to file a divisional application relating to that application while the proceedings remained suspended (confirmed in G. 1/09, OJ 2011, 336).

In J. 9/12 the Legal Board added that to allow the filing of a divisional application by an applicant whose entitlement was challenged would be inconsistent with and contrary to the fundamental objective of R. 14(1) EPC, which was to preserve any potential rights a third party might have to the grant of a patent for the earlier application in dispute.

### 3.1.3 Joint applicants

In J. 2/01 (OJ 2005, 88) the Legal Board held that joint applicants could not acquire a procedural status different from that of a single applicant, because otherwise each of them could perform different and contradictory procedural acts, including the filing of different versions of the patent to be granted. Therefore, where an application (the "earlier application") had been filed jointly by two or more applicants and the requirements of Art. 61 or R. 20(3) EPC 1973 (now R. 22(3) EPC) had not been met, the right to file a divisional application in respect of the earlier application under Art. 76 EPC 1973 was only available to the registered applicants for the earlier application jointly and not to one of them alone or to fewer than all of them.

### 3.1.4 No obligation to postpone a decision to allow the filing of a divisional application

In T. 1184/03 the appellant requested during the oral proceedings before the board that the delivery of the decision be postponed with a view to filing a divisional application. Since the case was ready to be decided at the oral proceedings, the board held that postponing the decision of the board to allow the filing of a divisional application would run counter to the public interest in having the matter decided as expeditiously as possible, because the matter ready to be finally decided by this board would be pending again. See also T. 592/15, in which the board observed that requests forcing a board to examine questions outside of the framework of the given appeal were not admissible (T. 502/02). Thus, the board refused the applicant's request that the "application be maintained pending until [a] divisional application has been filed".