

general principle "a jure nemo recedere praesumitur" mentioned in **G 1/88** (OJ 1989, 189), in the absence of an **explicit** withdrawal, surrender of a right could not be simply presumed and silence could not be deemed to be equivalent to surrender in the logic of how the Convention operated.

In **T 388/12** the board confirmed that, as a general principle of law, surrender of a right could not be simply presumed (with reference to **G 1/88**). On a strict application of the principle "a jure nemo recedere praesumitur", the withdrawal of a request could only result from acts of the party that manifestly establish such intention. At the same time, the board held that explicit withdrawal of a request would not be required insofar as the intention of the party, as it might result from its behaviour or comments made, was **unequivocal**.

Circumstances leaving no doubt that requests had been withdrawn were established in the following decisions:

In **T 2301/12** the proprietor had replaced the initial requests with new requests before the opposition division. The board held that the use of the word "replace" implied that the initial main request was no longer the current main request, and since there was no attempt to retain it as a new auxiliary request either, it was difficult to avoid the conclusion that it had been simply withdrawn. The new requests had been annexed to the minutes and the first of them was clearly entitled "main request". The board did not accept the argument that the titles of requests should be considered mere labels for identification. Where a proprietor filed multiple requests, there had to be a single main request, and it had to be apparent at every stage of the proceedings which request this was.

In the same vein, in **T 52/15** the board noted that, in the circumstances of the case, the opposition division did not err when considering that each newly filed "main request" was clearly meant to replace the previously filed one/s. The board emphasised that the withdrawal of a request was a serious procedural step which was usually announced explicitly by a party via a corresponding statement and that any such statement must be mentioned in the minutes (see **T 361/08**). However, an explicit withdrawal was not required if a party's behaviour or procedural steps it took during the proceedings made its intention unequivocal (see **T 388/12**). The board confirmed that EPO departments have the duty to ensure that any uncertainty with regard to procedural acts of the parties is clarified. However, the board held that, if a procedural act of a party was clear and there were no reasons to suggest that its intentions were not correctly understood, that party could not expect not to have to bear the consequences of that procedural act.

In **T 1255/16** the board concluded from the following elements that the previously filed requests had been replaced with the newly filed claims: the appellant's reply to the preliminary opinion, in which the board had raised objections against the previously filed requests, contained no arguments in their support, but merely gave reasons why the newly filed amended claims complied with the EPC; in addition, the appellant did not disagree when the board informed him, in a further communication, of its understanding that the newly filed claims replaced the previous pending substantive requests.