

priority claim based on an invention disclosure at an exhibition must fail in the case in hand.

## **2.5. Postdating of the previous application**

Swiss patent law formerly allowed a patent application to be postdated if it was subsequently amended. In T 132/90 the patent proprietor had claimed 11.3.1983, the original filing date of the earlier Swiss application, as the priority date for his European application dated 9.3.1984. In 1985 the Swiss Patent Office ordered that the filing date of the Swiss patent application be set at 1.7.1983 following subsequent completion of the technical documentation. The board concluded that the original application should serve as the basis for claiming a priority right and that the priority date was the filing date of the original application. The postdating order did not take effect ab initio, and the subsequent fate of the original application was immaterial as far as the priority date was concerned.

## **2.6. Multiple exercise of the right of priority for one contracting state**

According to the board in T 998/99 (OJ 2005, 229), Art. 87(1) EPC 1973 made no provision for multiple filings in the same country within the priority period for the same subject-matter and hence the same invention on the basis of the same priority document. However, in subsequent decisions this strict approach was rejected.

Thus, in T 15/01 (OJ 2006, 153) the board pointed out that, with respect to the issue of exhaustion of priority, the wording of Art. 87(1) EPC 1973 appeared to be open to different interpretations. Since the EPC constituted a special agreement within the meaning of Art. 19 of the Paris Convention, this provision was not intended to contravene the basic priority principles of this Convention. The Paris Convention in its present version explicitly recognised the possibility of claiming multiple and partial priorities and guaranteed the right to divide patent applications while preserving the benefit of the right of priority for the divisional application as well (principles also recognised in Art. 76(1), second sentence, EPC 1973 and Art. 88(2) and (3) EPC 1973). The board considered that the priority provisions of the Paris Convention had to be construed in a manner which ensured that the general purpose they served, namely to assist the applicant in obtaining international protection for his invention, was fulfilled as far as possible. The board also examined the circumstances under which the issue of exhaustion might arise (splitting up of the subject-matter of the priority application to avoid non-unity objections; filing of a deficient subsequent application and remedying it by means of a second filing; combination of the originally disclosed subject-matter with further improvements and additional embodiments developed during the priority period) and analysed the interests involved. It concluded that the same priority right might be validly claimed in more than one European patent application; there was no exhaustion of priority rights. In T 5/05 the board again confirmed that neither the EPC nor the Paris Convention contained any indication that the right of priority constituted an exception which had to be interpreted narrowly and thus allowed the right of priority to be exercised only once for one contracting state. These decisions were followed in T 1562/06.