

On the basis of the evidence before it, the board was satisfied both that Israeli law did not require an assignment in writing signed by both parties and that the priority right had been transferred to the patent proprietor before the date of filing of the international application underlying the patent in suit. See also T 517/14.

According to the board in T 577/11, where the applicant of the priority application and the applicant of the subsequent application contractually agree that (only) economic ownership ("economische eigendom" under Dutch law) of the priority application and the right to claim its priority is to be transferred to the subsequent applicant, this is not sufficient to consider the latter a successor in title within the meaning of Art. 87(1) EPC 1973 (see decision Catchword). The board recognised the retroactive effect of the transfer of "economic ownership" but not of the legal title. It concluded that at the time of filing of the subsequent application this arrangement only amounted to a limited transfer, insufficient for the purposes of Art. 87(1) EPC 1973. Furthermore, this case was to be distinguished from the situation of equitable assignment under English law, which was the subject of J 19/87.

Considering the requirement that the right of priority must have been transferred before the filing of the later European application, the board in T 1201/14 took the view that, even if a retroactive transfer such as the *nunc pro tunc* assignment under US law invoked by the appellant was allowable under US law, it would not be acceptable under Art. 87(1) EPC 1973. The board also held that an implied transfer of a particular right could be accepted when it was sufficiently clear that the parties had formed an agreement and what they had agreed. The burden of proving a valid transfer of the right of priority lay with the proprietor since it was the one claiming that right. As to the standard of proof to be applied, see below.

According to the board in T 1103/15, if a party made statements about conclusions to be drawn on the basis of the applicable national law, it had to file suitable evidence, for example by filing as documents adequate copies of such laws and/or as appropriate by filing as expert evidence the opinions of a suitably qualified lawyer in the relevant jurisdiction (T 74/00).

In T 725/14 A was the applicant for the application from which priority was claimed and also the applicant for the parent application of the patent in suit. However, the appellant (opponent) alleged that the priority right had been transferred from A to F (patent proprietor/respondent) by a declaration of assignment dated 1 March 2007 (D17), some days before the parent application was filed. The board rejected the respondent's argument that the transfer was only effective on the date on which a request for registration of the transfer was sent to the EPO (R 22 EPC; note: see, similarly, T 404/13). The transfer of the priority right had to be assessed by applying national law (e.g. T 205/14, T 1201/14). The applicable law was in general determined by the conflict of laws rules of the court seised, here the board. Such rules were absent in the EPC and the law derived from it. The board saw no reason to deviate from the parties' agreed position that the law of the Netherlands was applicable. The priority application was a European application, was not regulated by any national law and thus did not require the application of any particular national law. All other circumstances pointed to the law of the Netherlands.