

joint priority right to the sole applicant of the subsequent application before its filing date (see T.382/07, with further references).

In T.844/18 the core issue to be decided was this: "A and B are applicants for the priority application. A alone is the applicant for the subsequent application. Is a priority claim valid even without any assignment of priority right from B to A?" One of several applicants for certain US provisional applications from which priority was claimed had not been named as an applicant in the application leading to the patent in suit. The appellants (patent proprietors) challenged the long-established "all applicants" (or "same applicants") approach applied by the opposition division in line with the boards' case law.

The board found the ordinary meaning of the term "any person" in Art. 87(1) EPC to be ambiguous in all language versions (cf. Art. 4A(1) Paris Convention, Art. 31(1) Vienna Convention). It agreed with T.15/01 (OJ 2006, 153) that the object and purpose of the Paris Convention (cf. Art. 31(1), 33(4) Vienna Convention) was to "safeguard, for a limited period, the interests of a patent applicant in his endeavour to obtain international protection for his invention" and that "the international priority provisions contained in the Paris Convention ... assist the applicant in obtaining international protection for his invention". Rejecting the appellants' interpretation of "any person", which would allow A alone to file another application in another country claiming the same invention without involving B, the board reasoned that the object and purpose of the Paris Convention could not form the basis for favouring one or some persons to the detriment of all other persons who had originally formed part of the group filing a patent application. Moreover, the priority provisions of the Paris Convention had remained essentially unchanged since 1883 and there had been no EPO or national case law clearly adopting the appellants' interpretation. The bar for overturning long-established case law and practice should be very high because of the disruptive effects a change could have. The continuation of such long-standing and rationally based practices could be considered an aspect of legal certainty. The board also noted that applicants wishing to use US provisional applications to claim priority for a European patent application should be aware of the difficulties that they might face. This was a consequence of the US's adhesion to the Paris Convention. See also T.788/05 in chapter II.D.4.2.

In T.1513/17 (consolidated with T.2719/19) the board considered the so called "joint applicants approach" in the context of a PCT application. The application on which the patent was granted was originally filed by the inventors (for the US only) and the appellant together with a university (for all other designated States) as an international application under the PCT, claiming priority from a US provisional application filed by the inventors. The opposition division had rejected the priority claim and revoked the patent for lack of novelty and inventive step. Relying on Art. 11(3) PCT and Art. 118 and 153(2) EPC, the patent proprietor argued that the PCT application had the same effects as the European patent application. Therefore, even where the applicants who jointly filed the PCT application are not the same in respect of different designated States, the applicants for the designation EP should benefit from the priority right to which their co-applicants (for the US only) are entitled.