

#### 4.1.4 Intention to file divisional application immaterial to admissibility of appeal against grant of the parent

The board in T 591/05 could not see how the filing and the status of a divisional application might have had any bearing on the admissibility of the appeal against the parent (i.e. on the question of whether the appellant was adversely affected). In particular, any allegation relating to the circumstances under which the divisional application had been filed (here: appellant had expressed the intention to file a divisional application) might have been pertinent to the legal status of the divisional application, but was irrelevant to the issue of the admissibility of the appeal.

#### 4.1.5 Submissions made in the parent procedure

In T 1705/11 the board held that facts, evidence and requests or submissions made or filed in the parent procedure were not automatically part of the divisional procedure. A general citation or a mere reference to facts and/or evidence, such as to prior art documents, filed in the parent procedure but not physically filed or incorporated into the divisional application procedure did not constitute a reservoir upon which a party might draw at its convenience and at any time in the divisional application procedure.

### 4.2. Designation of contracting states in a divisional application

#### 4.2.1 Deemed designation of all states designated in earlier application at the date of filing of divisional

According to Art. 76(2) EPC 1973, the European divisional application shall not designate contracting states which were not designated in the earlier application. Pursuant to Art. 76(2) EPC all the contracting states designated in the earlier application at the time of filing of a divisional application are deemed to be designated in the divisional application. For divisional applications filed after 1 April 2009, only one designation fee has to be paid (Art. 2(1), item 3 RFees); if this designation fee is not paid in due time, the application is deemed to be withdrawn (R. 36(4) EPC, R. 39(2) EPC).

#### 4.2.2 Designated state forfeited in the parent application at the time of filing the divisional

In J 12/18, interpreting Art. 76(2) EPC in accordance with the recognised rules of interpretation, the Legal Board confirmed that under this provision only those states that had been designated in the earlier application at the time of filing the divisional could be designated in the divisional. A designated state forfeited in the parent application at the time of filing the divisional could not be revived in the divisional one. The fact that the application was referred to as a "divisional" application under Art. 76(2) EPC implied by definition that it was divided from the earlier application and thus at the time of filing it could not be broader than the earlier application it derived from. Only after the filing of the divisional application was its fate separated from changes concerning the earlier application. Likewise, in the context of the required systematic interpretation of Art. 76(2) EPC the Legal Board noted that the nature of a divisional application, which was derived from a parent application, thereby benefiting from the parent's date of filing and