

priority rights, implied that the divisional could not be broader than the parent application, neither as to its subject-matter (Art. 76(1) EPC) nor its geographical cover. Thus Art. 79 EPC had to be considered. According to Art. 79(3) EPC the applicant could withdraw the designation of a Contracting State at any time up to the grant of the European patent. However, further possibilities, in particular the addition of a Contracting State, which had previously been excluded by withdrawal, were not foreseen in Art. 79 EPC. A revival of the withdrawn designation could only be achieved under particular circumstances if the requirements for a correction under R. 139 EPC were fulfilled. This, for reasons of consistency, had to apply also to a divisional derived from the earlier application. See also the parallel decisions J 13/18, J 14/18 and J 3/20, which contain identical reasoning on this point.

#### 4.2.3 Full effect of designation up to the due date for payment

In G 4/98 (OJ 2001, 131) the Enlarged Board of Appeal found that the wording of Art. 78(2) and Art. 79(2) EPC 1973 and the European patent system clearly indicated that up to the due date for payment of the designation fees, the designations had full effect. Only if the designation fees were not paid in due time would the designations not have any effect with respect to acts to be performed after that date, such as the filing of a divisional application. Retroactivity of the effects of non-payment of designation fees would occur only where the EPC explicitly provided for it, i.e. in the case of provisional protection (Art. 67(4) EPC 1973).

#### 4.2.4 Payment of fee for each designated State – case law concerning situation prior to 1 April 2009

For case law concerning the situation regarding divisional applications filed before 1 April 2009, where designation fees had to be paid for each designation of a contracting state, see "Case law of the Boards of Appeal of the EPO", 9th edition 2019, II.F.4.2.2.

### 4.3. Correction of errors in a divisional application

In J 17/97 and J 18/97 the representative had filed the divisional application under a different name than the parent application. The Receiving Section had thus refused to treat the application as a divisional application. The representative filed a request for correction of errors pursuant to R. 88 EPC 1973 (now R. 139 EPC) to replace the name of the applicant of the divisional application with the name of the applicant of the parent application. The Legal Board rejected the request as the appellant had not proved that the divisional application had been filed in error under the wrong name. R. 88 EPC 1973 may not be used to enable a person to give effect to a change of mind or to a subsequent development of plans.

In T 1008/99, the request for correction of errors concerned a divisional application which had been filed with a wrong description unrelated to the earlier (parent) application. The wrongly filed description was therefore to be replaced by the description of the parent application. The board rejected the request and held that, for the purposes of