

concerning the latter's right to inspect the files pursuant to Art. 128(2) EPC was best decided in oral proceedings convened at short notice.

In J. 27/87 the Legal Board confirmed the Receiving Section's decision to refuse a request pursuant to Art. 128(2) EPC, because there was no proof that the applicants had invoked their rights under the application against the appellants. The extracts from correspondence in which the applicants' representative asserted that his clients had developed a new technology and mentioned the patent application were not deemed sufficient evidence.

1.2. Exclusion from inspection under Rule 144 EPC

R. 144 EPC (cf. R. 93 EPC 1973) indicates those parts of the file which are to be excluded from inspection pursuant to Art. 128(4) EPC. These include documents excluded from inspection by the President of the EPO (R. 144(d) EPC).

The President's power to exclude documents was most recently exercised in the decision of the President of the EPO dated 12 July 2007 concerning documents excluded from file inspection (OJ SE 3/2007, 125), which provides under Art. 1(2) that documents other than those referred to in Art. 1(1) of the decision "shall be excluded from file inspection at the reasoned request of a party or his representative if their inspection would be prejudicial to the legitimate personal or economic interests of natural or legal persons". Documents may, exceptionally, be excluded by the Office of its own motion (Art. 1(2)(b) of the decision).

1.2.1 Test for exclusion

In T. 2522/10 of 28 January 2014 the board summarised that the **test for exclusion or non-exclusion** was clear and straightforward, namely would the document in question serve the purpose of informing the public about the patent or patent application in issue? While the answer to that question will depend on the facts of each case, if the answer is "yes", then there may be no exclusion and the matter need not be considered further. If the answer is "no", then consideration must be given to a further question, namely whether inspection would be prejudicial to the legitimate personal or economic interest of natural or legal persons.

In T. 379/01 the board stressed that the provisions concerning the exclusion of documents from file inspection (R. 93 EPC 1973; decision of the President of the EPO dated 7 September 2001, OJ 2001, 458) stipulated exceptions from the principle of public inspection of files pursuant to Art. 128(4) EPC 1973, thus requiring a **narrow construction** of those provisions. The board concluded that a merely abstract prejudice to hypothetical personal or economic interests was not a sufficient bar. The party requesting such exclusion should rather show that public access to certain documents would be prejudicial to specific and concrete personal or economic interests. Citing that conclusion, in T. 1401/05 of 20 September 2006 the board further expressed the opinion that documents that did not furnish information about patent applications or patents were generally subject to being excluded from file inspection, in line with the then applicable decision of the President of the EPO concerning documents excluded from file inspection dated 7 September 2001 (OJ 2001, 458). Such documents did not serve the paramount