Under R. 125(4) and 126(2) EPC the EPO has to bear not only the risks arising within its own sphere but also the "transport" risks, e.g. of post going astray on its way to the addressee. But here a distinction must be drawn between risks borne by the EPO and those for which the addressee has organisational responsibility and power (**T 1535/10**, see headnote). See chapter III.S.4. "Spheres of risk and apportioning the burden of proof". This same division of risk applies also to newer, electronic means of notification under R. 127 EPC (see also the EPO's explanatory notice in OJ 2015, A36, especially as regards amendment of R. 124 to 127 and 129 EPC).

Regarding a "lost request", see **T 8/16**.

g) Generally accepted procedural principles (Art. 125 EPC) and national law

With regard to principles of procedural law generally recognised in the contracting states, a party relying on Art. 125 EPC and asserting that German law allows for the revision of a decision of a court of final jurisdiction in the case of a fundamental procedural violation, will also have to produce evidence that such a procedural principle exists in most EPC contracting states and is therefore "generally recognised" for the purpose of Art. 125 EPC (**T 843/91**, OJ 1994, 832). Following on from that, another board stated in **T 833/94** that, when the evidence offered did not directly indicate the truth or falsity of the fact in issue, but required knowledge of the **national law** and patent practice, such law and practice had to be **proved, as did any other fact** on which a party based its arguments.

In **J 14/19**, the issue of when national proceedings became pending was to be assessed under German procedural law. At the EPO, German law was to be treated as foreign law for conflict-of-law purposes. Where the EPO was called on to apply foreign law, it has to do so within the overall context of the foreign legal system, wherever possible. When interpreting the foreign law to be applied, it was not bound by the case law of national courts, but if it was aware of the case law of the highest national court, it should consider and evaluate it in coming to its decision. The appellant had referred to German legal commentaries in support of its interpretation of German law. However, they were not official publications and did not form part either of the law created by legislation or of the case law, so they were not, as such, to be taken into account by the EPO when applying foreign law. Moreover, parties and their representative could not assume that the boards of appeal had access to all the legal literature of all the EPC contracting states, particularly when that literature was unrelated to patent law. The legal commentaries cited by the appellant in relation to the German Code of Administrative Court Procedure were therefore taken into account only to the extent that they had been produced.

The Enlarged Board in **G 4/19** concluded that there was a real and effective agreement that the EPO should prohibit double patenting by taking into account principles of procedural law generally recognised in the contracting states, i.e. by a direct application of Art. 125 EPC. At the time of signing of the EPC, the statement made by the delegations in this respect had to be taken as proof that the principle of the prohibition on double patenting was a generally recognised principle in the contracting states. No information had been brought to the Enlarged Board's attention, nor had it been argued, that this