

Referring to a legal opinion filed by the appellant to explain the requirements for assignment of the priority right under the Dutch Civil Code, the board concluded that D17 was sufficient to execute the assignment under the law of the Netherlands. The wording of D17 clearly pointed to the assignment of the priority right to F on 1 March 2007 or earlier. As D17 was intended to provide proof of the assignment of rights, its persuasive weight was considerable. The appellant had discharged its burden of proof. The priority claim was invalid. See also parallel case T 924/15.

On the standard of proof to be applied to an implied transfer of the priority right by virtue of a general policy under German law, the board in T 1201/14 (see above) held that the circumstances of the case in hand required proof "beyond reasonable doubt", as all the relevant evidence lay within the knowledge and power of only one party to the inter partes proceedings. The board in T 2466/13 was in no doubt that the formal transfer of the priority right had taken place, so that there was no need to decide on the standard of proof to be met (see similarly T 2431/17). It nevertheless observed that there was no clear line in the boards' case law on this point: T 205/14 and T 517/14 applied the balance of probabilities, while in T 1201/14, a stricter standard was applied (see above). In T 1786/15, too, the board applied the standard of proof "beyond reasonable doubt". In doing so, it referred to the boards' case law on cases of prior use (in particular T 472/92, OJ 1998, 161) where all the evidence supporting a specific statement of fact was within the power and knowledge of one party (cf. chapter III.G.4.3.2b). However, according to T 407/15, the balance of probabilities was the standard to be applied.

In T 493/06 it was held that the respondents had provided sufficient proof of the assignment of priority rights. In the board's view, even a copy of an assignment agreement could be sufficient provided that evidence was supplied that the content of the copy was identical to that of the original document. Such evidence might, according to board of appeal case law, take the form of an affidavit – even though affidavits were not expressly mentioned in Art. 117(1) EPC 1973 – and the principle of unfettered consideration of the evidence applied to them (see e.g. T 970/93, T 804/94, T 558/95 and T 43/00; also T 535/08).

In T 407/15 the board noted that the two US provisional applications from which priority had been claimed contained a section "Assignee information", identifying the applicant of the current application as assignee. However, it found this not sufficient to establish that the priority rights derived from either application had also been transferred to the applicant. This was a consequence of the fact that the filing of a first application gave rise to two different and independent rights, namely the right to the application in question, and the right of priority. While the aforesaid section appeared to provide evidence of a transfer of the right to a patent, it was silent as to any right of priority based on said filings.

See also the decisions in chapter II.D.4.2.

### 2.2.3 Plurality of applicants for the first application

Where there were several applicants for the first application and one of them is the sole applicant for the subsequent application, the other co-applicants must have transferred the