

patent application in respect of which suspension was requested corresponded to the disclosure of another application, ownership of which was disputed before a national court.

In J 15/13 the Legal Board held that while it was established case law that the board was not allowed to examine the substance and merits of a national entitlement case, the board's power of examination could not be limited to merely checking whether the claim submitted with the entitlement suit was directed to the transfer of the application, but – to a certain extent – it also allowed and possibly even required a consideration of the grounds given in the complaint of the entitlement suit. The board had to verify that the national proceedings were in accordance with R 14(1) EPC, since to request a stay of the grant proceedings was a strong weapon which could be misused.

In J 14/19, the Legal Board of Appeal held that, where the EPO was called on to apply foreign law, it had to do so within the overall context of the foreign legal system, wherever possible. When interpreting the foreign legislation to be applied, it was not bound by the case law of national courts, but if it was aware of the case law, in particular of the highest national courts, it should consider and evaluate it in coming to its decision. As regards whether instituting national proceedings might have involved an abuse of law ("Rechtsmissbrauch"), the Legal Board held that, to avoid contradictory interpretations, the EPO should rule on any such issues autonomously, i.e. irrespective of national legal systems, even when they arose in relation to staying proceedings. Improperly asserting a right could amount to an abuse of law in some cases, for instance if the right was asserted predominantly with a view to causing damage, ahead of other, legitimate aims. The abuse of law had to be established beyond any doubt; that meant carefully examining and weighing up the circumstances of the individual case, with the burden of proof falling on whoever alleged the abuse.

In T 1473/13 the appellant's request for a stay of proceedings mentioned constitutional complaints pending before the German Federal Constitutional Court (FCC) on the basis of claimed insufficient judicial relief at the EPO against decisions of the boards of appeal. With reference to one of the constitutional complaints, the board explained that the appellant in the case in hand had not stated why and how a ruling on certain provisions of the EPC, its Implementing Regulations, the RPBA and the RPEBA could impact on other board decisions with effect for Germany. For the board it was not obvious that any FCC decisions on the constitutional complaints would have direct legal implications beyond those cases concerned. The appellant had also stated no possible disadvantage from a decision of the board in the case in hand in case of success of the constitutional complaints. The board held that in the absence of an established disadvantage for the appellant, the respective adverse consequences of staying or not staying the proceedings (i.e. the delay of the proceedings) could not be balanced. Consequently, the board held that the request for a stay must be refused.

### **3.2. Rule 14(3) EPC**

Under R 14(3) EPC (R 13(3) EPC 1973), upon staying the proceedings for grant, the EPO may set a date on which it intends to resume the proceedings for grant, regardless of the stage reached in the national proceedings under R 14(1) EPC. It is clear from the