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Divisional applications at the EPO



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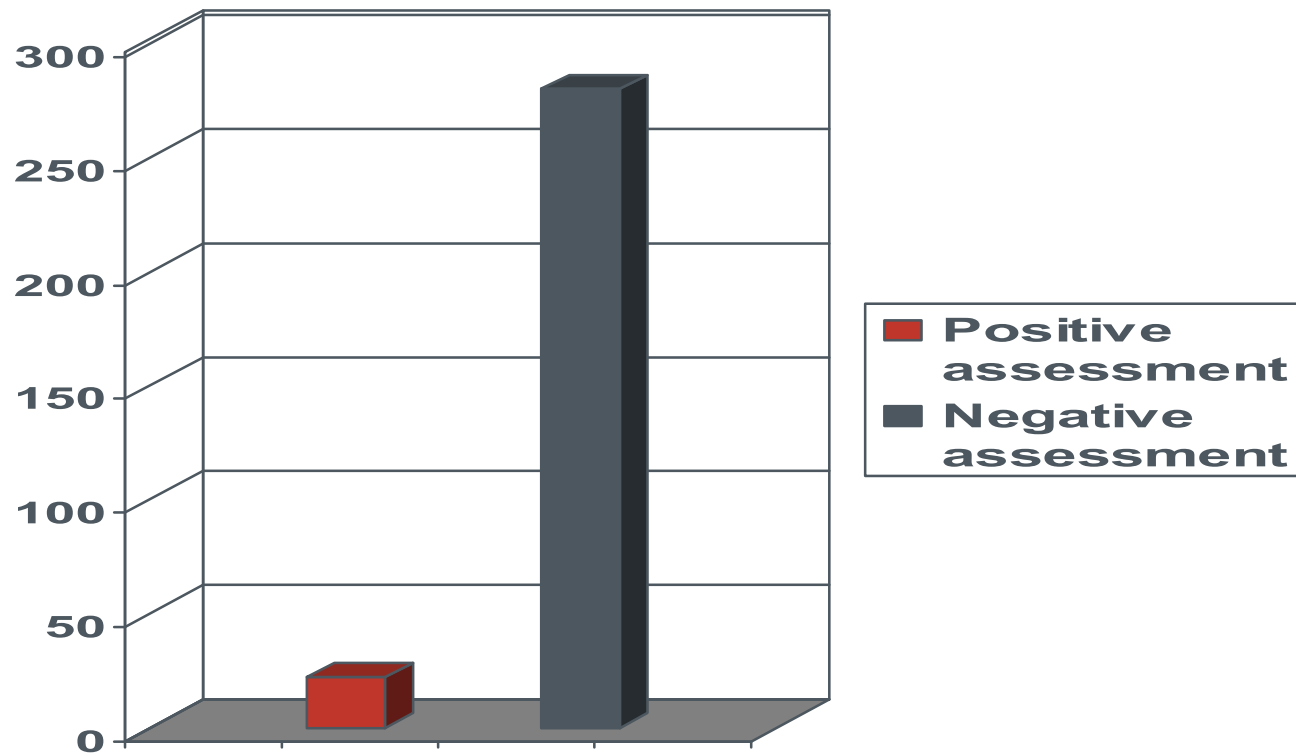
17.03.2014

Current Rule 36 EPC

- Entered into force on 1 April 2010
- Requirements for filing divisional applications:
 1. Earlier application must be **pending**
 2. Time limit of **24 months** calculated **from**:
 - a) (voluntary division) the Examining Division's first communication under Art. 94(3) EPC, Rule 71(1), (2), or (3) EPC in respect of the earliest application for which a communication has been issued, or
 - b) (mandatory division) from any Examining Division's communication raising a specific objection of non-unity for the first time against the earlier application,

must not have expired yet
- **Objective:** Limitation of the possibility to use divisional applications as a tool to prolong pendency of subject-matter before the EPO

User consultation 2013 - Overall Assessment



User Consultation- Perception of Rule 36 EPC



Divisional applications as of 1.4.2014 - Rule 36 EPC

- Rule 36(1) EPC to allow the filing of divisional applications as long as the earlier (parent) application is pending (see also G 1/09)

AND

- Rule 38 EPC to establish an additional fee as part of the filing fee in the case of divisional applications of second or subsequent generations

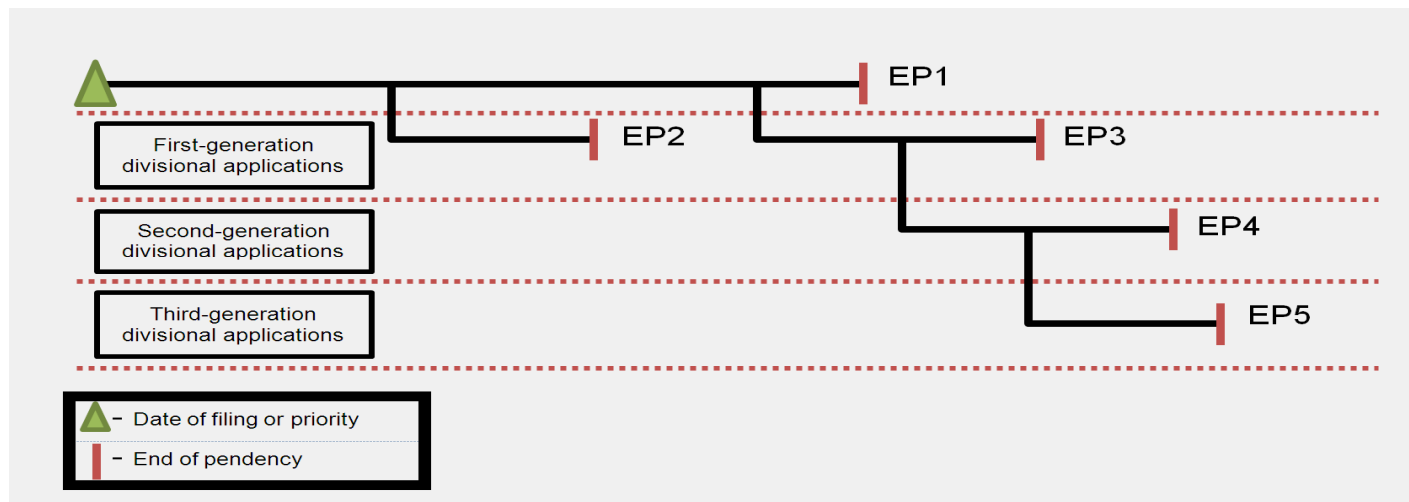
Additional fee as of 1.04.2014

Rule 38(4) EPC and Art. 2(1b) RFees :

- Due within one month of filing the divisional application
- First generation divisional applications will not be subject to payment of an additional fee.
- Starting from the second generation the amounts of additional fee will grow with each generation up to a certain level
- Amounts moderate
 - 2nd generation 210€
 - 3rd generation 420€
 - 4th generation 630€
 - 5th and any subsequent generation 840€

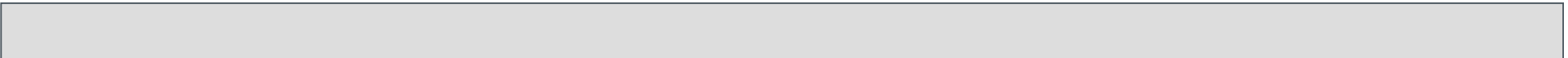
Concept of generations

- Relates to the links in a chain of divisional applications (G1/05 and G1/06, point 11.1 of the reasons)
- Dealt with in the Guidelines (A-IV, 1.1.1 and 1.1.1.4), case-law (T 1158/01)
- **1st generation divisional applications:** based on an earlier application, which is not itself a divisional application.
- **2nd generation divisional applications:** filed in respect of a first-generation divisional application



Entry into force

- Date of entry into force: 1 April 2014
- The new provisions will apply to divisional applications filed on or after that date
- Notice in the Official Journal explaining how the new system will function released in February 2014 (See [OJ EPO 2014, A22](#))



Questions?

Thank you for your attention !

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