

## **New deadlines for European Divisional Applications**

The rules for filing divisional applications under the European Patent Convention (EPC) will significantly change as of April 1<sup>st</sup>, 2010.

Under the current practice it is possible to file a divisional application from any pending European patent application (including divisional applications) up to (but not including) the date of grant of the application from which the divisional application is to be filed.

Under the new Rule 36(1)(2) EPC which will become effective on April 1<sup>st</sup>, 2010, an applicant may file either a voluntary divisional application according to Rule 36(1) EPC or an obligatory divisional application in reaction to a lack of unity objection according to Rule 36(2) EPC.

According to Rule 36(1) EPC, a voluntary divisional application may be filed from any pending earlier European patent application (including earlier divisional applications) as long as the new divisional application is filed within 24 months after the first office communication issued in the respective patent family. For determining the relevant deadline, it will thus be necessary to check all European patent applications of a single patent family for the earliest office action to calculate the 24 month-deadline.

Under Rule 36(2) EPC, an obligatory divisional application may be filed within 24 months after the date of any Office Communication in which a lack of unity objection is raised for the first time.

In the future, the first office communication received by the EPO will thus trigger the 24 month deadline for filing a voluntary divisional patent application. A new 24 month deadline will start if in a later office action a lack of unity objection is raised for the first time. A divisional application may be filed at the latest when this later deadline expires.

In addition to the aforementioned general timelines under the new Rules, there will be a transitional period of April 1<sup>st</sup> to October 1<sup>st</sup>, 2010.

Under these transitional regulations, the deadline for filing a divisional patent application will be extended to October 1<sup>st</sup>, 2010 if under the new Rules, the deadline otherwise had expired either before April 1<sup>st</sup>, 2010 or between April 1<sup>st</sup>, 2010 and October 1<sup>st</sup>, 2010, unless, of course, a patent is granted before this date.

We recommend to review all pending European patent applications already now, and to inform us about subject matter which needs to be prosecuted in a divisional application. We will then provide you with the applicable deadline in due course.