

# Divisionals in Europe

Where is the problem?

# Why are non-unitary applications filed?

Because the applicant does not know the application is non-unitary

Because it is necessary

Because it is expedient

For some complex strategic reason

# Why are divisional applications filed?

Objection of lack of unity

To capture unclaimed subject matter

For licensing/commercial reasons

As a precaution

# What is the fate of divisional applications in Europe?

Higher grant rate than first filed applications

EPO paper “An Application of Patent Statistics: Some Insight into Strategies” presented in October 2009 showed grant rates of

- 54.1% non-divisional
- 57.7% 1<sup>st</sup> generation divisional
- 61.6% 2<sup>nd</sup> and later generation divisional

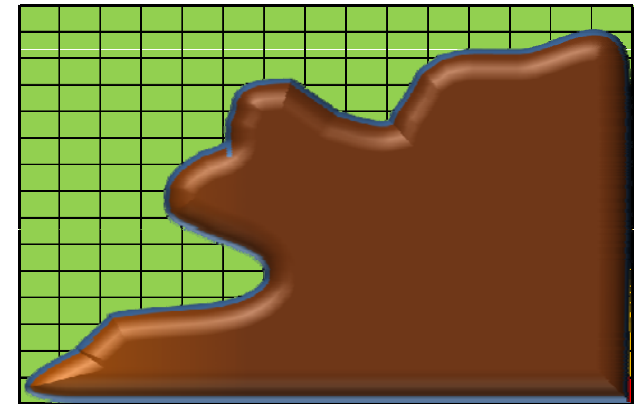
So divisionals are a good thing?



# What is the political reaction to divisional applications?

Increased restrictions in right and/or timing of divisional applications

How big is the “problem”?



How proportionate is the response?

# What is or may be the effect of recent EPO changes?

Discrimination against applicants who choose, or are compelled, to use EPO as ISA

Flight from EPO as ISA by some with freedom to choose

Reduction in ability to conduct serial prosecution of multiple inventions made at the same time

Decrease in “quality” and grant rate for divisionals?

Increase in the number of divisionals?

# Conclusions

The new rules seem set to be counter-productive in potentially increasing divisional filings

The collateral damage of the new rules vastly exceeds the problem they were intended to solve

The new rules leave open potentially “abusive” behaviour



# One last thought

A Google search on the term patent backlog shows results as early as 1948.

Worldwide filings have shown exponential growth over the last 100+ years

Is not attention better addressed to dealing with the predictable demand than seeking to limit applicant's options for obtaining appropriate protection?

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