

## Patent Alert European Patent Office: Divisional Deadline Rules: the U turn!

October 2013

The Administrative Council Committee of the EPO adopted on October 16, 2013 a change in the Divisional Deadline Rule 36 which since March 29, 2009, introduced two 24-month time limits as a requirement for the filing of divisional applications.

The new rule 36 EPC, introduces again the former Rule 25 (EPC 1973) or 36 (EPC 2000) according to which:

*"The applicant may file a divisional application relating to any pending earlier European patent application."*

The EPO, however, provides in a new paragraph of Rule 38 for **an additional fee as part of the filing fee in the case of a divisional application filed in respect of any earlier application which is itself a divisional application.**

The new Rules will enter into force on April 1<sup>st</sup>, 2014 and shall apply to all divisional applications filed on or after that date. In fact, according to the new Rules, applicants with a pending application (not granted, refused or abandoned) on April 1<sup>st</sup>, 2014, can use it as the basis for a divisional application, even if the current 24 months time limit has lapsed.

The present Rule 36 setting the 24 months time limit for filing divisionals will apply to any divisional application filed before April 1<sup>st</sup>, 2014.

We advise that you check all your currently pending European Patent Applications, in order to identify those for which the 24 months time limit has expired or will expire before April 1<sup>st</sup>, 2014. If you wish we can do this check for the applications handled by our firm.

If you are still interested in filing divisional application of those pending application(s), we suggest to slow down the prosecution before the examining division (original application and/or divisional application), so as to avoid a premature grant of the corresponding patent(s), in order to have the application(s) still pending on April 1<sup>st</sup>, 2014.

We are at your disposal to advise you on the possible options open to delay the grant.