Q297-RES-P-2026

2026 AIPPI World Congress – Hamburg
Adopted Resolution
10 October 2026

Resolution

2026 – Study Question - Patents

Divisional applications and double patenting

Background:

1) AIPPI has studied divisional applications in Q193 "Divisional, Continuation and Continuation in Part Patent Applications" (Singapore 2007). This Resolution supplements Resolution Q193.

2) For the purposes of this resolution, a "Divisional Application" is any later patent application that claims subject matter disclosed in an earlier filed application (parent application) and is entitled to the same filing date as the parent application and the same priority date, if applicable. For the avoidance of doubt, if the later application contains any claims directed to subject matter not disclosed in the earlier application, those claims shall not be considered to fall within the scope of this Resolution.

3) This Resolution concerns double patenting in the context of Divisional Applications only and not double patenting in other contexts. This Resolution does not deal with questions of double patenting where patents are granted for the same jurisdiction by different patent granting authorities.

4) Divisional Applications are a key mechanism for applicants seeking to secure protection for multiple inventions disclosed in a single parent application. They allow applicants to pursue different subject matter while retaining the effective filing date of the original filing as the effective filing date of the Divisional Applications.

5) A central issue associated with Divisional Applications is double patenting. For the purposes of this resolution, "Double Patenting", as its name suggests, refers to the granting of two or more independent patent rights for the same subject matter and having the same effective filing date, to the same applicant(s) in the same jurisdiction. For the purposes of this resolution, each "same applicant" refers to the applicant or to a successor in title of the applicant. Double Patenting may arise, e.g., when the claims of the parent and the divisional patent(s) are directed to the same subject matter, even if worded differently.

6) The substantive and procedural criteria used to assess Divisional Applications and Double Patenting vary significantly across jurisdictions.

7) Antitrust and competition law issues are outside the scope of this Resolution.

8) 44 Reports were received from AIPPI's National and Regional Groups and Independent Members, providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (which can be found at www.aippi.org).

9) At the AIPPI World Congress in Hamburg in 2026, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

1) There continues to be a need for harmonisation regarding Divisional Applications and Double Patenting in order to reduce the legal uncertainty arising from divergent national and regional approaches.

2) Double Patenting should not be permitted. An applicant should not be able to obtain more than one patent right in force for the same subject matter for the same jurisdiction by the same patent granting authority. An obviousness standard should not apply to determination of Double Patenting.

3) The assessment of Double Patenting with respect to a Divisional Application or a patent granted on the basis of that application should be based on patent rights

previously allowed or granted to the same applicant, or its successor in title, and which rights remain in force and have not lapsed, been invalidated, or revoked.

4) Where Double Patenting is found to exist, it should be resolvable by at least any of the following actions: abandoning or withdrawing one of the conflicting rights or amending the claims of one of the conflicting rights.

5) Double Patenting should not prevent simultaneous protection between different types of exclusivity rights.

6) In accordance with and supplementing Resolution Q193:

- The filing of Divisional Applications should be permitted based on either a parent application or any divisional family member at any time that such application is pending.
- Pending means that the prior application has not received a final ruling rejecting the application and has not issued as a granted patent. Pendency does not include any period when the prior patent is involved in post-grant proceedings.
- There should be no limit on the number of Divisional Applications that may be filed.

7) When a lack of unity objection is raised in respect of a patent application, the applicant should not be required to file all divisional applications at that time, and it should be possible to file a Divisional Application claiming more than one invention, without prejudice to the examiner's ability to issue a further lack of unity objection in respect of that Divisional Application.

8) Divisional Applications should be subject to the same examination process and patentability criteria as other patent applications. In particular, there should be no special limitation on the prosecution period of Divisional Applications, and no requirement to update the patent specification in view of the later filing date of the Divisional Application. Further, applicants should not be required to justify the need for filing a Divisional Application, nor to explain the relationship between the claims in the Divisional Application and the claims of the parent application.

9) Prosecution history of a parent application should not be binding on the prosecution of a Divisional Application derived from it, or vice versa.

10) The same criteria for assessing Double Patenting should also apply to Divisional Applications regardless of whether a Divisional Application was filed in response to a lack of unity objection or at the applicant's own discretion. Double patenting should not be applied by the same granting authority where the Divisional Application was filed in response to a lack of unity objection raised by the office and the applicant confined the Divisional Application to the subject matter to which that objection related.

11) The availability of divisional practice should not be restricted in order to address conduct by which a proprietor seeks to abuse a market position through the use of the patent system.