Divisional, Continuation and Continuation in Part Patent Applications

Questions

1) Analysis of the current law

1) Are divisional, continuation or continuation-in-part applications, respectively, available under your national or regional law?

Divisional application and internal priority application were adopted Korea.

2) What is the justification behind allowing the filing of divisional, continuation and continuation-in-part applications in your law?

In Korea divisional application and internal priority application are similar system to compensate the position of successive inventions like divisional, continuation and CIP application.

3) Under what circumstances and conditions may divisional, continuation and continuation-in-part applications (or combinations thereof) be filed in your national or regional patent system?

Internal priority application has conditions of

a) the same applicant or the same successor of the original application,

b) identity with the original application,

c) filed within one year from the priority date,

d) the original application is not a divisional application or modified application,

e) the original application must be pending in the KIPO,

f) the priority must be indicated.

4) Are cascades of divisional, continuation and continuation-in-part applications allowed, i.e. is it possible to file a divisional, continuation or continuation-in-part application on the basis of another divisional, continuation or continuation-in-part application?

Yes.

5) At what time during the prosecution of the parent application may divisional, continuation or continuation-in-part applications be filed?

The divisional application can be filed within one month from the final decision of examination and the internal priority application can be filed within one year from the priority date of original application.
6) Is it a requirement for filing an application that is a divisional, continuation or continuation–in–part of an original application (or of another divisional, continuation or continuation–in–part thereof) that the original application (or the direct parent application, or both) is still pending at the time of filing of the divisional, continuation or continuation–in–part application?
Yes.

7) Is it a requirement that the original application (or the direct parent application, or both) is still pending throughout the prosecution of a divisional, continuation or continuation–in–part application derived therefrom?
No.

8) Are there any restrictions as to what may be included in a divisional, continuation or continuation–in–part application?
In divisional application new matter can not be included and the internal priority application does not include a new matter but only including new embodiment level.

9) In particular, may the description and/or claims contain or claim matter that was not contained or claimed in the original application, or other application from which the divisional, continuation or continuation–in–part application derives?
No.

10) Is it possible to extend the patent term in respect of matter contained in the original application by filing divisional, continuation or continuation–in–part applications, including divisional, continuation or continuation–in–part applications containing added matter, to the extent the addition of new matter is allowed?
In the internal priority application it can be extended one more year.

11) Is double–patenting permitted or must the matter claimed in divisional, continuation or continuation–in–part applications be deleted from the claims of the original application, or other application from which the divisional, continuation or continuation–in–part application derives?
Yes.

12) Does it matter in this respect whether the divisional, continuation or continuation–in–part application was filed in response to a restriction requirement issued by the patent granting authority?
Yes.

II) Proposals for adoption of uniform rules

1) In the opinion of your National or Regional Group, what are the advantages, for applicants and third parties, of allowing the filing of divisional, continuation or continuation–in–part patent applications?
The divisional application was already adopted and CIP application may be replaced with the internal priority application and the continuation application will be preferred.

2) In the opinion of your National or Regional Group, what are the disadvantages, for applicants and third parties, of allowing the filing of divisional, continuation or continuation–in–part patent applications?
The applicants of divisional continuation and CIP application may abuse this system to strengthen their patents improperly.

3) In the opinion of your National or Regional Group, should the filing of divisional, continuation or continuation–in–part patent applications, respectively, be permissible?
Divisional application is permissible and the other two applications are allowed restrictively.

4) If international harmonisation were to be achieved in respect of the rules governing divisional or continuation patent applications, what should be the common rules in respect of the circumstances and conditions in which divisional, continuation or continuation–in–part applications may be filed?
Divisional application.

5) In particular, should a harmonised system permit the addition in a divisional, continuation or continuation–in–part application of matter that was not contained in the original application as filed?
Yes.

6) Should it be permitted to use a divisional, continuation or continuation–in–part patent application to obtain new examination and decision of an application that contains claims that are identical or essentially identical with claims finally rejected in the course of the prosecution of the parent application?
No.
Should there be an exception where case–law on the substantive conditions for patent grant of the patent granting authority has changed since the parent application was rejected?
Yes.
Would this possibility adequately take into account the interests of third parties in legal certainty?
Yes.

7) Should it be possible to extend the patent term in respect of matter contained in the original application by filing divisional, continuation or continuation–in–part applications, including divisional, continuation or continuation–in–part applications containing added matter?
Yes.

8) In the opinion of your Group, would it be justified to limit the access to filing divisional, continuation or continuation–in–part applications primarily with the object of limiting the backlog of patent granting authorities?
No.

9) In the opinion of your Group, would it be desirable, in the interest of legal certainty of third parties, if databases of patent granting authorities ensured that a clear link was always indicated between original patent applications and all divisional, continuation or continuation–in–part applications derived therefrom?
Yes.

National and Regional Groups are invited to make any additional comment concerning divisional, continuation and continuation in part applications which they find relevant.