

which are **not entitled to priority**. See the example in G 9/93; see also e.g. T 594/90, T 961/90, as well as the discussion in T 301/87, OJ 1990, 335.

T 131/99 stressed that in this regard there is no difference between dependent and independent claims (see also T 85/87, and T 127/92, which is summarised in the next section).

5.2. Different priorities for different parts of a European patent application

According to Art. 88(3) EPC, if one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed. Since, pursuant to Art. 84 EPC, the claims of the European patent application define the matter for which protection is sought and, hence, determine the matter for which priority may be claimed, the term "elements of the invention", referred to in Art. 88(4) EPC, and the term "elements of the European patent application", referred to in Art. 88(3) EPC, are to be considered synonymous. Both an "element of the invention" and an "element of the European patent application" actually constitute subject-matter as defined in a claim of the European patent application (see G 2/98, OJ 2001, 413).

In T 828/93 the board stated that it followed from Art. 88(3) EPC 1973 that different priorities (including no priority, i.e. only the date of the European application) could be conferred on different parts of a European application. It was sufficient to check whether the subject-matter to be compared with the prior art, i.e. the **subject-matter of the independent patent claims**, corresponded to the disclosure of the documents of the priority application as a whole (see Art. 88(4) EPC 1973). Only one (or, as the case may be, no) priority could be conferred on each claimed **subject-matter as a whole**, in so far as the subject-matter was defined by the totality of the given elements. This subject-matter as a whole represented the invention, which either corresponded to the disclosure of a priority application or not.

In T 127/92 priority had been claimed from two German utility models (D1 and D2), which were published during the priority interval. The board held that priority had been validly claimed from D1 for claim 1 and several dependent claims. However, it found that other **sub-claims**, which also contained **elements not disclosed in D1**, could not claim partial priority from D1 for the subject-matter of claim 1 contained in them. On the basis of the principles developed in G 3/93 (OJ 1995, 18), the board concluded that D1 and D2 formed part of the state of the art in respect of these claims and that, consequently, their subject-matter did not involve an inventive step. The patent proprietor therefore deleted them.

See also T 85/87, T 594/90, T 961/90.

5.3. Multiple priorities or partial priority for one claim

Art. 88(2), second sentence, EPC provides that, where appropriate, multiple priorities may be claimed for any one claim. The Enlarged Board of Appeal considered the application of