

application documents as a whole would conclude, without further information, that the channel would be enclosed on all sides.

The patent at issue in T. 578/08 contained only device claims, whereas the previous application contained only process claims (the description and the drawings being largely identical). However, the board found that the wording of the previous application's claim 1 already presupposed structural device components in addition to specifying process steps that could only be performed by suitable – and so structural – technical means. General technical means suitable for performing the specified functions were therefore implicitly disclosed. Besides, the previous application repeatedly explained that the process described and claimed was performed automatically, which likewise called for suitable technical means. Priority was thus validly claimed.

b) Example cases – features of the invention not all disclosed in the priority document

In T. 1052/93 it was a feature of the wash adjunct products claimed in the European patent that they contained sodium perborate monohydrate in conjunction with a **functionally defined activator**. The priority document only mentioned certain activators complying with the functional definition in the European patent; these specific compounds could not be considered to disclose the broad group of activators functionally defined in claim 1 of the European patent. See also T. 132/09.

In T. 277/95 the board found that a claim to a method of producing in CHO cells hEPO characterised by the presence of a specific **glycosilation pattern** did not enjoy priority from a priority application which made available the cell line but gave no information on the specific glycosilation pattern. See also T. 479/97.

In T. 908/09 the board concluded that the priority document did not clearly allocate to one single group the classes of substances which were named in granted claim 1 as components b). Accordingly, the skilled person could not derive directly and unambiguously from the priority document a mixture of at least one substance a) with at least one substance b), as was required by claim 1.

See also T. 379/13 and T. 1487/16.

In T. 521/10 the enabling disclosure for the embodiment of claim 1 relied on the content of patent applications incorporated by reference. The reference to one of these (D9) was not present in the priority document. Indeed, D9 was not filed until after the claimed priority date. Therefore, as far as the subject-matter of claim 1 was based on the disclosure of D9, the priority was not validly claimed. As D9 was published before the filing date, it was pertinent prior art. See also summary of this decision in chapter II.C.4.2.

In T. 846/10 the US priority application P1 claimed (on Form PTO/SB/01 (12-97)) the benefit under 35 U.S.C. 119(e) of two provisional applications P2 and P3. The board rejected the appellant's claim that their contents were for this reason to be considered incorporated by reference into the disclosure of P1; P1 itself contained no mention of "incorporated by reference" or any equivalent expression.