

and not to some kind of interrelationship between the subject-matter of independent claims. Such products were, on the one hand, objects which although existing independently of each other as stand-alone products only performed the distributed invention when interacting with each other (e.g. lock and key) and, on the other hand, chemical compounds derived from their precursors. Moreover, the board pointed out that exception (b) referred to different uses of a product or apparatus and not to different uses of a concept as argued by the appellant (applicant).

### 2.2.2 Burden of proof

In T 56/01 the board emphasised that, when an objection under R. 29(2) EPC 1973 arose, the burden of proof was shifted onto the applicant, i.e. it was up to the applicant to argue convincingly why additional independent claims could be maintained. Likewise the board in T 1388/10 stressed that the onus of setting out and proving the case for the application of an exception (in this case, an exception under R. 43(2) EPC) lay with the party seeking to rely on that exception. Thus, an applicant wanting more than one independent claim in the same category must, if the examining division objects, convincingly demonstrate that all the additional independent claims fall under one of the exceptions provided for in R. 43(2) EPC.

### 2.2.3 No applicability in opposition proceedings

In T 263/05 (OJ 2008, 329) the board considered whether R. 29(2) EPC 1973 (R. 43(2) EPC) applied in opposition proceedings by virtue of the reference in R. 61a EPC 1973. The board reviewed decision G 1/91 (OJ 1992, 253), which had considered the effect of R. 61a EPC 1973 in the context of the requirement of unity. The Enlarged Board had taken the view that the reference to Chapter II was only a general one and that R. 61a EPC 1973 could only be taken to refer "to those requirements which would still be reasonable to demand of the new documents relating to the amended patent". The board in T 263/05 concluded that R. 29(2) EPC 1973 did not apply in opposition proceedings to prohibit an amendment to a granted patent if it would be unreasonable to demand of the amended claims that they comply with this rule. This condition was satisfied in a case where otherwise R. 29(2) EPC 1973 would force the patent proprietor to abandon potentially valid subject matter already contained in the granted claims. Once an amendment to the claims had been established to be necessary and appropriate having regard to the grounds of opposition, it would be unreasonable to impose the additional requirement that the amendment complied with the purely administrative provisions of R. 29(2) EPC 1973 (see also T 987/05; T 1242/06, OJ 2013, 42; T 85/08). For example it is, in principle, possible in opposition proceedings to replace an independent claim as granted by two independent claims directed to specific embodiments covered by the independent claim as granted (see T 223/97, T 428/12 and chapter IV.C.5.1.2 c. (ii) "Filing new independent claims").

## 2.3. Conciseness and number of claims

Whilst R. 43(2) EPC provides for a restriction in the number of independent claims per category, there is no equivalent limit on the number of dependent claims or claims