

the fact that the two sets of intermediates were not structurally related to each other since the orientation of the intermediates towards the end products permitted the individual technical problems addressed by the intermediates to be combined into a unitary overall problem to the solution of which both sets of purpose-made intermediates contributed.

In W 35/91 the board ruled that the requirements of unity of invention as set out in R. 13.1 and R. 13.2 PCT were met if the novel intermediates designed to give rise to the novel end products were technically sufficiently closely related by their contribution to an essential structural element of the end products.

In W 7/85 (OJ 1988, 211) the board stated that there was sufficient technical information to justify a prima facie finding of unity between a claim to a mixture and a claim to one essential component of that mixture or a narrowly defined version thereof. If a finding of unity was justified in cases of chemical intermediates and end products even when, as was often the case, only a part of the intermediate structure was actually incorporated, there was all the more reason to view the intact components and the corresponding compositions in a mixture as technically interconnected by incorporation. The former were not even destroyed when the admixture was prepared and fully retained their properties and functions in the product, unlike typical intermediates, which lost their identity in the process. Thus, both inventions could be considered to fall within the same general inventive concept. In such cases the requirement that the means for preparing the end product should be "specially designed for carrying out the process" appeared to be fulfilled since none of the means led or was related to an end product outside the scope of its definition. In view of this the character of the invention in the component was, prima facie, also dependent on the existence of an invention in the end product.

3. Assessing lack of unity of invention

3.1. General approach – content of claims

In W 6/97 it was held that the determination of unity of invention must be made on the basis of the contents of the claims as interpreted in the light of the description and of the drawings, if applicable (with reference to Annex B, Part 1(b) PCT Administrative Instructions; cf. now Annex B, para. (b) PCT Administrative Instructions, as in force from 1.1.2022).

In W 39/90 the board observed that it was not the formal choice of words or form of reference, but the actual content of the claims which established technical relationships between the subject-matter of different claims, and which was thus decisive for the question of unity. In W 33/92 the board emphasised that R. 13.1 PCT did not require the link between the subject-matter of the two independent claims to be expressly stated in their wording. All that was required was that there be a single inventive concept.

3.2. Assessment of lack of unity at the search stage

Lack of unity may be directly evident **a priori**, i.e. before examination of the merits of the claims in comparison with the state of the art revealed by the search (W 1/96 and W 6/90,