

examiner did not indicate that the documents cited in the case could exclude such a contribution, it could not be assumed that this could not be the case (W 17/89; see W 6/90, OJ 1991, 438). In view of this, a single inventive concept had to be attributed to all claims linking all their subject-matters (see W 22/91).

In W 6/90 (OJ 1991, 438; see also in this chapter II.B.5.1. above) the board noted inter alia that R. 13.1 PCT also stipulated that the single general concept had to be inventive. Even with a given single general concept there was lack of unity if the concept had no inventive character. The boards of appeal have confirmed the above decision on several occasions (see e.g. W 31/91, W 29/92, W 34/92, W 45/92, W 8/93 and W 6/97).

In W 48/90 and W 50/90 the board noted that as far as chemical compounds were concerned, unity of invention was no mere question of the respective structural features, but had to be decided taking into account the technical problem to be solved and whether or not the respective compounds contributed to the solution found.

In W 45/92 the board stated that the term "inventive" could not be interpreted as a requirement for the common part to be inventive per se and therefore claimable as such. The investigation in this respect should concentrate on whether or not all or some of such features could contribute to the later detailed consideration of the inventive steps. Only if the state of the art or common general knowledge which had already been taught showed, beyond reasonable doubt, that this was not possible in the circumstances, should non-unity be declared. It further held that the term "same or corresponding special technical features" recognised that the features should define a contribution to the invention vis-à-vis the prior art. As the features in question were also part of the most relevant state of the art, where they were set out in an identical manner, they could not provide such a contribution. Thus, the various inventions, if any, had to lie in the unshared specific characterising features in each case. Since the claims contained no other common feature between them in the characterising part, this confirmed the conclusion of lack of unity (see W 32/92, OJ 1994, 239).

In W 38/92 the board confirmed W 6/90 (see above) and noted that the common features in the claim groups represented the "sole concept" linking the various subject-matters. The board stated that the remaining question was whether or not any of these specific features in the claim groups or their combination could make a contribution to the inventive steps relating to each claimed subject-matter; if so, this would render the said concept linking the various subject-matters inventive. The board observed that the new R. 13 PCT also required such a contribution by the suggested common "special technical features" over the prior art, i.e. that more than novelty be provided. In T 94/91 the board made it clear that the general inventive concept could not be equated with the features cited in a claim or in a particular combination of claims. What should be considered was the inventive concept as defined in the claims with due regard to the description and any drawings (see W 2/95).

In W 9/93 the board noted that the intermediate compounds were known, so that these products could not serve as a common inventive concept, and that a technical feature contained in the process claims was also known. The board pointed out that a technical