

invention should be reconsidered. In particular, if the structure of at least one of the compounds covered by a Markush claim is known together with the property or technical effect under consideration, this is an indication of lack of unity of the remaining compounds (alternatives).

## **6. Individual features in a claim**

See ISPE Guidelines 10.10.

See also GL/PCT-EPO G-VII, 7.

## **7. Lack of unity "a priori" or "a posteriori"**

See ISPE Guidelines 10.03.

## **8. Examiner's approach**

ISPE Guidelines 10.04 apply.

For the particular case of claims for a known substance for a number of distinct medical uses, see GL/PCT-EPO G-II, 4.2.

When there is lack of unity, the claimed subject-matter is divided among the separate inventions. In this context the word "invention" means an invention having technical character and concerned with a technical problem within the meaning of Rule 5.1(a)(iii), which does not necessarily need to meet other requirements for patentability, such as novelty and inventive step (see GL/PCT-EPO G-VI and GL/PCT-EPO G-VII).

### **8.1 Reasoning for a lack of unity objection**

Rule 40.1(i)

Section F-V, 4.3, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

### **8.2 Determination of the invention first mentioned in the claims**

Section F-V, 4.4, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

See also GL/PCT-EPO B-VII, 2.

## **9. Dependent claims**

Rule 6.4

Rule 13.4

See ISPE Guidelines 10.06 to ISPE Guidelines 10.08.

## **10. Lack of unity during search**

Art. 17(3)(a)

Rule 40

In many and probably most instances, lack of unity will have been noted at the search stage. In such cases, a search is conducted for the invention first mentioned in the claims and the applicant is invited to pay additional search fees with Form PCT/ISA/206. See GL/PCT-EPO B-VII, 2.

See also ISPE Guidelines 10.60.

## **11. Lack of unity during the PCT Chapter II procedure**

Art. 34(3)(a)-(c)

Rule 68

If an invitation to pay additional fees was issued during Chapter I and the applicant paid some or all of the required additional fees, and if, where applicable, the objection as to lack of unity was at least partly upheld during