

this provision in G 2/98 (OJ 2001, 413) and in G 1/15 (OJ 2017, A82). Respective summaries are given below.

The following earlier decisions of technical boards are also of interest.

In T 828/93 (see also chapter II.D.5.2. above) the board confirmed that the possibility mentioned in Art. 88(2) EPC 1973 of multiple priorities for any one patent claim related only to instances where, unlike in the case at issue, the claim contained **alternatives** and could therefore be split into **several subject-matters**.

In T 620/94 it became apparent that granted claim 1 covered two alternatives A and B of the invention. Only alternative B was disclosed in the priority document; alternative A was contained only in the subsequent European application. Prior art published during the priority interval rendered obvious alternative A. The patent could thus only be maintained in amended form, i.e. limited to alternative B.

In T 441/93 the patent related to a process for preparing a strain of the yeast *Kluyveromyces*, which comprised transforming *Kluyveromyces* yeast cells. The priority document disclosed a process for the transformation of protoplasts of such yeast. The board concluded that the claims could be divided into two groups: Group A, enjoying priority rights from the previous application and comprising claim 1 in so far as directed to a process for the transformation of *Kluyveromyces* protoplasts, and the related further claims; and Group B, only enjoying the priority of the subsequent European application, and comprising claim 1 in so far as not directed to a process for the transformation of protoplasts, and the related further claims. Consequently, a scientific article published in the priority interval was held to be prior art only as regards the parts of the claimed subject-matter not disclosed in the priority document. See also T 395/95.

In G 2/98 (OJ 2001, 413) the Enlarged Board of Appeal analysed the legislative intention behind Art. 88(2), second sentence, EPC 1973 and concluded that a distinction has to be drawn between the two following cases. The legislator did not want several priorities to be claimable for the **"AND" claim** (e.g. a claim to features A and B, with the first priority document disclosing claim feature A alone and only the second priority document disclosing claim feature B). With regard to the **"OR" claim**, the Enlarged Board drew the following conclusion from the historical documentation relating to the EPC 1973: where a first priority document disclosed a feature A, and a second priority document disclosed a feature B for use as an alternative to feature A, then a claim to A or B could enjoy the first priority for part A of the claim and the second priority for part B of the claim. It was further suggested that these two priorities might also be claimed for a claim directed to C, if the **feature C**, either in the form of a generic term or formula, or otherwise, **encompassed feature A as well as feature B**. The use of a generic term or formula in a claim for which multiple priorities were claimed in accordance with Art. 88(2), second sentence, EPC 1973 was perfectly acceptable under Art. 87(1) and 88(3) EPC 1973, provided that it gave rise to the claiming of a **limited number of clearly defined alternative subject-matters** (see point 6.7 of the Reasons.)