

In T.250/02 the board found that the subject-matter of a claim for a herbal essential oil in which the total amount of carvacrol and thymol was at least 55%, and preferably 70%, by weight of the said essential oil and with exact ratios of carvacrol to thymol could not be derived directly and unambiguously from a priority document only disclosing a herbal oil containing "thymol and carvacrol in levels of 55% to 65%".

Further decisions concerned with differing ranges indicated in a priority document and disputed sets of claims include T.903/97, T.909/97, T.13/00, T.136/01, T.423/01, T.788/01, T.494/03 and T.537/03.

3.1.8 Selection from generic disclosure

A generic disclosure implicitly encompassing two or more alternative embodiments cannot generally give rise to a right of priority in respect of one specific embodiment that is **neither explicitly nor implicitly** disclosed (T.61/85; also T.30/01 below).

In T.85/87, the priority document disclosed a generic chemical formula, while a dependent claim of the application in suit was directed to a specific compound. Applying the principles which it had previously developed with respect to the novelty of specific (individual) chemical compounds over a generic disclosure of a group of compounds, the board concluded that the specific compound was not disclosed in the priority document. Therefore the subject-matter of the dependent claim was not entitled to priority and, as a result, was anticipated by the disclosure of the same specific compound in another European patent application within the meaning of Art.54(3) EPC.

According to the board in T.77/97, a chemical compound according to a dependent claim in a European patent application could not be granted priority simply because it fell within the scope of the claims in the priority document, and so was covered by its disclosure, and could be readily prepared on the basis of the information provided there (see T.409/90, OJ 1993, 40). Art. 88(4) EPC required, moreover, that the elements for which priority was claimed, i.e. all the features essential for defining the chemical compound, including those distinguishing it from the generic group disclosed and claimed in the priority document, be specifically disclosed in that document. In the case in hand, the board found that each of the compounds according to claims 4 and 5 were part of the "purely conceptual content" of the priority document's claim 3 but not part of its actual teaching. That meant they could not be regarded as "specifically disclosed" by this document, and so the two claims could not be granted the claimed priority. See also T.295/87 (OJ 1990, 470).

T.30/01 concerned an apparatus for optical imaging and measurement. The board noted that the description of the priority document unmistakably indicated the provision of the light steering means "in the sample arm". This precise disclosure deprived of support the appellant's construction of the disclosure as implicitly disclosing the provision of the light steering means in and outside the probe as two complementary alternative implementations – let alone as disclosing any specific one of these two alternatives by way of "implicit disclosure" by reference to common general knowledge (T.823/96, T.744/99 and T.818/00). According to the criterion consistently applied by the boards of appeal, a generic disclosure **implicitly encompassing two or more alternative embodiments** can