

feature which already formed part of the state of the art could not, by definition, make a contribution over the prior art and did not, therefore, qualify as a unifying element within the meaning of R. 13.1 PCT. According to R. 13.2 PCT, as in force from 1.7.1992, an international application could relate to a group of inventions if there was a "technical relationship" among those inventions involving one or more of the same or corresponding "special technical features", i.e. such technical features that defined a contribution which each of the claimed inventions made over the prior art. R. 13.1 PCT did not simply require some link between a group of inventions claimed in an international application, but a common inventive concept. This meant that there must be either a common technical problem or at least, if there was more than one technical problem, there must be one single technical concept behind the solutions of these different problems.

In T 957/96 the application described a number of processes which did not have any process step in common. According to the board, the decisive fact was that all the processes claimed shared a common technical feature, namely the use of the substantially pure regioisomer, which was essential for solving the technical problem addressed by the application. It was this use of the intermediate compound which formed the common "inventive" concept of all the claimed process variants. This feature constituted a special technical feature which defined the contribution that the claimed invention made over the prior art as required by R. 30(1) EPC 1973 (see now R. 44(1) EPC).

In W 11/99 (OJ 2000, 186) the board held that if, in an international application, there are claims directed to products and to a process for the manufacture thereof, it could not be assumed that there were no corresponding special technical features within the meaning of R. 13.2 PCT simply because the process could also be used to manufacture other products. The board interpreted the requirement for the presence of "corresponding special technical features" under R. 13.2 PCT in cases where a manufacturing process and products were being claimed in the same application to mean that they could usually be assumed to be present where the production process is new and actually suited to making the claimed products accessible (where appropriate in addition to further products). In such cases the board regards the process as being "specially adapted" to the manufacture of the claimed products. A narrower interpretation of the terms "specially adapted" and "corresponding special technical features" would not fulfil the legislative purpose of Art. 34(3) PCT and associated R. 13.1 PCT, which, in the board's view, was the same as that of Art. 82 EPC 1973, namely to prevent subject-matters which were not interconnected being claimed in one and the same application. This interpretation accorded with Annex B to the PCT Administrative Instructions mentioned in the PCT Guideline III-7.2 (July 1998 version), where it is stated in Part 1, item (e), that a process is specially adapted for the manufacture of a product if it inherently results in the product (see now Annex B, para. (e) PCT Administrative Instructions, as in force from 1.1.2022). If this condition was met, it was irrelevant whether other products could be obtained using the process.

In T 106/06 the board referred to the established case law of the boards of appeal according to which a manufacturing process and its resulting products are considered as unitary subject matter (e.g. W 2/95 and W 11/99). The board gave consideration to the question whether the fact that claim 1 did not relate to a manufacturing process in the