

Likewise, in T.980/95 it was held that there was no explicit requirement in R. 29(1)(a) EPC 1973 that a claim in two-part form be set up on the basis of the "closest" prior art, since the rule made no reference to the necessity or desirability for the characterising portion of the claim to set out the inventive step. Basing the two-part form on a particular state of the art which later turned out not to be the "closest" state of the art for the assessment of inventive step did not in itself contravene R. 29(1)(a) EPC 1973.

In decision T. 688/91 (discussed in this chapter II.A.3.3.) the board took the view that there was a breach of R. 29 and Art. 84 EPC 1973 where an incorrect distinction was made between the preamble and the characterising portion (likewise T. 181/95).

## **2.2. More than one independent claim per category: Rule 43(2) EPC**

R. 29(2) EPC 1973 was amended with effect from 1 January 2002. Prior to this date it permitted an application to contain two or more independent claims in the same category where it was "not appropriate" to cover the subject matter by a single claim. The amended version of R. 29(2) EPC 1973 specified that an application may contain more than one independent claim in the same category (product, process, apparatus or use) only if the subject-matter involves (a) a plurality of interrelated products, (b) different uses of a product or apparatus or (c) alternative solutions to a particular problem, where it is inappropriate to cover these alternatives by a single claim.

The case law below relates to the amended version of R. 29(2) EPC 1973 (corresponding to R. 43(2) EPC), which is not applicable in opposition proceedings (see in this chapter II.A.2.2.3).

### **2.2.1 Conditions**

In case T. 56/01 each of the appellant's requests in the appeal stage contained three independent claims of the same category: one claim to a broadband communications module and two claims to a signal transport system. Hence, the board had to discuss compliance with R. 29(2) EPC 1973. The board concluded from the preparatory documents that condition (a), in spite of the distinction made between products and apparatus in the opening part of the Rule, also applied to apparatus claims. Nevertheless, the board did not consider that condition (a) was met by the two claims for the signal transport system because they were not interrelated. The board inferred from the examples in an early proposal to the Administrative Council for the amendment of R. 29(2) EPC 1973 that interrelated products were meant to be different objects that complement each other, or somehow work together. Moreover, the board defined the "alternative solutions" under R. 29(2)(c) EPC 1973 as different or even mutually exclusive possibilities. Moreover, even alternative solutions were only allowed under the condition that "it is not appropriate to cover these alternatives by a single claim". The board concluded from the preparatory documents that "not appropriate" meant "not possible or not practical". The intention was that, if it was possible to cover alternative solutions by a single claim, then the applicant should do so.