

and it is on the basis of this knowledge, or by carrying out simple operations derived from it, that he may infer whether or not there is identity of invention. In the case in question a **structural feature** claimed in the European application was supported by a **general functional feature** described in the prior application.

Applying G 2/98 (OJ 2001, 413), the board in T 744/99 held that the application of common general knowledge could only serve to interpret the meaning of a technical disclosure and place it in context; it could **not** be used to **complete** an otherwise incomplete technical disclosure. In the case in hand, since the priority document only disclosed a new signal protocol without any disclosure of a suitable receiver, claim 8 of the subsequent application, which was directed to such a receiver, was not entitled to the claimed priority date.

In T 1312/08 the patent proprietor had submitted that the definition of "PU" was correct in the patent in suit but erroneous in the priority document. The board, referring to the established jurisprudence, stated that the reworking of an example and especially of a method which was not a standardised one and was not reported in encyclopaedias, textbooks, dictionaries and handbooks could not be considered to be the application of common general knowledge. The mere fact that it was necessary to carry out a test, which was not part of common general knowledge, in order to find out whether the definition of PU in the priority document was erroneous made it clear that the different definition of PU used in the patent in suit was not derivable directly and unambiguously, using common general knowledge, from the whole content of the priority document. See also T 1579/08.

### 3.1.5 Explicit or implicit disclosure of the features of the invention in the priority document

In G 2/98 (OJ 2001, 413) the Enlarged Board stated that priority for a claim, i.e. an "element of the invention" within the meaning of Art. 4H Paris Convention, is to be acknowledged if the subject-matter of the claim is specifically disclosed, be it explicitly or implicitly, in the application documents relating to the disclosure, and priority can be refused if there is no such disclosure.

Already in decision T 81/87 (OJ 1990, 250), it had been held that, although no identical wording was required, the disclosure of the essential elements, i.e. features of the invention, in the priority document, must either be express, or be directly and unambiguously implied by the text as filed (see also fuller summary of T 81/87 in chapter II.D.3.1.6. below; see also T 184/84). T 81/87 has been followed in numerous decisions, both before and after G 2/98 (e.g. T 301/87, OJ 1990, 335; T 296/93, T 479/97, T 342/98).

#### a) Example cases – features of the invention all disclosed in the priority document

In T 289/00 the contested feature of Claim 1 was that a channel was enclosed on all sides. The board accepted that the reference in the priority application to the channel as "filled with air" did not in itself mean that it was enclosed. However, the reference had to be seen together with the other information on this matter which the skilled person would derive from the application (cf. Art. 88(4) EPC 1973). A skilled person considering the priority