

Protests under the PCT in respect of additional fees paid following a non-unity objection by the EPO acting as ISA (R. 40 PCT) or as IPEA (R. 68 PCT) were previously decided on by the boards of appeal (Art. 154(3) and 155(3) EPC 1973), but are now decided on by review panels of the EPO (R. 158(3) EPC, decision of the President of the EPO, OJ 2015, A59; for the interim procedure see notice of 1 March 2005, OJ 2005, 226). The boards' competence to consider unity in the context of European applications remains unaffected. Given the harmonisation of the definitions concerning unity of invention in R. 13 PCT and Art. 82, R. 44 EPC, the criteria for unity in both systems are the same. Therefore, board decisions rendered according to the former PCT protest procedures ("W" cases) continue to be of interest for the consideration of unity in European applications and so many have been included in this chapter.

The Guidelines for Examination in the EPO (March 2022 version) deal with unity of invention at the search stage in Part B-VII, unity as a procedural aspect of substantive examination in Part C-III, 3, and unity as a requirement of the European patent application in Part F-V. For international applications see especially Chapter 10 of the PCT International Search and Preliminary Examination Guidelines, as in force from 1.3.2022, and the Guidelines for Search and Examination at the EPO as a PCT Authority, B-VII, C-V and F-V – March 2022 version.

## **2. Unity in the context of different types of claims**

### **2.1. Plurality of independent claims**

Under Art. 82 EPC, as under R. 13.1 PCT, the application must relate to one invention only or to a group of inventions so linked as to form a single general inventive concept. The second alternative, i.e. the single-concept linked group, may give rise to a plurality of independent claims in the same or different categories (see also R. 43(2) EPC).

In W 5/92 the board considered it to be implicit in the definition of R. 13.1 PCT that the "invention" be considered in the broadest sense. Thus, according to the former PCT Search Guidelines VII-5 (PCT Gazette No. 30/1992, Sec. IV; No. 29/1993, Sec. IV), the mere fact that an international application contained claims of different categories or several independent claims of the same category was in itself no reason for objection on the grounds of lack of unity (see now guidance in para. 10.01 ff. PCT International Search and Preliminary Examination Guidelines, as in force from 1.3.2022).

R. 44(1) EPC and R. 13.2 PCT provide that where a group of inventions is claimed in a European/international application, the requirement of unity of invention is fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features.