

In T. 659/03 the board had to decide whether the two contentious independent claims in the same category were covered by the exception in R. 29(2)(c) EPC 1973. The board held, first of all, that the appellant's wish to protect the two alternative processes by two independent process claims was justified. It then confirmed that there were alternative solutions to a particular problem, since the independent claims each contained all the features required to solve the problem addressed.

In T. 525/03 the board also found that there were alternative solutions and held that it would not appear appropriate to cover those alternative solutions in a single independent claim. Rather, attempting to redefine the subject-matter of these claims in a more generalising way in one independent claim might lead to an objection under Art. 123(2) EPC 1973. Such generalisation could furthermore be problematic under Art. 87 EPC 1973. In T. 895/05 too the board found that the requirements of R. 29(2)(c) EPC 1973 were satisfied.

In T. 2355/11 the board interpreted R. 29(2)(c) EPC 1973. In its view, it was appropriate for the application to have three independent process claims because a single claim bringing together all the process steps could entail a breach of Art. 83 EPC 1973. Besides, a single claim of this kind could give rise to objections under Art. 84 EPC 1973 because the essential features defining the sequencing of the steps in the process would be lost. The board concluded that it was possible but not practical to replace the three independent claims with a single claim.

In T. 671/06 the board found that a claim to a system comprising a power source (specified in broad functional terms) and claims to power sources (specified in structural terms) for that system did not fall under the exception in R. 29(2)(a) EPC 1973. It could be deduced from the examples provided in the Guidelines that inter-related products were, on the one hand, products which, although existing independently from each other as stand-alone products, only performed the invention when interacting with each other (e.g. plug and socket, transmitter – receiver), and, on the other hand, chemical products which were derived from their predecessors (i.e. intermediate(s) and final chemical product, gene – gene construct – host – protein – medicament). In contrast, the claimed system and the claimed power sources did not interact with each other, as the claimed system was completely self-contained in performing the invention. The board concluded that the term "inter-related products" in R. 29(2) EPC 1973 did not extend to a system which is self-contained in performing the invention and a product which is a constitutive substituent part for that system. The board did not follow T. 133/02, which had held that a system claim and a means claim relating to a component of the system were directed to inter-related products, similar to a plug and a connection system combining the plug with an adapted socket. In T. 671/06 the board argued that a claim directed to a connection system comprising the plug would be dependent on the claim to the plug, as it necessarily comprised all the features of the plug. However, R. 29(2) EPC 1973 was not intended to permit or prohibit claims which were permitted under R. 29(4) EPC 1973. The scope of application of these rules should be kept separate.

Likewise in T. 1232/07 the board, discussing the exceptions laid down in R. 29(2) EPC 1973, highlighted that exception (a) referred only to interrelated products