activity existed in the case in point. The new use could therefore form the general inventive concept linking the subject-matters of the claims in accordance with R. 13.1 PCT and had to be treated as a functional characteristic linking the compounds claimed.

In **W 6/95** the board referred to the PCT Administrative Instructions, binding not only on the ISA but also on the board of appeal acting as the "three-member board" according to R. 40.2(c) PCT (see **G 1/89**, OJ 1991, 155; since 1.4.2005, the references in the PCT Regulations to "three-member board" have been replaced by "review body" – see also in this chapter II.B.1. "Introduction"). The board noted that it followed from Annex B, Part 1(f)(i) PCT Administrative Instructions (now part of Annex B, para. (f) PCT Administrative Instructions, as in force from 1.1.2022) that in order to establish unity of invention "a posteriori", it was not sufficient for all alternatives of chemical compounds covered by a Markush claim to have a common property or activity, i.e. be suitable for solving a common technical problem, because according to item (B)(1) they had, in addition, to have a "significant structural element" in common in order for the alternatives to form unity. The board made it clear that it was, however, not in agreement with the explanation given in Annex B, Part 1(f)(ii) PCT Administrative Instructions to assume that the said "significant structural element" had to be novel per se. Rather, this expression meant that in relation to the said common property or activity there had to be a common part of the chemical structure which distinguished the claimed compounds from known compounds having the same property or activity (see also **W 6/97**).

In **T 169/96** the board noted that the fact that claim 1 also comprised a known compound, not covered by claim 2, was of no relevance to the question of unity, because R. 30(b) EPC 1973 (in the version as in force until 31.5.91; also in the version in force thereafter) did not require that there must be a common concept unifying different "means" according to it. It was not relevant here that the three different classes of chemical compounds identified by the examining division comprised completely different chemical structures of a residue. The board observed that Chapter C-III, 7.4a of the then applicable EPO Guidelines, which had been relied on by the examining division, as well as Annex B, Part 1(f) PCT Administrative Instructions (see now Annex B, para. (f) PCT Administrative Instructions as in force from 1.1.2022), concerning Markush-type claims, rightly stated that the said significant structural element might consist of a combination of individual components linked together. It was not stated there that the combination of individual structural elements had to be novel per se, nor did such a requirement follow from Art. 82 EPC 1973. Rather it followed from that guideline that this expression meant that in relation to the said common property or activity there had to be a common part of the chemical structure which distinguished the claimed compounds from known compounds having the same property or activity (see now Guidelines F-V, 3.2.5 – November 2022 version).

In **W 4/96** (OJ 1997, 552) the board noted that the requirement of a technical relationship as defined in R. 13.2, first sentence, PCT might be met when all claimed alternatives belong to a class of compounds which might be expected to behave in the same way in the context of the claimed inventions ("Markush claims"). The technical relationship involved those common special technical features that defined a contribution over the state of the art (R. 13.2, second sentence, PCT; see also **W 6/96**, **W 1/10**). However, such