

## 6.2 Extent of generalisation

See ISPE Guidelines 5.52.

An invention which opens up a whole new field is entitled to more generality in the claims than one which is concerned with advances in a known technology.

## 6.3 Objection of lack of support

See ISPE Guidelines 5.44.

Once the examiner has set out a reasoned case that, for example, a broad claim is not supported over the whole of its breadth, the onus of demonstrating that the claim is fully supported lies with the applicant (see GL/PCT-EPO F-III, 4).

The question of support is illustrated by examples (i) to (iii) in GL/EPO F-IV, 6.3. See also ISPE Guidelines 5.53.

Where it is found that the claims lack support in the description under Art. 6, it may be appropriate for the examiner to first invite the applicant to provide informal clarification before the search is carried out (see GL/PCT-EPO B-VIII, 3.3-3.6).

## 6.4 Lack of support vs. insufficient disclosure

It should be noted that, although an objection of lack of support is an objection under Art. 6, it can often, as in examples (i) to (iii) of GL/EPO F-IV, 6.3, also be considered as an objection of insufficient disclosure of the invention under Art. 5 (see GL/PCT-EPO F-III, 1 to GL/PCT-EPO F-III, 3), the objection being that the disclosure is insufficient to enable the skilled person to carry out the "invention" over the whole of the broad field claimed (although sufficient in respect of a narrow "invention"). Both requirements are designed to reflect the principle that the terms of a claim should be commensurate with, or be justified by, the invention's technical contribution to the art. Therefore, the extent to which an invention is sufficiently disclosed is also highly relevant to the issue of support. The reasons for failure to meet the requirements of Art. 5 may in effect be the same as those that lead to the infringement of Art. 6 as well, namely that the invention, over the whole range claimed, extends to technical subject-matter not made available to the person skilled in the art by the application as filed. Art. 5, 6

For example, where a technical feature is described and highlighted in the description as being an essential feature of the invention, to comply with Art. 6 this must also be part of the independent claim(s) defining the invention (see GL/PCT-EPO, F-IV, 4.5.1). By the same token, if the (essential) technical feature in question is absent from the claims, and no information is given on how to perform the claimed invention successfully without the use of said feature, the description does not disclose the invention defined in the claim(s) in the manner prescribed by Art. 5.

An objection under both Art. 5 and Art. 6 may also be justified. An example would be a claim relating to a known class of chemical compounds defined GL/ISPE 4.12, 5.58