

In W 13/89 the board found unity between a claim to the use of a substance or composition for the preparation of a medicine intended for a specific use (second medical use) and a claim to a pharmaceutical product containing that substance or composition (first medical use). This decision was confirmed in W 5/91 and W 28/91.

In W 23/91 the board confirmed the ISA's view that the novelty of a given product might justify claims of different categories being contained in a single application without contravening the requirements of unity (several new uses of the product in different areas and/or new processes concerning the product, e.g. preparation). In the case in point, the two independent product claims related to two "products", namely a nucleic acid sequence and the protein relating to the nucleic acid sequence. The board held that these products might constitute the common link if they were novel.

In W 40/92 the board took the view that there could be unity of invention if one independent claim to a process and another to the means for executing that process were comprised in one application. Said means could itself also be a process.

In T 492/91 the board found that, for the purposes of Art. 82 EPC 1973, the whole composition covered by claim 6 (new composition) did not need be the product of the process according to claim 1 (process for preparing known products). It was sufficient for one component of the composition to be such a product where the composition and the process were intended to solve the same technical problem. The board concluded that the scope of claim 6 therefore did not have to be limited to the compositions resulting from the process according to claim 1, thus excluding the compositions obtainable by subsequent mixing.

In J 13/13 the Legal Board recalled that R. 43(2) EPC and R. 44 EPC govern two distinct matters: R. 43(2) EPC must be complied with even where a patent application claims and describes a group of inventions that form a single general inventive concept, while R. 44 EPC must be complied with even where only a single independent claim is drafted for each claim category.

## 2.2. Dependent claims

R. 13.4 PCT provides that dependent claims must fulfil the requirement of unity in accordance with R. 13.1 PCT. The EPC makes no comparable express provision. The question has therefore arisen whether this difference means that there is a difference in the way dependent claims are assessed. Board of appeal case law on PCT cases has been uniform: the requirement of unity must also be met by dependent claims (see inter alia W 3/87, W 2/88, W 30/89, W 32/89, W 26/90, W 8/91 and W 54/91). In EPC cases the boards likewise assume that dependent claims have to meet the requirement of unity. Under the EPC the approach is not as strict as in the case of independent claims: the examination is only carried out in those cases where unity could be problematical (see T 140/83 and T 249/89).