

The corresponding provision R. 30 EPC 1973 as in force until 31.5.1991 (cf. also previous R. 13.2 PCT) specified the following three cases in which a combination of independent claims in different categories was to be considered permitted by Art. 82 EPC 1973:

(a) in addition to a claim for a given product, a claim for a process specially adapted for the manufacture of the product, and a claim for a use of the product;

(b) in addition to a claim for a given process, a claim for an apparatus or means specifically designed for carrying out the process;

(c) in addition to a claim for a given product, a claim for a process specifically adapted for the manufacture of the product, and a claim for an apparatus or means specifically designed for carrying out the process.

The list was not exhaustive and other combinations were permitted if they met the requirements of Art. 82 EPC 1973 (T. 861/92). The same applied to the old version of R. 13.2 PCT (W. 3/88, OJ 1990, 126; W. 29/88, W. 3/89). In T. 702/93 it was held that this version of R. 30 EPC 1973 did not provide for such a fictitious unity in the case of independent claims in the **same** category. While this fiction was removed with the amendment of R. 30 EPC 1973 and R. 13 PCT (both with effect from 1.6.1991), the principles based on it, as set out in the case law, remain unchanged (T. 169/96).

In T. 202/83 it was concluded from the old version of R. 30(c) EPC 1973 (see above) that the requirement of unity was not met by every subject-matter for carrying out a process. On the contrary, the provision presupposed that the means for carrying out the process had been specifically designed. Consequently, such a means in connection with the corresponding process did not meet the unity requirement if it was obvious that it could also serve to solve other technical problems.

In T. 200/86 the board held that it was possible to claim, in one application, not only a product for pharmaceutical use, but also the product's non-therapeutic (cosmetic and dietary) uses.

In W. 29/88 the international application related to chemical products, a process for their preparation and their use. The board was of the opinion that a particular use of a class of compounds on the one hand, and, on the other hand, a claim to that class of compounds per se or to certain members of that class of compounds could form a single general inventive concept. The salient point was not the identity of the respective structural scopes, but whether the compounds claimed per se (and the process for their manufacture) contributed to the solution of the problem underlying the use invention.

In W. 32/88 (OJ 1990, 138) the board was of the opinion that an invitation to pay an additional search fee on the grounds that an international application concerning a process and an apparatus related to two different inventions, whereas the apparatus was specifically designed for carrying out the process, had no legal basis, even if the claims for the apparatus were not restricted to such use (see also W. 16/89).