

In **T. 250/06**, claim 1 of the second auxiliary request related to recombinant DNA molecules comprising a nucleotide sequence encoding a murine delta opioid receptor (DOR), characterised as hybridising under conditions of low stringency to the DNA sequence shown in Figure 5. Appellant II pointed out that Figure 5 of the priority document differed by the addition of seven interspersed bases in the 3' untranslated region. The board indicated that conditions of low stringency were developed for screening molecules which differ somewhat from the probe. It was fully expected that the group of molecules obtained by hybridisation to the DNA of Figure 5 of the priority document and of the patent in suit respectively would not be different.

3.2. Claiming in the subsequent application the invention disclosed in the previous application

The features of the invention disclosed in the priority application must also characterise the invention claimed in the subsequent application.

In **T. 1050/92** the disclosure of the invention in the earlier application provided an adequate basis for replacing the term "Flüssigkeitsabscheidezyklon" used in said application with the more general one "Luft/Flüssigkeits-Trenneinrichtung" in claim 1 of the European application.

In **T. 809/95**, the opponents submitted that the "thin-walled" feature, which was disclosed in the first priority application as essential, was not contained in granted claim 1. The board was of the opinion that granted claim 1 was based on a "collapsible" plastic bottle "produced by the blow-moulding method" which had folds "to facilitate a reduction of volume upon the exertion of a pressure applied to the walls by hand". This description in itself **implied** that the bottle would have to be made from thin-walled plastic flexible enough to be collapsible by hand when empty, as required by independent claim 3 in the first priority application.

In **T. 515/00** the appellant had argued that features pertaining to hardware components relating to the printing process were no longer present in the claim and that there was no basis in the priority document for the deletion of these features. The board referred to **G. 2/98** (OJ 2001, 413, point 8.3 of the Reasons), in which the Enlarged Board had warned against an approach whereby a distinction was made between technical features which were related to the function and the effect of the invention and technical features which were not. Priority could not be acknowledged if a feature was modified or deleted, or a further feature was added. The board further noted that a claim passed the priority test if its subject-matter could be derived from the previous application **as a whole**. It followed that comparing the claim with the corresponding claim of the previous application was not a valid approach to performing the "priority test". The priority test was basically a disclosure test in which the skilled reader could use common general knowledge. If, in the description of the previous application, a distinction was made between features that were essential for the performance of the invention and features which were not, the latter could be deleted from the subject-matter of a claim without losing the right to priority. The omitted hardware components were nowhere presented as essential features in the priority document's description. The skilled reader would not have any reason to assume that they