

it had to cede to a stricter criterion close to absolute conviction. In other words, there should be a degree of certainty which is beyond reasonable doubt.

### 7.3. Requirement that the claimed product cannot be described in any other way

The criterion laid down in T 150/82 (OJ 1984, 309), whereby it must be impossible to define the claimed product other than in terms of a process of manufacture is now established case law (see e.g. T 333/93, T 749/95, T 950/97, T 1074/97, T 933/01, T 150/12, T 863/12).

In T 320/87 (OJ 1990, 71) the board stated that product-by-process claims were admissible for hybrid seeds and plants when they were not individually definable biological entities which could be characterised by their physiological or morphological features.

In T 130/90 the board had to rule on recombinant monoclonal antibodies having two different specificities and produced by a process involving trioma cells or quadroma cells and thus producing antibodies in a native form. The patentability of the process was not questioned. The process known from prior art chemically recombined antibody half-molecules. At issue was the validity of the product claim. The prior art did not disclose how fully re-associated molecules, i.e. with the same structure as native antibodies, which might be contained in the mixture of hybrids, could be screened out and isolated from molecules which were chemically altered. The board allowed a claim for bispecific recombinant monoclonal antibodies comprising intact immunological chains produced by the process claimed in the independent process claims of the patent in suit. Defining the antibodies by their process was the only way of delimiting them vis-à-vis the prior art.

In T 552/91 (OJ 1995, 100) it was held that where a European patent application relates to chemical substances originally defined by an incorrect chemical structural formula, correction of which is not allowable under R. 88 EPC 1973, replacement of the incorrect formula by the correct one infringes Art. 123(2) EPC 1973. Nevertheless, the submission of a "product-by-process" claim is compatible with Art. 123(2) EPC 1973 if it contains all the measures required to obtain this result (starting materials, reaction conditions, separation).

### 7.4. Applicability of the principles for product-by-process claims to use claims

In T 81/14 the board held that when considering the definition of a product in terms of its production process the principles developed in the jurisprudence for the product-by-process claims are in general to be applied, also in the case of a claim directed to the use of that product. Claim 1-7 of one of the auxiliary requests were directed to a method of producing a sintered cemented carbide body. Claim 8 was directed to the use, for the production of a cutting tool, of a sintered cemented carbide body obtained according to the method of any one of claims 1-7. Hence, claim 8 comprised process and product features and was notionally equivalent to a claim directed to a process for the production of a cutting tool using the sintered cemented carbide body. Although the claim was not directed to a product but to a process, the board stated that the principles underlying the assessment of the clarity of product features should not depend on whether such product