

In earlier decisions it was likewise held that, under Art. 88(4) EPC, it suffices if the features claimed in the later application are disclosed by the earlier application taken as a whole (T 184/84, T 497/91 and T 359/92).

If the priority document does not include any claims, this does not mean that the conditions of Art. 88(4) EPC are not fulfilled; Art. 88(4) EPC cannot be construed as meaning that a priority document must comprise claims in order to form a regular national filing within the meaning of Art. 87(3) EPC which can give rise to a right of priority (T 469/92). While in such a case it could be more difficult to establish whether the priority document discloses the same invention, the principles of G 2/98 equally apply (T 1437/10). See also e.g. T 525/13, in which the right of priority claimed from a US provisional application was held invalid.

In T 515/00 the board further noted that comparing the claim with the corresponding claim of the previous application was not a valid approach (see also summary in this chapter II.D.3.2.).

T 409/90 (OJ 1993, 40) showed that a broad claim in the previous application was not necessarily a suitable basis for a priority right. When considering what was disclosed in a priority document's claim it was necessary to bear in mind the purpose of the claim, i.e. to define the protection sought. The fact that a claim in a priority document was broad enough to cover specific subject-matter filed for the first time in a later application was not by itself sufficient evidence that such subsequently filed subject-matter had already been disclosed in the priority document, or that subsequent claims based on the later-filed subject-matter still defined the same invention as that which was the subject of the priority document (see also T 77/97, summarised in chapter II.D.3.1.8 below).

Features of the invention may also be disclosed in the drawings (T 169/83, OJ 1985, 193; T 837/13; also T 1434/13, in which the drawings of the priority document were found not to show all the alternatives of claim 1).

In T 449/04 the board emphasised that the "same invention" considered in Art. 87(1) EPC 1973 did not encompass the comparative example(s) which were clearly and definitely **excluded** from the scope of the invention in an earlier application of the applicant (see also fuller summary in this chapter II.D.4.1.).

### 3.1.4 Reference to common general knowledge

The priority of a previous application in respect of a claim in a European patent application in accordance with Art. 88 EPC is to be acknowledged only if the skilled person can derive the subject-matter of the claim directly and unambiguously, using common general knowledge, from the previous application as a whole (G 2/98, OJ 2001, 413).

According to earlier decision T 136/95 (OJ 1998, 198), a patent application is a technical document, addressed to the skilled person, not a work intended for the general reader. However, the skilled person is not familiar, unlike in the assessment of inventive step, with all the prior art, but only with those elements of it which form part of his general knowledge,