

In W 8/91 it was decided that, where claims were formally dependent, the ISA had to state expressly why they lacked unity; it was not enough simply to say that this was shown directly by the subject-matter as defined by the ISA.

In W 6/98 the board held that anticipation of the subject-matter of an independent claim might well lead to a situation of non-unity a posteriori, which however could only be established by showing that there was indeed no unifying novel inventive concept common to all dependent claims. The board noted that lack of novelty of the subject-matter of an independent claim did not automatically lead to a posteriori lack of unity for the claims directly or indirectly appended to said independent claim.

The board in T 129/14 pointed out that, normally, a dependent claim has all the features of its independent claim. If the independent claim comprised one or more special technical features defining a contribution over the prior art, the dependent claim would also comprise them. Hence they would form a single general inventive concept within the meaning of Art. 82 EPC. If the independent claim did not comprise any special technical features defining a contribution over that prior art, e.g. because its subject-matter was not novel, then it would not form any inventive concept. Hence, again no more than one general inventive concept within the meaning of Art. 82 EPC – possibly defined by the additional features of the dependent claim – would result (cf. Guidelines F-V, 9 – November 2015 version; see now Guidelines F-V, 3.2.3 – March 2022 version).

2.3. Intermediate products

In T 57/82 (OJ 1982, 306) it was stressed that the subject-matter of an application relating to new chemical end products, processes for their preparation, and to new intermediates for those end products at all events had unity within the meaning of Art. 82 EPC 1973 if all these subject-matters were technically interconnected and integrated into a single overall concept by being oriented towards the end products. In this context, starting materials which were used in a process for preparing end products and which were themselves products of a disclosed, albeit unclaimed, production process were also considered to be intermediates. This principle was confirmed in T 110/82 (OJ 1983, 274) for low-molecular products. According to that board, an invention relating to new low-molecular end products and to several groups of new low-molecular intermediates invariably had unity if the groups of intermediates prepared and oriented towards the end-products were technically closely interconnected with the end products by the incorporation of an essential structural element into the end-products and if due account was taken of the regulatory function of Art. 82 EPC 1973 (prohibition of unjustified saving of fees, need for ready comprehensibility).

This was confirmed by T 35/87 (OJ 1988, 134) and T 470/91 (OJ 1993, 680). The intermediates in the latter case – unlike those in earlier ones – were not structurally related to each other. However, they provided both the essential structural elements present in the end products. The intermediates of the application were therefore only made available with a view to obtaining the end products and they were sufficiently closely technically interconnected with those end products. Thus, they were integrated into a single overall inventive concept by being oriented towards the end products. This was not prejudiced by