generally not give rise to a right of priority in respect of a **specific one of the embodiments** that is neither explicitly nor implicitly disclosed (**T 61/85**) the latter criterion being a particular form of the "disclosure test" laid down in **G 2/98** (OJ 2001, 413) and constituting the logical corollary of the established principle – confirmed in **G 2/98** (see also **T 744/99**) – that no right to priority can be acknowledged for an invention that is regarded as novel over the disclosure of the corresponding priority document.

Subsequent decisions **T 788/01**, **T 899/04**, **T 70/05** and **T 971/08** also applied the principle that a generic disclosure cannot provide priority for a specific embodiment not disclosed in the priority document.

3.1.9 Inventions relating to nucleotide and amino acid sequences

In **T 923/92** (OJ 1996, 564) claim 1, the subject-matter of which was defined by means of a reference to the amino acid sequence of Figure 5, was held not to be entitled to priority from earlier applications P1 and P2, in which that amino acid sequence was not disclosed. The sequence reported in Figure 5 was observed to differ from that of Figure 5 of P1 and P2 in respect of three amino acids. In the board's judgment, the skilled person would consider the reference to the amino acid sequence of a protein as a primary technical feature linked to the character and nature of the product. Evidence from the patentee was restricted to the testing of a limited number of parameters and constituted at most proof of similarity, not of identity of the two polypeptides. These differed in one essential characteristic, i.e. the primary amino acid sequence.

In **T 351/01** a polynucleotide which was the subject-matter of claim 1 was characterised both in structural terms and by its function. Priority documents I and II disclosed a polynucleotide having the same function as that of the polynucleotide of claim 1. However, its structure differed from that of the polynucleotide of claim 1 by five bases, all found in the part of the sequence which does not relate to the function i.e. outside of the coding region. The board, referring to the Enlarged Board's opinion **G 2/98** (OJ 2001, 413), which had rejected an extensive or broad interpretation making a distinction between technical features which are related to the function and effect of the invention and technical features which are not, concluded that the subject-matter of claim 1 could not be seen as the same subject-matter as that disclosed in the priority documents. See also decision **T 1213/05**.

In **T 30/02** the board held that the presence of two additional guanine residues in the nucleotide sequence disclosed in an application cited in this case under Art. 54(3) EPC 1973 resulted in a different molecule that was not directly and unambiguously derivable from the earlier application from which priority was claimed. It was generally acknowledged in the case law of the boards of appeal that the nucleotide sequence of a nucleic acid represents an essential feature linked to the character and nature of the nucleic acid as such, and, where the nucleotide sequence is a coding sequence, also of the encoded protein (see **T 923/92**, OJ 1996, 564). The skilled person was aware of the fact that even a minimal modification of the nucleotide sequence may result in a different nucleic acid not only from the structural but also from the functional point of view. See also decision **T 70/05**.