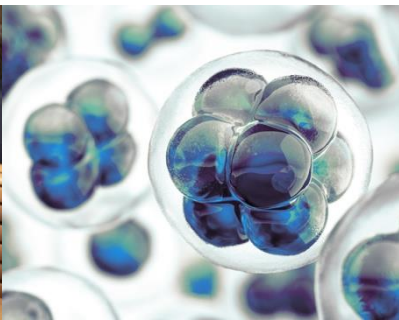




Europäisches
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des brevets

Examination of unity of invention

Proceedings of the working group and common practice adopted



Starting point

- Legal basis of the requirement of unity of invention
 - Article 4.F Paris Convention
 - Article 82 European Patent Convention
 - National laws of the EPC contracting states

Starting point

Rule 13.1 and 2. PCT: A patent application must relate to one invention only or to a group of inventions so linked as to form a single general inventive concept. This is fulfilled where there is a technical relationship between those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” refers to those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art



Existing differences as to its practical application

On the way to common practices in working group

- **Collect information** on the practice in the different participating states and the EPO
- **Analyse the information and determine areas for discussion,**
- **Explore uniformities and differences in the practice** with regard to the agreed areas for discussion,
- Discuss **proposals on possible common practices** in these areas, and **adopt** such practices

Recommendation for a common practice concerning the minimum reasoning when raising a non-unity objection

Information to be provided when raising a non-unity objection:

- Introduction to the objection
- Grounds for the objection
- Conclusion

Information to be provided when raising a non-unity objection

General principles

- Non-unity assessment may be performed according to different approaches; the minimum reasoning merely relates to the way in which the non-unity findings are presented
- No logical steps, but information to be given (no matter in which order)
- No influence on the discretion to raise the objection (or not)

Information to be provided when raising a non-unity objection

Introduction to the objection

- Where appropriate, statement of the legal basis for the objection, invoking a specific legal provision
- Identification of the different groups of inventions, including, where possible, the numbering of the groups and an indication of the claims belonging to each of these groups

Information to be provided when raising a non-unity objection

Grounds for objection (1)

- Identification of the *common matter* between the different groups of inventions or, if appropriate, a statement on the lack thereof

- If common matter has been identified, a comparison with the “*prior art at hand*” which:
 - if applicable, explains why the features identified as part of the common matter do not constitute a contribution over the “*prior art at hand*”
 - if prior art is relied upon, identifies that prior art.

Information to be provided when raising a non-unity objection

Grounds for objection (2)

- Analysis of the remaining technical features which are not part of the identified common matter
 - Explanation of why there is no unifying technical relationship among the groups of inventions, if applicable by identifying the differences between the remaining technical features considering the technical effects achieved or *the technical problems* solved by these remaining features.

Information to be provided when raising a non-unity objection

Grounds for objection

- Identification of the “common matter”
- Comparison with the “prior art at hand”
- Analysis of the remaining technical features

“Common matter”

- “Common matter” represents a potential single general inventive concept amongst the claims. It may be present in features that are identical or analogous (corresponding). Analogous features may be identified by checking which features provide individually or in combination a common technical effect or a solution to a common *technical problem*.

“Common matter”

- Common matter may also be embodied in features of **claims of different categories**.
- Claim 1: A **product**
- Claim 2: A **process specially adapted** for the manufacture of the product of claim 1
- Claim 3: **Use** of the product of claim 1
- **Common matter:** The **product** (present in both the use and in the process **as the effect or result of the process**).

“Common matter”

- Common matter may also be embodied in **interrelated product features** (e.g. a plug and a socket).
- Analogous (corresponding) features in interrelated products may be formulated quite differently, but if in **their interaction** they contribute to the **same technical effect** or to the solution of the **same technical problem**, they may be part of the common matter.

Information to be provided when raising a non-unity objection

Grounds for objection (3)

- Identification of the common matter
- If common matter has been identified, comparison with the “prior art at hand”
 - If applicable, explaining why the features identified as being part of the common matter do not define a contribution over the “prior art at hand”
 - If prior art is relied upon, an identification of said prior art.

“Prior art at hand”

- The prior art relied upon in the non-unity assessment may **vary depending on the provisions of each national office**, as well as on the **stage of proceedings**.
- The “**prior art at hand**” may range from **nothing at all** to the prior art found during **a search** and may **change** during the course of the proceedings.

Information to be provided when raising a non-unity objection

Grounds for objection

- Identification of the common matter
- Comparison with the “prior art at hand”
- Analysis of the **remaining technical features** which are not part of the identified common matter
 - Explanation of why there is no unifying technical relationship among the groups of inventions, if applicable by identifying the differences between the remaining technical features **considering the technical effects achieved or the technical problems** solved by these remaining features

The technical problem in the non-unity assessment

- When analysing the technical problem in the non-unity assessment, the **overall object** is to find out what the claims have in **common**.
- The **starting point** is usually what is considered in the **description** as having been achieved but the technical problem may need **gradual refinement** once **prior art** is revealed.

The technical problem in the non-unity assessment

- The technical problem solved should **not be too narrow or too general**. If the technical problem is so broadly formulated that it is itself already known or could be recognised as generally desirable or obvious, unity usually cannot be established on the basis of this common problem.

Information to be provided when raising a non-unity objection

Conclusion

- The concluding statement explaining that lack of unity has been found may be supplemented, where appropriate, with information on any procedural consequences of this result at the procedural stage in question.



Thank you for your attention!

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