

ANLAGE 3

LEITSÄTZE der ENTSCHEIDUNGEN des Jahres 1997, die im ABI. EPA veröffentlicht wurden oder zur Veröffentlichung vorgesehen sind¹

AKTENZEICHEN: D 14/93, ABI. EPA 1997, 561
STICHWORT: Praktikum
BESCHWERDEKAMMER: DBK
DATUM: 5.6.96

LEITSATZ:

Die für die Zulassung zur europäischen Eignungsprüfung nach Artikel 7 (1) b) VEP nachzuweisende Beschäftigung kann nicht bei einem Rechtsanwalt abgeleistet werden, der nicht in die Liste der zugelassenen Vertreter eingetragen ist, und zwar auch dann nicht, wenn der Rechtsanwalt außerdem Patentanwalt nach nationalem Recht ist.

AKTENZEICHEN: D 15/95, ABI. EPA 1998, 297
BESCHWERDEKAMMER: DBK
DATUM: 9.6.97

LEITSATZ:

Die das auf Grund einer Anzeige eingeleitete Verfahren abschließende Entscheidung des Disziplinarrates ist eine Entscheidung im Rechtssinn nur gegenüber dem betroffenen zugelassenen Vertreter, dem Präsidenten des EPI und dem Präsidenten des EPA und kann auch nur von diesem Personenkreis mit der Beschwerde angefochten werden. Dem Anzeigenerstatter steht insoweit kein Beschwerderecht zu; eine entsprechende Beschwerde ist nicht statthaft.

CASE NUMBER: D 8/96, OJ EPO 1998, 302
BOARD OF APPEAL: DBA
DATE: 18.7.97

HEADNOTE:

Borderline case assessments of candidates' fitness to practice as professional representatives before the European Patent Office are not possible under the 1994 Regulation on the European Qualifying Examination, REE 1994, and its implementing provisions, IP 1994. Article 17(1) REE 1994 is exhaustive. In accordance with this a candidate must pass each examination paper in order to pass the European qualifying examination as a whole. The only exception is laid down in Rule 10 IP 1994, which by virtue of Article 17(1) REE 1994 is also exhaustive and applicable only to candidates who sit the examination the first time.

ANNEX 3

HEADNOTES to DECISIONS delivered in 1997 which have already been published in OJ EPO, or are scheduled for publication¹

AKTENZEICHEN: D 25/96, ABI. EPA 1998, 45
STICHWORT: Beschäftigungszeit
BESCHWERDEKAMMER: DBK
DATUM: 17.3.97

LEITSATZ:

Die für die Zulassung zur europäischen Eignungsprüfung nach Artikel 10 (2) a) VEP nachzuweisende Beschäftigung kann nicht bei einem freiberuflich tätigen deutschen Patentanwalt abgeleistet werden, der nicht in die Liste der zugelassenen Vertreter eingetragen ist.

N° DU RECOURS : J 28/94, JO OEB 1997, 400
DEMANDEUR : SOLUDIA S.A. et al
REFERENCE : Suspension de la procédure
CHAMBRE DE RECOURS : 3.1.1
DATE : 4.12.96
N° DE LA DEMANDE : 91402380.9

SOMMAIRE :

Le demandeur du brevet, qui n'est pas entendu lorsque la procédure de délivrance est suspendue sur requête d'un tiers agissant dans le cadre des dispositions de la règle 13 CBE, garde la possibilité de contester le bien-fondé de cette suspension. Il est, de droit, partie à la procédure de recours ouverte par le tiers qui a vu sa requête rejetée par l'OEB.

CASE NUMBER: J 29/94, OJ EPO 1998, 147
APPLICANT: González García, Luis Emilio
HEADWORD: Deemed withdrawal
BOARD OF APPEAL: 3.1.1
DATE: 10.3.97
APPLICATION NO: 93201692.6

HEADNOTE:

Deemed withdrawal of the application pursuant to Article 110(3) EPC applies in the case of a failure to reply to a communication pursuant to Article 110(2) EPC in ex parte appeal proceedings, even where the decision under appeal did not refuse the application, but only a particular request.

¹ Diese Leitsätze erscheinen in der Anlage 3 nur in der Verfahrenssprache.

¹ These headnotes are published in Annex 3 in the language of the proceedings only.

¹ Ces sommaires ne sont publiés dans l'Annexe 3 que dans la langue de la procédure.

N° DU RECOURS : J 3/95, JO OEB 1997, 493
DEMANDEUR : Eta S.A. Fabriques d'Ebauches
REFERENCE : ETA
CHAMBRE DE RECOURS : 3.1.1
DATE : 29.2.97
N° DE LA DEMANDE : 83810210.1

SOMMAIRE :

Les questions suivantes concernant un point de droit fondamental sont soumises à la Grande Chambre de recours :

I. Dans le cadre de la Convention sur le brevet européen, quelles suites administratives ou juridictionnelles convient-il de réserver aux requêtes fondées sur la violation alléguée d'un principe fondamental de procédure et qui tendent à la révision d'une décision passée en force de chose jugée prise par une Chambre de recours ?

II. Convient-il, le cas échéant, d'en prescrire l'inscription sur le Registre européen des brevets ?

CASE NUMBER: J 22/95, OJ EPO 1998, ***
APPLICANT: Aumac Limited
HEADWORD: Designation of Contracting States in divisional application
BOARD OF APPEAL: 3.1.1
DATE: 4.7.97
APPLICATION NO: 94120537.9

HEADNOTE:

A designation of a Contracting State is deemed to be withdrawn if the designation fee has not been paid in due time in respect of this State. Failure to pay the designation fee thus means that the initial designation of this Contracting State in an application is void ab initio and is deemed never to have taken place. Thus, there is no right to designate in a divisional application a Contracting State which was originally designated in the parent application at the time of filing, unless the original designation was subsequently validated by payment of the respective fee.

AKTENZEICHEN: J 16/96, ABI. EPA 1998, 349
ANMELDER: A, B, C
STICHWORT: Zusammenschluß von Vertretern
BESCHWERDEKAMMER: 3.1.1
DATUM: 14.7.97

LEITSATZ:

Ein Zusammenschluß von Vertretern im Sinne von R. 101 (9) EPÜ kann auch von zugelassenen Vertretern gebildet werden, die nicht freiberuflich tätig sind.

AKTENZEICHEN: J 18/96, ABI. EPA 1998, ***
STICHWORT: Anmeldetag
BESCHWERDEKAMMER: 3.1.1
DATUM: 1.10.97

LEITSÄTZE:

I. Die Voraussetzungen von Artikel 80 EPÜ für die Zuerkennung eines Anmeldetags sind nicht erfüllt, wenn die Beschreibung und die Patentansprüche in zwei verschiedenen Amtssprachen eingereicht werden.

II. Wenn die Eingangsstelle den Antragsteller trotz dieses Mangels während längerer Zeit in dem begründeten Glauben läßt, die Anmeldung sei rechtswirksam eingereicht worden, kann sich dieser hinsichtlich der Zuerkennung eines Anmeldetags auf den Grundsatz des Vertrauensschutzes berufen.

CASE NUMBER: T 472/92, OJ EPO 1998, 161
APPLICANT: SEKISUI KASEIHIN KOGYO KABUSHIKI KAISHA
OPONENT: Owens-Illinois, Inc.
HEADWORD: Joint Venture/SEKISUI
BOARD OF APPEAL: 3.3.3
DATE: 20.11.96
APPLICATION NO: 83100303.3

HEADNOTE:

I. Although the standard of proof is the same for all objections covered by Article 100 EPC (cf. T 270/90, OJ EPO 93, 725), in those prior public use cases where practically all the evidence in support of an alleged prior public use lies within the power and knowledge of the Opponent, the latter has to prove his case up to the hilt (Reasons 3.1).

II. The printability of a material, as well as its surface characteristics after exposure to thermal shrinkage conditions, are not "intrinsic" properties which according to G 1/92, should be considered to have been made available to the public by the mere delivery of said material to a customer (Reasons 7.3.4 to 7.3.7).

CASE NUMBER: T 649/92, OJ EPO 1998, 97
APPLICANT: GENENTECH, INC.
OPPONENT: – Delta Biotechnology Limited – RIATAL GmbH – Naohito Oohashi
HEADWORD: DNA for HSA/GENENTECH
BOARD OF APPEAL: 3.3.4
DATE: 2.7.96
APPLICATION NO: 82304478.9

HEADNOTE:

The following questions are referred to the Enlarged Board of Appeal for decision:

I. Is a respondent patentee entitled to challenge the admissibility of an opposition on grounds relating to the identity of an appellant opponent during the course of the appeal, where no such challenge to admissibility had been raised before the opposition division?

II. If the answer to Question 1 depends on the particular circumstances, what are the legal principles governing the circumstances that the Board of Appeal should take into account in assessing whether a challenge to the admissibility of the opposition is allowable at the appeal stage?

III. If the answer to Question 1 can be yes, how is the requirement of Article 99(1) EPC to the effect that any person may give notice of opposition to the European patent to be interpreted, and in particular should it be interpreted to the effect that anybody may give notice of opposition in his own name, but not in the name of a nominal opponent, that is an opponent who merely lends his name for the proceedings while allowing the proceedings to be controlled by another?

IV. If the answer to Question 3 means that Article 99 EPC precludes a nominal opponent, in what circumstances, if any, can a suspected nominal opponent be required to provide evidence to establish that the opposition is genuinely his own, and what evidence can such a suspected nominal opponent be required to give to prove that he is a genuine opponent?

V. If the answers to the above questions involve a restriction on the right to challenge admissibility, is such restrictive view to be applied immediately in all pending proceedings?

CASE NUMBER: T 655/92, OJ EPO 1998, 17
APPLICANT: NYCOMED AS
OPPONENT: Advanced Magnetics Inc.
HEADWORD: Contrast agent for NMR imaging
BOARD OF APPEAL: 3.3.2
DATE: 11.2.97
APPLICATION NO: 85900253.7

HEADNOTE:

I. The use of a substance or composition for the manufacture of a preparation to be used in a specific method may derive its novelty from the subsequent use of the preparation in this specific method only if said method is one of those excluded from patentability by virtue of Article 52(4) EPC (see G 5/83, OJ EPO 1985, 64).

II. Methods for determining chemical or physical conditions which do not include any stages or measures requiring a doctor to carry them out but rather a technician in order to provide a basis for the doctor's subsequent activity of diagnosis may not necessarily fall within the exclusion of Article 52(4) EPC (see eg T 385/86, OJ EPO 1988, 308).

III. However, the diagnostic character of a process, within the meaning of Article 52(4) EPC, may be recognised in that such a process for which protection is sought does include essential steps which are to be implemented by medical staff or under the responsibility of a doctor (see reasons point 5.2).

CASE NUMBER: T 694/92, OJ EPO 1997, 408
APPLICANT: Mycogen Plant Science
OPPONENT: Unilever N.V. – Cemterms Ungdomsförbundet – Sandoz LTD. – Monsanto Company – Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. – Koninklijk Kweekbedrijf en Zaadhandel D.J. van der Have B.V. – Stichting Oppositie Plantoctrooi p/a St
HEADWORD: Modifying plant cells
BOARD OF APPEAL: 3.3.4
DATE: 8.5.96
APPLICATION NO: 84302533.9

HEADNOTE:

I. Where an invention relates to the actual realisation of a technical effect anticipated at a theoretical level in the prior art, a proper balance must be found between, on the one hand, the actual technical contribution to the state of the art by said invention, and, on the other hand, the terms in which it is claimed, so that, if patent protection is granted, its scope is fair and adequate (see point 3 of the Reasons).

II. In cases where the gist of the claimed invention consists in the achievement of a given technical effect by known techniques in different areas of application and serious doubts exist as to whether this effect can readily be obtained for the whole range of applications claimed, ample technical details and more than one example may be necessary in order to support claims of a broad scope. Accordingly, claims of broad scope are not allowable, if the skilled person, after reading the description, is not able to readily perform the invention over the whole area claimed without undue burden and without needing inventive skill (see points 5 and 19 of the Reasons).

CASE NUMBER: T 85/93, OJ EPO 1998, 183
APPLICANT: PITNEY BOWES INC.
OPPONENT: Francotyp-Postalia Aktiengesellschaft & Co.
HEADWORD: Apparatus for determining postage fees
BOARD OF APPEAL: 3.4.1
DATE: 17.10.96
APPLICATION NO: 83110532.5

HEADNOTE:

Evidence of common general knowledge, like any other evidence in support of an opponent's case, should be filed at an early stage in the proceedings before the Opposition Division (following Decision G 4/95, OJ EPO 1996, 412), and may be rejected as inadmissible in the Board's discretion, if filed for the first time during appeal proceedings.

CASE NUMBER: T 254/93, OJ EPO 1998, 285
APPLICANT: ORTHO PHARMACEUTICAL CORPORATION
HEADWORD: Prevention of skin atrophy
BOARD OF APPEAL: 3.3.2
DATE: 14.5.97
APPLICATION NO: 87309681.2

HEADNOTE:

I. When a second medical indication is claimed in relation with the use of a constituent in the preparation of a known composition and the final effect is apparent in using the known composition for the known purpose, a technical problem can be seen neither in the obtention of the final effect nor in the preparation of the composition. The only remaining question could be the explanation of the phenomenon underlying the treatment according to the known process (see reasons point 4.4).

II. The mere explanation of an effect obtained when using a compound in a known composition even if the effect was not known to be due to this compound in the known composition, cannot confer novelty to a known process if the skilled person was already aware of the occurrence of the desired effect (see reasons point 4.8).

CASE NUMBER: T 926/93, OJ EPO 1997, 447
APPLICANT: Mitsubishi Denki
OPPONENT: Siemens AG
HEADWORD: Gas laser device
BOARD OF APPEAL: 3.4.1
DATE: 1.10.96
APPLICATION NO: 85101372.2

HEADNOTE:

An opponent may only substantiate a ground of opposition against a single claim of each request on file. If he succeeds in establishing that a claim of each request is not allowable, the patent will be revoked. Thus an opponent is under no obligation to "overkill" requests put forward by the proprietor by substantiating grounds of opposition against more than one claim of such request.

N° DU RECOURS : T 97/94, JO OEB 1998, ***
DEMANDEUR : CECA S.A.
OPPOSANT : - 01 Bayer AG, Leverkusen Konzernverwaltung RP PatenteKonzern - 02 Grace GmbH
DATE : 15.7.97
N° DE LA DEMANDE : 86402042.5

SOMMAIRE :

I. Si, selon la décision G 6/95, la règle 71bis(1) CBE est pour les chambres de recours facultative dans son application en ce sens qu'elle laisse à celles-ci toute latitude pour la préparation de la procédure orale, elle demeure en revanche contraignante pour les parties dans son exécution. Ainsi, lorsqu'une chambre de recours décide d'adresser aux parties une notification au titre de la règle 71bis(1) CBE, celles-ci sont tenues d'en respecter la teneur, en particulier en ce qui concerne la date limite de réponse (point 3.5.1).

II. En cas de changement de mandataire à un stade tardif de la procédure ne résultant pas d'un cas de force majeure, le nouveau représentant est tenu de poursuivre la procédure en l'état où elle se trouvait au moment où il a assumé la succession de son prédécesseur. En tout état de cause, ce changement ne peut être l'occasion pour une partie, dans la présente affaire une intimée/opposante, de recourir à une nouvelle stratégie de défense basée sur une audition de témoins imprévisible au vu des arguments présentés et des requêtes formulées antérieurement (point 3.5.3).

III. Dans le cas d'une objection d'utilisation antérieure accessible au public le critère de l'appréciation de la probabilité, sur lequel les chambres de recours fondent habituellement leur conviction, est à interpréter selon des normes plus sévères atteignant pratiquement la conviction absolue, autrement dit la certitude allant au-delà de tout doute raisonnable (point 5.1).

CASE NUMBER: T 207/94, OJ EPO 1998, ***
APPLICANT: Biogen, Inc.
OPPONENT: Schering AG
HEADWORD: Human beta-interferon
BOARD OF APPEAL: 3.3.4
DATE: 8.4.97
APPLICATION NO: 81301414.9

HEADNOTE:

In case the expression of a cloned DNA in a chosen foreign host constitutes the subject-matter of the claimed invention, reasonable expectation of success may be evaluated only by taking into account real difficulties related to that step. Hence, in order to be considered, any allegation of features putting in jeopardy reasonable expectation of success must be based upon technical facts.

CASE NUMBER: T 329/94, OJ EPO 1998, 241
APPLICANT: BAXTER INTERNATIONAL INC.
HEADWORD: Blood extraction method
BOARD OF APPEAL: 3.2.2
DATE: 11.6.97
APPLICATION NO: 88901721.6

HEADNOTE:

I. The need for a medical practitioner to perform a measure on the human body or supervise such an operation is not the sole criterion by which a method step has to be assessed with regard to the exclusion of subject-matter from patenting under Article 52(4) EPC. The purpose and inevitable effect of the step at issue are much more important.

II. If the claimed subject-matter is actually confined to operating an apparatus for performing a method with the technical aim of facilitating blood flow towards a blood extraction point, the operating method has no therapeutic purpose or effect and, therefore, is not excluded from patentability.

AKTENZEICHEN: T 382/94, ABI. EPA 1998, 24
ANMELDER: Firma Carl Zeiss et al
STICHWORT: Ursprünglich eingereichte Unterlagen
BESCHWERDEKAMMER: 3.4.2
DATUM: 17.4.97
ANMELDENUMMER: 87104961.5

LEITSÄTZE:

I. Das Übereinkommen macht die Zuerkennung des Anmeldetags nicht davon abhängig, ob in den Zeichnungen vorhandene Texte in einer mit der Sprache der Beschreibung und der Patentansprüche übereinstimmenden Sprache gemäß Artikel 14 (1) und (2) EPU abgefaßt sind.

II. Sind die Zeichnungen am Anmeldetag vollständig eingereicht worden, so bilden sie einen Bestandteil der Anmeldung in der ursprünglich eingereichten Fassung, auch wenn darin Texte in einer von der Verfahrenssprache abweichenden Amtssprache enthalten sind. Einer Änderung der Anmeldung gestützt auf eine Übersetzung dieser Texte in die Verfahrenssprache steht nichts entgegen.

CASE NUMBER: T 522/94, OJ EPO 1998, ***
APPLICANT: TECHMO Car S.p.A.
OPPONENT: GLAMA Maschinenbau GmbH
HEADWORD: Admissibility of opposition
BOARD OF APPEAL: 3.2.5
DATE: 22.9.97
APPLICATION NO: 85902531.4

HEADNOTE:

I. The admissibility of the opposition must be checked ex officio in every phase of the opposition and ensuing appeal proceedings. It can and, where appropriate, must be raised by the board in appeal proceedings even if this is the first time this matter is addressed (T 289/91, OJ EPO 1994, 649; T 28/93, reasons, 2, not published in the OJ EPO).

II. Admissibility of the opposition has to be judged on the basis of the content of the notice of opposition as filed, taking account of additional documents filed before the expiry of the opposition period as far as they remedy any deficiency fatal to the admissibility. Such a defect cannot be remedied outside the period for opposition [Rule 56(1) EPC, in fine].

III. On the basis of statements contained in the notice of opposition it must be possible to qualify whether the "instance" or "aspect of the state of the art" was made available to the public by means of a written or oral description, by use, or in another way [Article 54(2) EPC] and of what it consists.

IV. In order to be substantiated pursuant to Rule 55(c) EPC the notice of opposition must indicate "when", "what" and under what circumstances, in particular "to whom", the alleged piece of state of the art was made available.

V. The overall purpose of the admissibility requirement is to allow the proprietor of the patent and the opposition division to examine the alleged ground for revocation without recourse to independent enquiries.

CASE NUMBER: T 750/94, OJ EPO 1998, 32
APPLICANT: AT&T Corp.
HEADWORD: Proof of prior publication
BOARD OF APPEAL: 3.4.1
DATE: 1.4.97
APPLICATION NO: 88309251.2

HEADNOTE:

I. When an issue of fact is being examined and decided by the EPO on the balance of probabilities, the more serious the issue the more convincing must the evidence be to support it. If a decision upon such an issue may result in refusal or revocation of a European patent, for example in a case concerning alleged prior publication or prior use, the available evidence in relation to that issue must be very critically and strictly examined. A European patent should not be refused or revoked unless the grounds for refusal or revocation (that is, the legal and factual reasons) are fully and properly proved.

II. In accordance with the principle of "free evaluation of evidence" (see decision T 482/89, OJ EPO 1992, 646) items of evidence relevant to a matter in issue must be given an appropriate weight in order to reliably to establish what is likely to have occurred. An unsigned statement by an unknown and unnamed person should in principle be given minimal weight.

N° DU RECOURS : T 136/95, JO OEB 1998, 198
DEMANDEUR : Justamente, Raphaele
OPPOSANT : Transordures
REFERENCE : Compacteur de déchets
CHAMBRE DE RECOURS : 3.2.1
DATE : 25.2.97
N° DE LA DEMANDE : 87420170.0

SOMMAIRE :

Il y a lieu de tempérer d'une certaine souplesse l'exigence d'identité d'invention entre une demande européenne postérieure et une demande antérieure dont la priorité est revendiquée. Certaines caractéristiques revendiquées dans la demande européenne peuvent ne pas être expressément mentionnées dans la demande prioritaire, pourvu que l'homme du métier puisse, à l'aide de ses seules connaissances ou en effectuant de simples opérations d'exécution, les déduire de la demande prioritaire (point 3.3 des motifs).

AKTENZEICHEN: T 301/95, ABI. EPA 1997, 519
ANMELDER: INDUPACK AG
EINSPRECHENDER: Emmerich Hartdegen
STICHWORT: Strohmann
BESCHWERDEKAMMER: 3.2.5
DATUM: 27.6.97
ANMELDENUMMER: 88112875.5

LEITSATZ:

Der Großen Beschwerdekammer werden nach Artikel 112 (1) a) EPÜ folgende Rechtsfragen von grundsätzlicher Bedeutung vorgelegt:

- I. Ist ein Einspruch, der durch einen mittelbaren Stellvertreter ("Strohmann") eingelegt wird, zulässig?
- II. Falls die Frage zu 1. verneint wird, inwieweit ist der Einwand der Strohmanneigenschaft zu prüfen, wenn Umstände geltend gemacht werden, die den begründeten Verdacht erwecken, der Einsprechende handle nicht in eigenem Interesse?

CASE NUMBER: T 742/96, OJ EPO 1997, 533
APPLICANT: UNILEVER PLC
OPPONENT: Procter & Gamble
HEADWORD: Textile
BOARD OF APPEAL: 3.2.5
DATE: 9.6.97
APPLICATION NO: 89311690.5

HEADNOTE:

The following question is referred to the Enlarged Board of Appeal:

Are the boards of appeal, in application of the principle of good faith, bound to notify the appellant of a missing appeal fee when the notice of appeal is filed so early that the appellant could react and pay the fee in time, even if there was no indication – either in the notice of appeal or in any other document filed in relation to the appeal – from which it could be inferred that the appellant would, without such notification, inadvertently miss the time limit for payment of the appeal fee?

CASE NUMBER: T 1105/96, OJ EPO 1998, 249
APPLICANT: HAMAMATSU PHOTONICS K.K.
HEADWORD: Requests
BOARD OF APPEAL: 3.4.1
DATE: 9.7.97
APPLICATION NO: 93300923.5

HEADNOTE:

I. An applicant has a right both to file one or more auxiliary requests in addition to a main request, and to maintain all such requests (that is, not to withdraw or abandon them), even if the Examining Division communicates its view that all except the last auxiliary request (possibly with further amendment) are inadmissible or unallowable, and he is then entitled to a reasoned appealable decision in respect of rejection of each such request.

II. Where an Examining Division has communicated its view that a further request in the form of an amended text of a claim would be allowable, the rejection in advance of such a further request unless all preceding requests are abandoned is an unlawful exercise of discretion under Rule 86(3) EPC, and a substantial procedural violation within Rule 67 EPC.

CASE NUMBER: T 951/97, OJ EPO 1998, ***
APPLICANT: CASIO COMPUTER CO., LTD.
BOARD OF APPEAL: 3.4.1
DATE: 5.12.97
APPLICATION NO: 93103140.5

HEADNOTE:

The subject of the proceedings is changed within the meaning of Rule 71a(1) and (2), inter alia where the Examining Division itself introduces a new document, which is pertinent new material, into the proceedings for the first time during oral proceedings convened following a Rule 71a notification.

CASE NUMBER: W 4/96, OJ EPO 1997, 552
APPLICANT: UNILEVER N.V.
HEADWORD: Teeth whitening
BOARD OF APPEAL: 3.3.2
DATE: 20.12.96
APPLICATION NO: PCT/EP95/03309

HEADNOTE:

I. An objection of lack of unity may be raised "a posteriori" in regard to all categories of grouping of alternatives of chemical compounds.

II. The requirement of a technical relationship as defined in Rule 13.2, 1st sentence, PCT, may be met when all claimed alternatives belong to a class of compounds which may be expected to behave in the same way in the context of the claimed inventions ("Markush claims"). The technical relationship involves those common special technical features that define a contribution over the state of the art (Rule 13.2, 2nd sentence, PCT). However, such contribution cannot be recognised on the basis of this expectation if members of the class have already been shown in the prior art to behave in the manner disclosed in the application.