



La prioridad y su interpretación

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Art. 4.A (1) PC (Paris Convention)

Any person who has duly filed an application for a patent, , in one of the countries of the Union, , shall enjoy, for the purpose of filing in the other countries^{(*)(**)}, a right of priority during the periods hereinafter fixed.

(*) patent applications in respect of the same invention? (Art. 4.H)

() patent applications related to a group of inventions so linked as to form a single general inventive concept? (Art. 4.F)**

Art. 87(1) EPC (European Patent Convention)

A person who has duly filed ..., an application for a patent ..., shall enjoy, for the purpose of filing a European patent application **in respect of the same invention**, a right of priority during a period of twelve months from the date of filing of the first application.

Art. 4.B PC

Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any **acts accomplished in the interval**, in particular, another filing, the publication or exploitation of **the invention**, ...

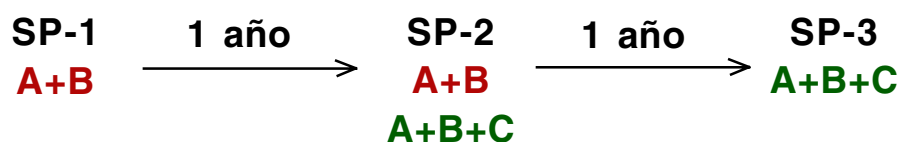


Art. 4 PC

- F** No country of the Union may refuse **a priority or a patent application** on the ground that the applicant claims multiple priorities, even if they originate in different countries, **or** on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, **provided that, in both cases, there is unity of invention** within the meaning of the law of the country.

With respect to **the elements not included** in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

- H** Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, **provided that the application documents as a whole specifically disclose such elements.**





Art. 88 EPC

- (3) If one or more priorities are claimed in respect of a European patent application, **the right of priority shall cover only those elements** of the European patent application which are **included** in the application or applications whose priority is claimed.
- (4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, **provided that the documents of the previous application as a whole specifically disclose such elements.**

Art. 89 EPC

The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of **Article 54, paragraphs 2 and 3**, and **Article 60, paragraph 2**.



Art. 29 LP (Ley de Patentes 11/1986)

- (3) Cuando se reivindicquen una o varias prioridades, el derecho de prioridad **sólo amparará a los elementos** de la solicitud que estuvieren **contenidos en la solicitud** o solicitudes cuya prioridad hubiere sido reivindicada.
- (4) Aun cuando determinados elementos de la invención para los que se reivindique la prioridad no figuren entre las reivindicaciones formuladas en la solicitud anterior, podrá otorgarse la prioridad para los mismos **si el conjunto de los documentos de aquella solicitud anterior revela de manera suficientemente clara y precisa tales elementos.**

Art, 21 Reglamento LP

- (1) A los efectos de admisión de una prioridad reivindicada se examinará, comparando la solicitud prioritaria con la posterior, la **congruencia** entre solicitantes y el objeto de la invención.
- (2) En caso de no identidad de los solicitantes se exigirá el documento acreditativo de cesión de derechos de prioridad para España.
- (3) Si no hubiere **congruencia de objetos**, no podrá aceptarse la prioridad pretendida, salvo en el caso previsto en el número 4 del artículo 29 de la Ley.



¿Cómo interpreta la OEP el derecho de prioridad en el marco del Convenio de la Patente Europea?

Las Cámaras de Recursos de la OEP han mantenido hasta la fecha dos criterios aparentemente diferentes:

Criterio 'tradicional' (más restrictivo)

Solamente se beneficia del derecho de prioridad **aquello que está específicamente descrito**, explícita o implícitamente, en la solicitud prioritaria.

Criterio 'renovador' (más permisivo)

El derecho de prioridad no se pierde si los elementos añadidos no descritos en la solicitud prioritaria **no están relacionados con el carácter y la naturaleza de la invención**, con la condición de que el objeto reivindicado esté relacionado substancialmente con la misma invención.

Diferente interpretación de la condición de 'misma invención'



Criterio 'tradicional'

Para invocar el derecho de prioridad válidamente no es necesario que la materia reivindicada en la solicitud de patente esté también reivindicada en la solicitud prioritaria, pero sí **debe estar específicamente descrita, aunque sea de manera implícita, en cualquier parte de la solicitud prioritaria** [Art. 88(4) EPC y Art. 4(H) PC].

Decisiones: T116/84 (reason 2), T184/84 (reasons 2 and 3), T85/87 (reasons 3 and 4) y T295/87 (reasons 6.2 and 6.4).

El test utilizado para evaluar el derecho de prioridad es el '**disclosure test**' aplicado para valorar el cumplimiento del Art. 123(2) EPC (a veces las decisiones de las Cámaras de Recursos de la OEP hacen referencia al 'novelty test', pero debe entenderse que se refieren al 'disclosure test').

Guidelines, C-V

- 2.3 The requirement that the disclosure must be specific means that it is not sufficient if the elements in question are merely referred to in broad and general terms. **A claim to a detailed embodiment of a certain feature would not be entitled to priority on the basis of a mere general reference to that feature in a priority document.** Exact correspondence is not required, however. It is enough that, on a reasonable assessment, there is in substance a disclosure of all the elements of the claim.
- 2.4 The basic test to determine whether a claim is entitled to the date of a priority document is the same as the **test of whether an amendment to an application satisfies the requirement of Art. 123(2)** (see VI, 5.4). That is to say for the priority date to be allowed, the subject-matter of the claim **must be derivable directly and unambiguously from the disclosure of the invention in the priority document**, when account is taken of any features **implicit to a person skilled in the art** in what is expressly mentioned in the document.



Criterio 'tradicional'

Además, la descripción en la solicitud prioritaria debe ser suficiente como para reproducir toda la materia reivindicada que invoca la prioridad (**enabling disclosure**).

Decisiones:T212/88 (reason 4) y T296/93 (reasons 4.5 and 4.6).

Es **irrelevante** que las características no descritas específicamente en la solicitud prioritaria sean **esenciales o no**, aunque siempre ha resultado claro que no se puede invocar una prioridad si alguna característica esencial para la invención no está descrita en la solicitud prioritaria,

Decisiones:T81/87 (reason 6), T301/87 (reasons 6.2 and 6.3), T269/87 (reason 7), T296/93 (reasons 4.5 and 4.6),

o si dicha característica esencial ha sido omitida en la solicitud de patente europea respecto de la solicitud cuya prioridad se invoca.

Decisión: T134/94 (reason 3.2.4)



Criterion 'renovador'

T73/88 'Snackfood' (headnotes 1 and 2)

1. A technical feature in a claim of a European patent, which is an essential feature for the purpose of determining the scope of protection conferred, is not necessarily an essential feature or element for the purpose of determining priority. Whether a particular feature is essential for the purpose of priority, and therefore needs to be specifically disclosed in the priority document, **depends upon its relationship to the character and nature of the invention**. In a case where a feature in a claim is not related to the function and effect of the invention, such feature is not related to the character and nature of the invention, and **the absence of such feature from the disclosure of the priority document does not cause loss of priority**, provided the claim is otherwise in substance in respect of the **same invention** as that disclosed in the priority document (Decisions T 81/87 and T 301/87 followed and distinguished).
2. If a technical feature in a claim of a European patent is **a more specific embodiment of a feature which is more generally disclosed in the priority document**, there is no loss of priority provided that the inclusion of such more specific technical features **does not change the character and nature of the claimed invention** which therefore remains in substance the same invention as that disclosed in the priority document.



T73/88 'Snackfood' (otros detalles relevantes)

Se rechaza la utilización del disclosure test para evaluar el derecho de prioridad.

'In the Board's view **such an approach to the determination of the right to priority is too narrow and too literal**, and does not conform to the requirement of Article 87(1) EPC. What has to be considered in relation to this requirement is whether, as a matter of substance, the earlier filed application **is in respect of the same invention** as the invention claimed in the European application or patent.' (reason 2.1)

Se efectúa una valoración de las 'intenciones' de los art. 87-89 EPC.

'In the Board's view, **it was not the intention of Articles 87 to 89 EPC** (or of the relevant provisions of the Paris Convention with which such Articles are intended to conform - see Decision T 301/87 «Biogen» dated 16 February 1989, published in OJ EPO 1990, 355) **that a Patentee should forfeit his claim to priority** (and potentially the validity of his patent), **as a result of such a reduction in the scope of protection of his patent as compared to the disclosure in the priority document.**' (reason 2.4)

Se afirma que los motivos por los que se añade a una reivindicación una característica no contenida en la solicitud prioritaria son irrelevantes para valorar el derecho a la prioridad (lo esencial es valorar si se altera el carácter y naturaleza de la invención).

'The **precise reason** why the above-mentioned feature was added to the claims of the European patent application as filed, in comparison with the earlier filed British application, **is in principle irrelevant to the determination of priority**. It would appear to have been designed to improve the Respondent's chances of defending the validity of the patent.' (reason 2.3)



Decisiones posteriores en la línea 'snackfood'

T16/87 (reason 5)

'...

Article 88(3) EPC states that the right of priority covers only those elements of the European patent application which are included in the application whose priority is claimed. It therefore follows, in the present case, that the priority of the French application was validly claimed for all the features of Claim 1 other than the added feature, **considered separately. That added feature, however, does not represent an essential element of the subject-matter of Claim 1 which would have altered its nature in such a way that the invention was new compared with that to which the French application relates. Instead, it represents simply a voluntary limitation of the scope of that claim** (cf. Decision T 73/88 - 3.3.1 dated 7 November 1989, point 2 of the Reasons, not published in the EPO Official Journal). Under these circumstances, the Board ... considers that document D1, published after the priority date and invoked by the appellants against all the features of the contested patent's Claim 1, does not form part of the state of the art as defined in Article 54 EPC and does not therefore need to be considered.'

¿Para valorar el derecho de prioridad, es correcto considerar por separado las características técnicas que definen una reivindicación, cuando no lo es para valorar el alcance de su protección ni su novedad y actividad inventiva? (conjunto de características consideradas en combinación)



Decisiones posteriores en la línea 'snackfood'

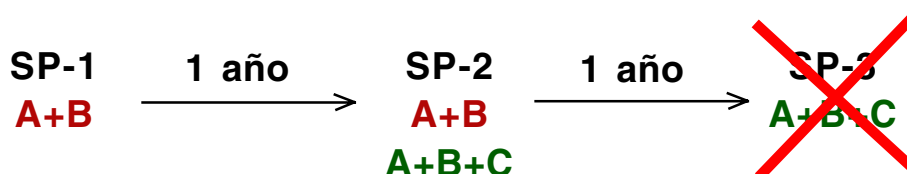
T582/91 (reason 3.1)

'...

However, in accordance with former decisions of the Boards of Appeal (see T 16/87, OJ EPO 1992, 212 and T 73/88, OJ EPO 1992, 557) a feature added to the claim after the priority date **which does not constitute an essential element of the invention but a voluntary limitation of the scope of that claim** does not invalidate the priority claimed, which conclusion is also adopted by this Board. In the present case the feature added to the claim relates to the guiding of the brake pads in the brake calipers which has no relevance to the constructional measures of the hold-down springs defined in the claims. Therefore, **in the Board's opinion the feature which was added does not change the character and nature of the claimed invention which therefore remains in substance the same invention as that disclosed in the second priority document.'**

T255/91 (reason 2.1.14)

'Thus, since the subsequent patent application is **only distinguished over the previous application by a limitation of the scope of protection by exclusion of a part of a range (in particular by a disclaimer) which does not change the nature of the invention**, and since the conditions of Article 87(4) EPC are not met, said subsequent patent application is not a first application in the sense of Article 87(1) EPC and cannot serve as a basis for claiming a right of priority (cf. decision T 73/88, OJ EPO 1992, 557).





Decisiones posteriores en la línea 'snackfood'

T669/93 (reasons 3 and 4)

3. ...

According to the practice of the Boards of Appeal, it was considered, e.g. in the decisions T 73/88 (OJ EPO 1992, 567), T 16/87 (OJ EPO 1992, 212) and T 582/91 of 11. November 1992 (not published), that the claim to priority is not lost in the case when the subsequent application contains a feature which, although not disclosed in the earlier application, merely limits the scope of protection of the patent vis-à-vis the disclosure of the priority document provided that the character and the nature of the invention claimed is not changed due to the additional feature (cf. T 73/88, section «2. Priority», in particular section 2.4 in which it is stated «...in the Board's view it was not the intention of Articles 87 to 89 EPC... that a Patentee should forfeit his claim to priority (and potentially the validity of his patent) as a result of such a reduction in the scope of protection of his patent as compared to the disclosure in the priority document».

4. The Board considers that in the present case the above cited principle originating from a well-established practice of the Boards of Appeal should be applied.

...

Hence, in the opinion of the Board, the criteria set up in the above-cited practice of the Boards of Appeal for acknowledgment of the claim to priority are complied with in the present case and it follows that Claim 1 according to the second auxiliary request is entitled to the priority 2 October 1985 (first priority document).'



Decisiones posteriores en la línea 'snackfood'

T1056/93 (reason 2)

' ...

Im übrigen schränken die vorstehend genannten Merkmale aus dem Anspruch 1 des Streitpatents den Schutzzumfang des Anspruchs 1 zwar ein, sie stehen jedoch in keinem wesentlichen Zusammenhang mit der Funktion und der Wirkung der beanspruchten Lehre. Die Kammer ist in Übereinstimmung mit der Entscheidung T 73/88, ABI. EPA 1992, 557 der Auffassung, daß die Aufnahme solcher unwesentlicher Merkmale in den Patentanspruch die Priorität selbst dann nicht ungültig machen könnte, wenn diese Merkmale tatsächlich nicht in den Prioritätsunterlagen vorhanden wären. In der Entscheidung der Großen Beschwerdekammer G 3/93, ABI. EPA 1995, 18 wird in diesem Zusammenhang festgestellt, daß das Prioritätsdokument und die spätere europäische Patentanmeldung «dieselbe Erfindung» betreffen müssen, was, wie vorstehend erläutert, im vorliegenden Fall aus den beiden genannten Gründen zutrifft.



Decisiones posteriores en la línea 'snackfood'

T1056/93 (reason 2)

' ...

For analogous reasons to those used in decision T 0581/89 (unpublished), the board considers **those specific technical features of the claims which were not contained explicitly in the present priority document** (i.e. the rotatable frame and coiled torsion spring) **are nothing more than routine choices for the skilled person, essentially trivial**, well known to him and **make no contribution to the invention as such**. As was the case in said decision, the requirement of Article 87(1) EPC concerning the same invention is thus satisfied.

Moreover along the same lines as decision T 0073/88 (OJ EPO 1992, 557), the board sees the rotatable frame and coiled torsion spring as being unrelated to the essential function and effect of the invention, so that their absence from the disclosure in the priority document does not result in a loss of priority, particularly because the rotatable frame and coiled torsion spring in the present claim **merely go toward describing a more specific embodiment of what was already disclosed in general terms in the priority document**. The priority application was in respect of the same invention as the application in its present form and so the present application is entitled to its priority.

As decided in decision T 0016/87 (OJ EPO 1992, 212), the addition in the present case to the independent claim of two features (i.e. the rotatable frame and coiled torsion spring), which do not constitute an essential element of the invention but are **merely a voluntary limitation of its scope**, does not invalidate a claim to priority. The effect of the introduction of these features into the claim is merely to limit the extent of protection, compared with the extent of protection which could have been attained based on the disclosure of the priority document, and **does not change the character and nature of the invention.**'



La decisión G 3/93 de la Alta Cámara de Recursos, de 16.08.1994, ha seguido el criterio ‘tradicional’

The question of law referred to the Enlarged Board by the President of the EPO

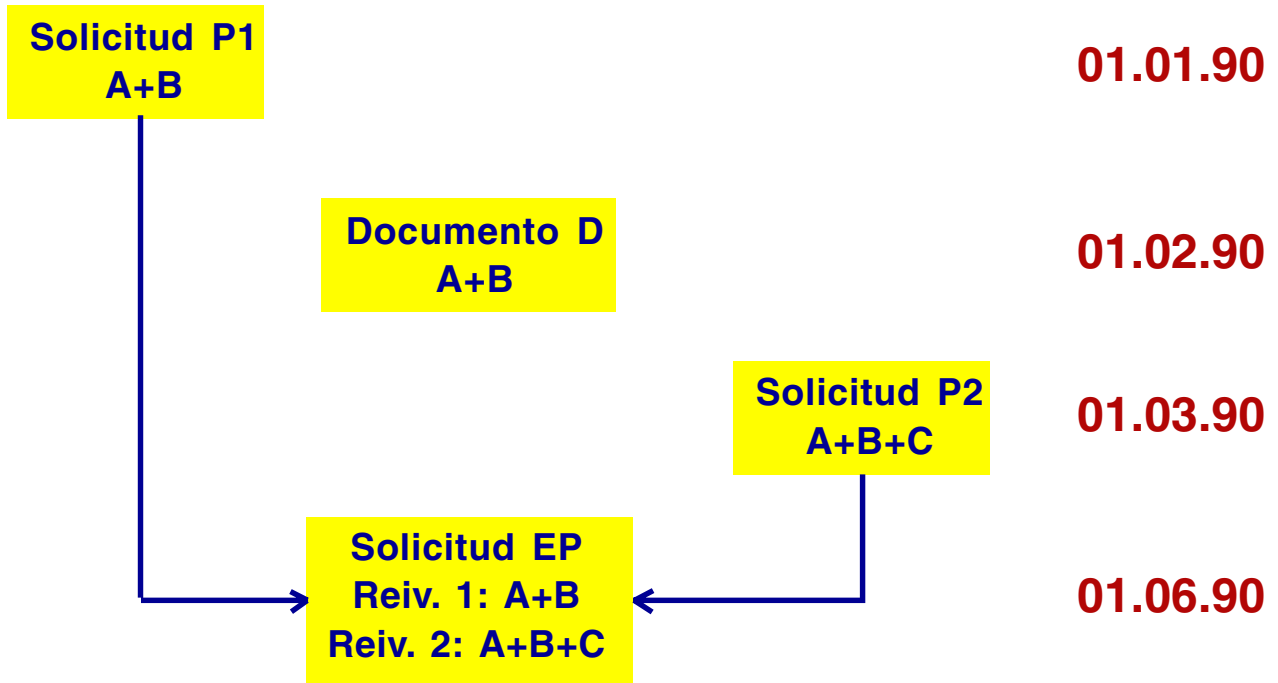
Does a document published during the priority interval and whose technical contents correspond to that of the priority document constitute prior art citable under Article 54(2) against a European patent application where the claim to priority is not valid because said application comprises subject-matter not disclosed in the priority document?

is to be answered as follows:

1. A document published during the priority interval, the technical contents of which correspond to that of the priority document, constitutes prior art citable under Article 54(2) EPC against a European patent application claiming that priority, to the extent such priority is not validly claimed.
2. This also applies if a claim to priority is invalid due to the fact that the priority document, and the subsequent European application, **do not concern the same invention because the European application claims subject-matter not disclosed in the priority document.**



Decisión G 3/93



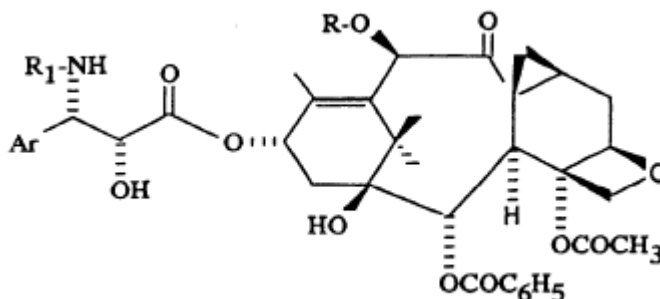
- 1) El documento D es estado de la técnica contra la reivindicación 2 de la solicitud EP.
- 2) Si **A+B+C no está descrito en P1, P1 y P2 no se refieren a la misma invención** y, por tanto, la reivindicación 2 de EP invoca inválidamente la prioridad P1.



T77/97 (taxoides) 03.07.1997

Exergue (catchword):

Afin qu'un droit de priorité puisse être reconnu pour un composé chimique faisant l'objet d'une revendication dépendante d'une demande de brevet européen, **il ne suffit pas** de constater simplement que le composé en question **est couvert** par ce qui est divulgué dans le document de priorité, dans le sens qu'il tombe sous la portée des revendications de celui-ci, **et qu'il peut être préparé sans difficulté selon les informations contenues dans ce document**. **Encore faut-il** selon l'article 88(4) CBE que les éléments pour lesquels la priorité est revendiquée, à savoir **toutes les caractéristiques essentielles** pour définir le composé chimique, y compris celles **permettant de le distinguer du groupe générique** divulgué et revendiqué dans le document de priorité, **soient révélés de façon précise dans le document de priorité** (point 6 des motifs).



Combinación de sustituyentes específicamente descrita en la solicitud prioritaria (reiv. 3):

R = H, acetilo.

R₁ = benzoilo o t-But-O-CO-

Ar = fenilo

No se reconoce el derecho de prioridad para los compuestos específicos reivindicados en la solicitud de patente:

R = acetilo, R₁ = t-But-O-CO-, Ar = fenilo (reiv. 4)

R = acetilo, R₁ = benzoilo, Ar = fenilo (reiv. 5)



T136/95 (waste compactor) 25.02.1997

Reason 3.3

Article 87(1) EPC does not specifically state that the question whether two applications concern exactly the **same invention** («identity of invention») **has to be assessed by reference to the skilled person**. However, this must be the case: identity of invention is established between two patent applications, the one previous and the other subsequent, and a patent application is a technical document, addressed to the skilled person, not a work intended for the general reader (see P. Mathély, *Le droit européen des brevets d'invention*, p. 210).

The **skilled person** to whom reference must be made for the purpose of assessing identity of invention **is the same** as the person whose point of view forms the basis **for assessing inventive step or deciding whether the description discloses the invention in a sufficiently clear and complete manner** (Art. 83 EPC). He possesses a general knowledge of the technical area in question. However, **he 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**, and it is on the basis of this knowledge, or by carrying out simple operations derived from it, that he may infer whether or not there is identity of invention.

For the **assessment of identity of invention**, it cannot be required that every feature claimed in the European patent application be found in identical form in the previous application whose priority is claimed. **It is necessary to give some flexibility to the requirement for identity of invention between the two applications** (see G.H.C Bodenhausen, *Guide to the Application of the Paris Convention for the Protection of Industrial Property as Revised at Stockholm in 1967*, BIRPI, 1969, Article H, Section 4, observation (b)).



Consequently, some features claimed in the European application need not be **explicitly mentioned** in the previous application whose priority is claimed, provided that the skilled person is able, purely on the basis of his knowledge or by performing simple operations to carry out the invention, **to infer these features** from the prior application.

¿El test de suficiencia de la descripción?



Riesgos que plantea el criterio 'renovador' interpretado con un alcance tan amplio como en 'snackfood'

La interpretación de la condición 'no relacionado con el carácter y naturaleza de la invención' **es indefinida y subjetiva e introduce inseguridad**, tanto para los solicitantes como para los terceros. También lo es el criterio de 'limitación voluntaria'.

Podría permitir la existencia de **solicitudes prioritarias 'abiertas' durante un año**, que permiten incorporar inventos de selección efectuados después de la fecha de prioridad, pero que se benefician de una fecha en la que dichos inventos de selección no habían sido todavía materializados.

Por medio de la aplicación del Art. 54(3) EPC, se podría producir la paradoja de rechazar la concesión de patente para un auténtico invento no descrito ni siquiera en una solicitud de patente no publicada.

<u>Fechas</u>	<u>Solicitante 1</u>	<u>Solicitante 2</u>
01.10.1993	Solicitud prioritaria 1: A+B	
01.12.1993		Solicitud prioritaria 2: A+B+C
01.10.1994	Solicitud europea 1: A+B+C	
01.12.1994		Solicitud europea 2: A+B+C

etc.



Referral by the President of The European Patent Office to the Enlarged Board of Appeal pursuant to Article 112(1)(b) EPC.

Concept of same invention within the meaning of Article 87 EPC

(Ref: T 73/88, OJ EPO 1992, 557, and others versus T 1090/92 and others)

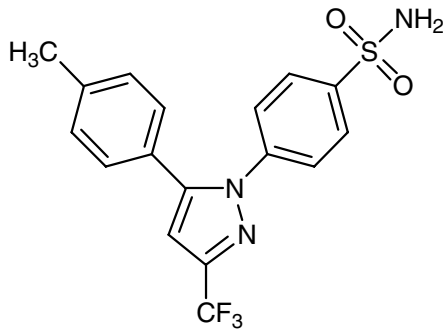
Pursuant to Article 112(1)(b) EPC, in order to ensure uniform application of the law I refer the following point of law to the Enlarged Board of Appeal:

- 1a) Does the requirement of the “same invention” in Article 87(1) EPC mean that the extent of the right to priority derivable from a priority application for a later application is determined by, and at the same time limited to, what is at least implicitly disclosed in the priority application?
- 1b) Or can a lesser degree or correspondence between the priority application and the subject-matter claimed in the later application be sufficient in this respect and still justify a right to priority?
- 2) If question 1b) is answered in the affirmative, what are the criteria to be applied in assessing whether the claim in the later application is in respect of the same invention as is in the priority application?
- 3) In particular, where features not disclosed, even implicitly, in the priority application have been added in the relevant claim of the later application, or where features defined in broader terms in the priority application have been more specifically or more narrowly defined in the later application, can a right to priority nevertheless be derived from the priority application and, if so, what are the criteria which must be met to justify the priority in such cases?

Decisión pendiente G 2/98

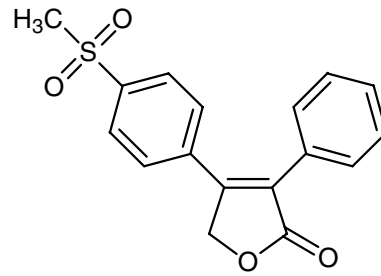


El caso de los analgésicos no agresivos para el estómago (inhibidores COX-2)



**Celecoxib
(Celebrex®)**

Searle (Monsanto)



**Rofecoxib
(Vioxx®)**

Merck

In 2000, celebrex has an advantage and that appears to be fairly steady. As far as total sales in 1999 and 2000, **Celebrex just surpassed 2 billion**. **Vioxx** has yet to hit one billion but **will certainly hit a billion in the next month**. While vioxx appears to be catching celebrex, and they may some day because they have a terrific sales force, **the total dollar value of market share is widening**.



COX-2

The Patents Court in the UK has ruled in favour of Merck & Co in its dispute with Searle over whether its patents were infringed by Merck's Cox-2 inhibitor.

Merck, who launched its selective COX-2 inhibitor, rofecoxib (Vioxx) in the UK in June 1999, faced a patent infringement claim by Searle that Vioxx infringed some of Searle's patents. Searle is understood to be appealing against the findings of insufficiency and non-infringement, and the order that Searle's patents be revoked.

The dispute is international - the US Patent and Trade Mark Office has already concluded that Searle's patents had not been infringed and other infringement proceedings are ongoing in Germany, Holland and France.

...

Pharmaceutical & Medical Review
Simmons & Simmons (30 June 2000)

Searle (EP679157) contra Vioxx

Merck (EP705254) contra la validez de EP679157

FechasSearleMerck

15.01.1993

US08/004822

Describe específicamente un grupo pequeño de productos, pero reivindica una fórmula general muy amplia. No describe específicamente furanos o furanonas.

24.06.1993

US082196

10.01.1994

US179467

Describen explícitamente numerosas furanonas (entre ellas Vioxx) y varios furanos y pirroles incluidos en la fórmula general de US08/004822.

14.01.1994

WO94/15932 (EP679157-A)

Restringe el alcance de la fórmula general e incluye variantes no comprendidas en la fórmula general anterior. Describe específicamente un furano y una furanona y reivindica específicamente un furano.

09.06.1994

WO95/00501 (EP705254-A)

Describe y reivindica productos específicamente descritos en las solicitudes prioritarias.

19.11.1997

EP679157-B1

Restringe más el alcance de la fórmula general.,pero continúa incluyendo a furanos y ¿furanonas?

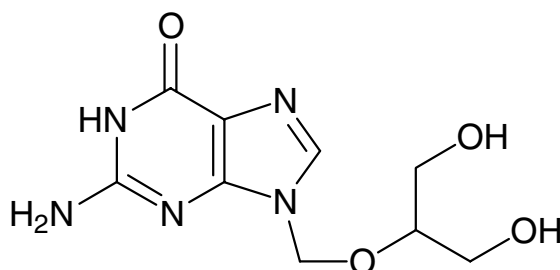
¿Es WO95/00501 estado de la técnica para valorar la novedad de WO94/15932?

¿Son válidas las reivindicaciones de EP679157-B1 que eventualmente incluyan a Vioxx?

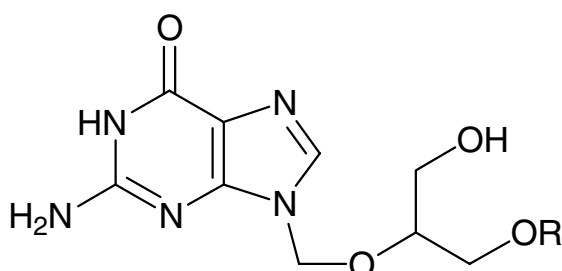
Las respuestas a estas preguntas pueden ser muy diferentes en función de que se aplique el criterio ‘tradicional’ o el ‘renovador’.



El caso Ganciclovir - ¿Syntex vs Syntex?



EP66208-B1 (Syntex)
caduca el 19.05.2002



R= H y unos pocos
substituyentes más

EP49072-B1 (Syntex)
caduca el 15.09.2001
y describe explícitamente a
ganciclovir (único ejemplo)

Las dos patentes están en vigor.

Fechasens BIO LOGICALSSyntex

16.09.1980

US187631

Describe genéricamente un gran conjunto de compuestos entre los que se encuentra el ganciclovir. No hay descripción específica de derivados de guanina, entre ellos el ganciclovir.

21.05.1981

US267210

¿Describe explícitamente el ganciclovir?

15.09.1981

EP49072-A1

Restringe mucho el alcance de la fórmula general y describe específicamente el ganciclovir.

19.05.1982

EP66028-A1

Describe y reivindica el ganciclovir.

02.10.1985

EP66028-B1

La patente se concede

1988

Syntex

Syntex compra la solicitud de patente a ens.

31.01.1990

EP49072-B1

La patente se concede

Supongamos que US267210 describe específicamente el ganciclovir:

Aplicando el criterio ‘tradicional’ la patente EP49072 sería nula y la EP66028 válida.

Aplicando el criterio ‘renovador’ con la amplitud ‘snackfood’ la situación podría invertirse.

¿Qué hace el fabricante de genéricos?