

# Eurasian Patent Office

## Unity of invention

### Legal provisions

Patent Regulations under the Eurasian Patent Convention

#### **Rule 4. Requirement of unity of invention**

The Eurasian application shall relate to one invention only or to a group of inventions so linked as to form a single inventive concept.

Where one and the same Eurasian application relates to a group of inventions, the requirement of unity of invention shall be deemed to have been complied with only if there exists a technical relationship among those inventions involving one or more of the same or corresponding special technical features; that is, those technical features which define the contribution made over the prior art by each of the claimed inventions.

Where this requirement is not satisfied, the applicant shall be required to limit the Eurasian application to one invention or to a group of inventions that satisfy the requirement of unity of invention as set out in the preceding item, and he may file one or more divisional Eurasian applications for the other inventions or groups of inventions that satisfy the requirement of unity.

#### **Rule 25. Various Groups of Inventions**

Subject to Rule 4 of the Regulations, a Eurasian application may contain independent claims relating to the subject matter of different categories of inventions, in particular:

an independent claim relating to a device, substance or biotechnological product, an independent claim relating to a process specially adapted for making the device, obtaining the substance or biotechnological product, and an independent claim relating to the use of said device, substance or biotechnological product;

an independent claim relating to a process and an independent claim relating to a device specially adapted for carrying out said process; an independent claim relating to a device, substance or biotechnological product,

an independent claim relating to a process specially adapted for making the device, obtaining the substance or biotechnological product and, an independent claim relating to a device specially adapted for carrying out said process.

(2) The Eurasian application may contain two or more independent claims relating to the subject matter of inventions of the same category characterizing the variants of the invention, as well as correlated as a part and a whole.

## **Rule 49. Rights of the Applicant under the Procedure for Obtaining Eurasian Patent**

(6) Where the Eurasian application as originally filed by the same applicant contains other inventions, the applicant shall have the right to file a divisional Eurasian application. A divisional Eurasian application shall enjoy the filing date and, where appropriate, the priority date of the parent Eurasian application from which it was divided, provided that it has been filed only in relation to those inventions which were disclosed in the parent Eurasian application and the information contained in the divisional application does not go beyond the parent application.

The claims of a divisional Eurasian application shall not contain inventions identical to the inventions for which legal protection is requested in the parent Eurasian application, except the case of limitation of the parent application in accordance with Rule 4 of the Regulations where the requirement of the unity of invention is violated.

The divisional Eurasian application may be filed, if on its filing date the parent application has not been withdrawn or is not considered to have been withdrawn, and its filing is prior to the date of grant of the Eurasian patent for the parent application or, where a decision of refusal to grant a Eurasian patent for it has been taken - until the possibility for appeal has been exhausted.

### **Practical aspects**

1. EAPO's legal provisions define unity of invention in terms of a linked group of inventions forming a single general inventive concept. This single general inventive concept is defined as a technical relationship among inventions expressed by the same or corresponding special features (one or more) which defines the contribution of the invention over the prior art. Such special feature is considered in respect of novelty and inventive step.

For example, if the only common feature which link all claimed inventions is known from the prior art there is no technical relationship among inventions and no unity of invention.

It is to be noted a special technical feature should not be necessarily the same in each invention; it may exist relationship among inventions expressed by corresponding special technical features which provide the same technical effect.

2. The unity of invention is examined both in search and examination procedures. Lack of unity may be determined *a priori* in evident cases before starting the search on prior art (i.e., a pharmaceutical composition and a process for production of iron), or *a posteriori* after taking into account the prior art.

Example. Claim 1: Compound X.

Claim 2. Process of manufacturing the compound X .

Claim 3. Use of the compound X.

The common feature for claims 1-3 is the compound X.

If the compound X is unknown from the prior art it is considered as special feature contributing over the prior art; thereby all claims are technically interrelated and the requirement of unity of invention is satisfied.

In opposite case where the compound X is known from the prior art, this feature cannot be considered as special feature contributing over the prior art; in this case there is no unity of invention between claims 2 and 3, and objection of lack of unity should be raised.

3. If it is found during the search that the inventions lack unity, the applicant is invited, within two months of the date on which corresponding notification has been dispatched to him, to pay an additional fee or to state the invention or inventions with respect to which the search is to be carried out. Where the applicant does not pay the additional fee or does not state which invention(s) shall be the subject of search, the patent search is carried out only in relation to the invention, or group of inventions forming a general inventive concept, mentioned first in claims.

4. Lack of unity is no ground for opposition or revocation of Eurasian patent. In oppositions/revocation proceedings the requirement of unity of invention is not considered for a patent maintained in amended form.

5. Where the application does not meet the requirement of unity, the applicant may file one or more divisional Eurasian applications for other inventions / groups of inventions (mandatory division). A divisional application may be filed on applicant's own request (voluntary division) for other inventions disclosed in the application as filed.

The divisional application may be filed where the parent application is pending, or not later the date of publication of the mention to grant the Eurasian patent or, where a decision of refusal has been taken - until the possibility for appeal has been exhausted.

A divisional application may be divided in turn; in this case this divisional application is a parent application for the second divisional application.

6. A divisional application is filed directly with the EAPO and is regarded as a new Eurasian application. The divisional application enjoys the filing date and, where appropriate, the priority date of the parent Eurasian application, if it meet the following requirements:

- the divisional application is filed only in relation to subject-matter disclosed in the parent Eurasian application and which does not go beyond the content of the parent application;
- the divisional application does not claim an invention identical, with respect to the claimed scope of protection, to the invention contained in claims of the parent Eurasian application or in claims of the Eurasian patent granted on the basis of such application.

7. Where the filed divisional application does not comply with the above mentioned requirements the applicant is notified about the necessity to submit the claims consistent with the requirements of Rule 49(6) of the Patent Regulations within two months.

If the applicant does not submit within this time limit the amended claims the divisional Eurasian application shall be deemed withdrawn. Further processing of the application and the restoration of rights are provided in such case.