

From:
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Subject:

Unity of Invention practice currently is a mess. Many of the Examiners have little to no understanding of the difference between unity and restriction and often issue restriction requirements between groups that are clearly and expressly required to be examined together. Probably the most egregious problem is requiring restriction between generic products and methods. A restriction requirement should never issue in the first instance. Rather, if the Examiner finds that the generic product invention lacks unity *a posteriori*, then a restriction requirement should only issue for the product claim. Any allowable species of the product would still possess unity with the method claims dependent thereon, so a restriction requirement in such a case is both premature and unwarranted. The simplest and most cost-effective way to deal with this is to simply set an office policy that ISA position on unity controls, unless the Applicant persuasively traverses. In other words, take the question of unity out of the Examiner's hands unless the Applicant challenges the ISA's position.

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