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Poisonous Priorities

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Opinion from the EPO Enlarged Board of Appeal
31 May 2001

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Article 54(3) EPC was based on the principle that, when two applications concerned **the same subject-matter**, the **right to the patent** should belong to the application which had **first disclosed such subject-matter**.

Consequently, a validly claimed **priority only fits in** with Article 54(3) EPC because, and to the extent that, the **subject-matter had already been disclosed** in the priority application.

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Does the requirement of the ”same invention” mean that the **extent of the right to priority** is determined by, and at the same time limited to, what is **at least implicitly disclosed** in the priority application?

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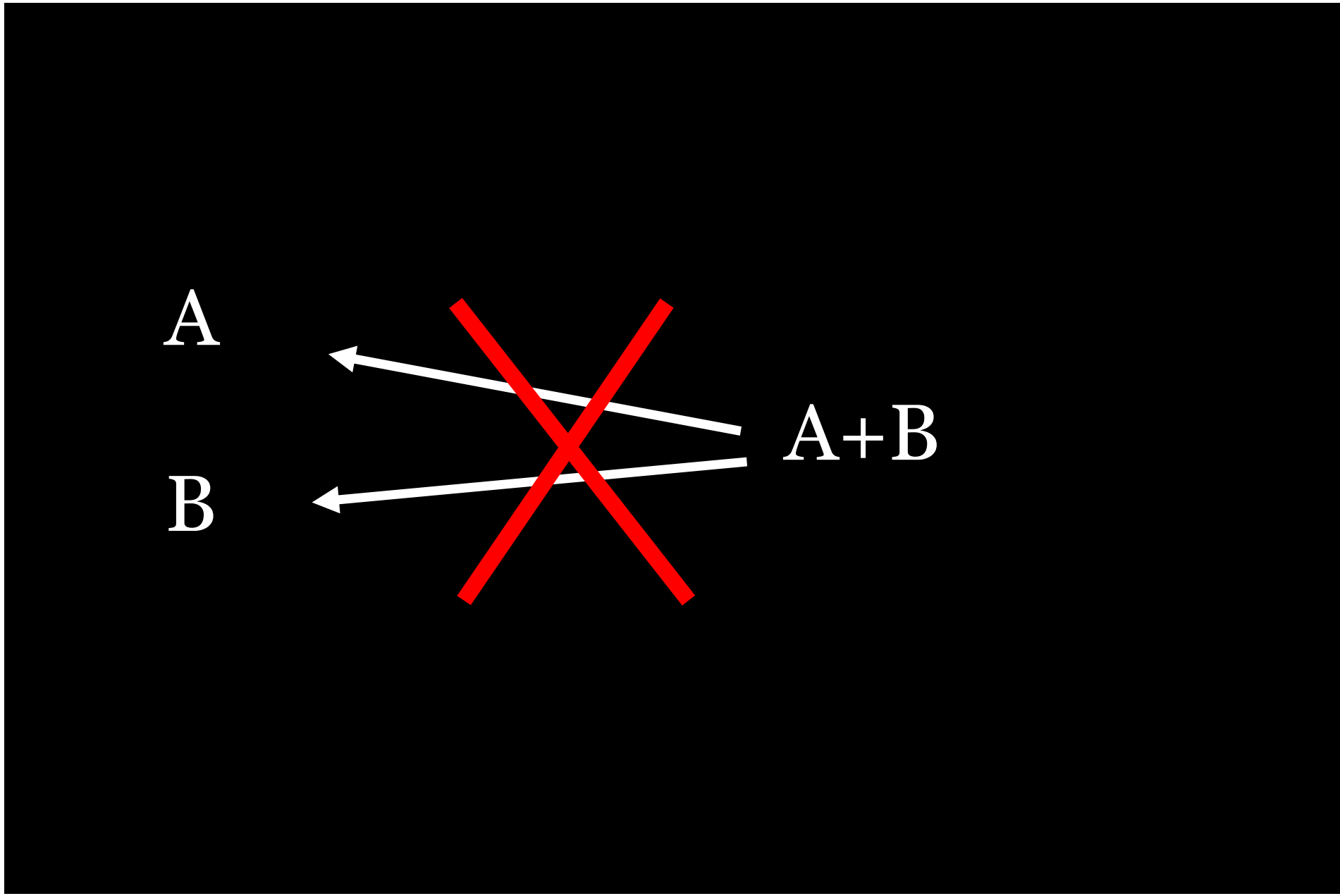

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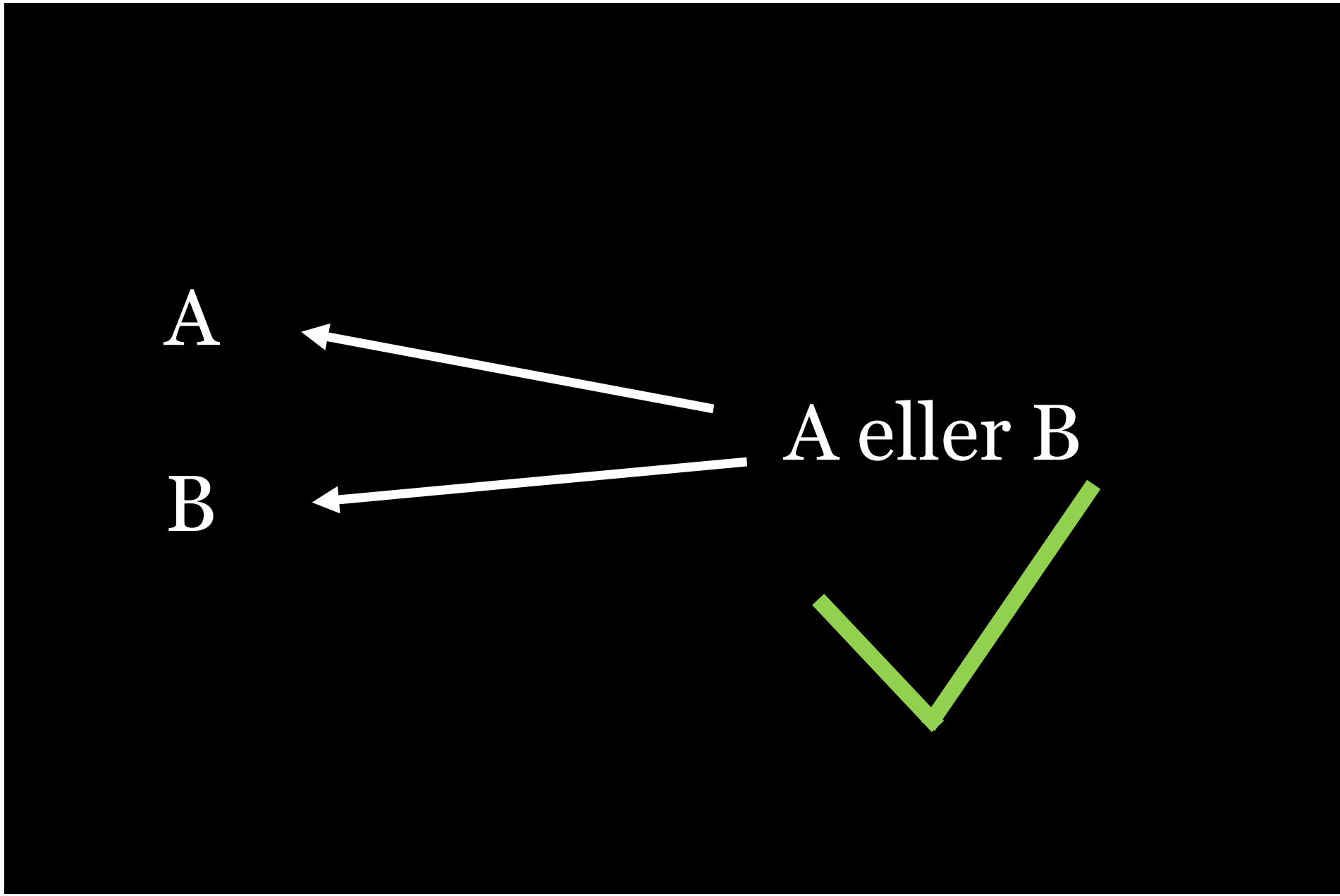

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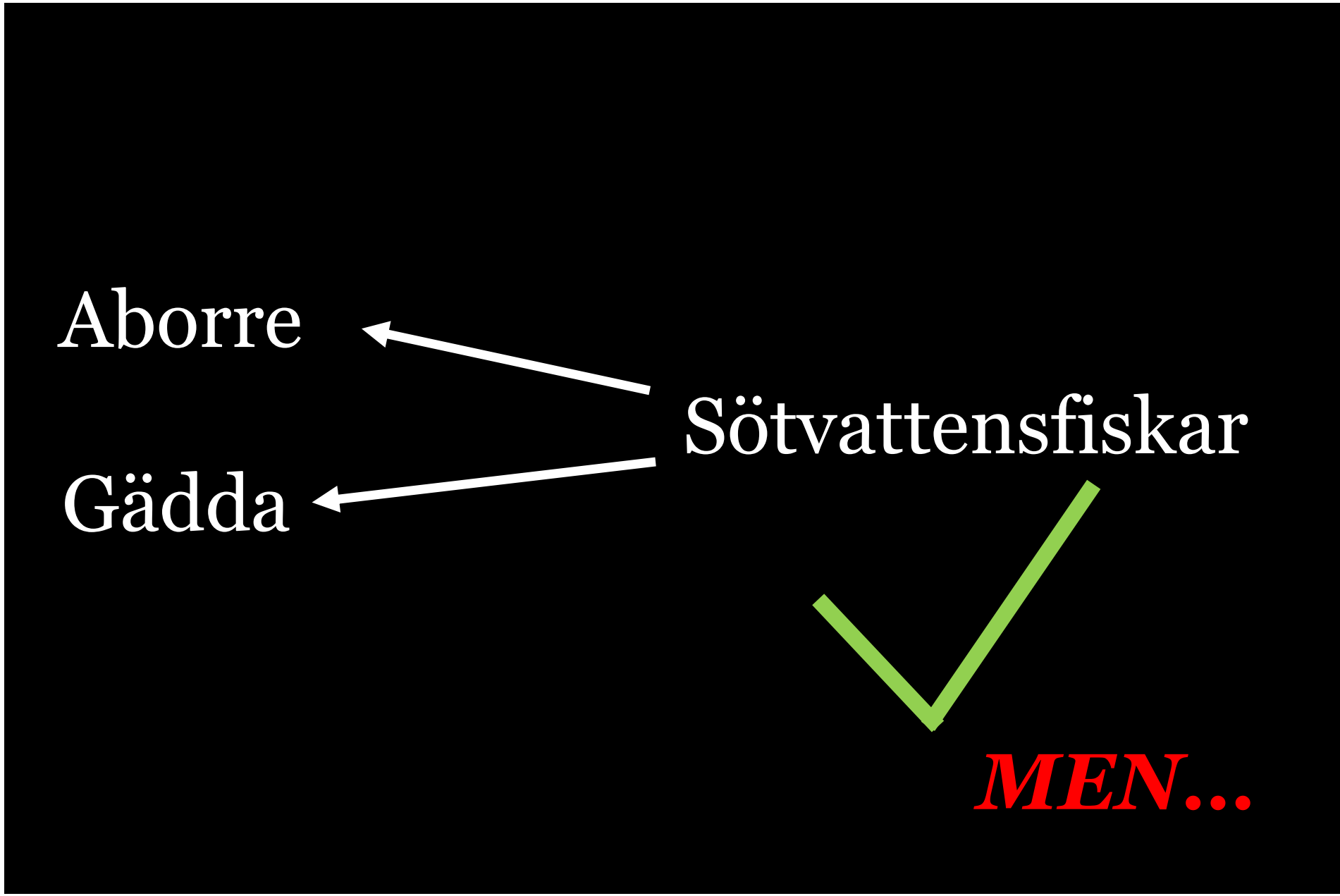

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… provided that the generic claim gives rise to the claiming of a **limited number** of **clearly defined** alternative subject-matters

- A narrow/strict interpretation of the concept of ”the same invention”
- The same invention = the same subject-matter

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Priority of a previous application in respect of a claim is to be acknowledged only if the skilled person can **derive the subject-matter** of the claim **directly and unambigously**, using common general knowledge, **from the previous application as a whole**.

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Tack!