

In T.1869/12 the appellant (applicant) lodged an appeal against the decision of the examining division refusing to correct the published European patent specification. It tried to achieve, via correction of the decision to grant, the patent to be comprising the set of claims proposed by the examining division with a communication under R.71(3) EPC, however, with substantive amendments as subsequently proposed by the appellant. The board based its decision on G.1/10 and also stated that the appellant's request could not be granted, since it was clear that the examining division intended – and maintained that intention – to grant the patent with its own proposed claims. Therefore, the appellant should have filed an appeal against the decision to grant the patent.

5. Correction of printing errors in the publication of the patent specification

Errors in publication occur where the content of the printed specification differs from the documents (Druckexemplar) transmitted to the applicant, if these documents form the basis of the decision to grant. Such errors in publication can be corrected at any time. The competence to correct errors in publication lies with the body before which proceedings are or were last pending (Guidelines for Examination H-VI, 6 – March 2022 version). Mistakes in the specification of a European patent arising in the course of its production have no effect on the content of the patent granted (Guidelines for Examination C-V, 10 – March 2022 version).

In T.84/16 the board noted that the text of the patent specification had no binding character. Its function is confined to facilitating public access to the content of the granted patent. The definitive text of the patent is established by the grant decision. The board held that while the EPC does not explicitly deal with the situation where the patent specification does not correctly reproduce the content of the European patent, it is established practice at the EPO that if the patent specification diverges from the text on which the grant decision is based, then the patent specification is corrected by the EPO (T.150/89, T.1644/10, Guidelines C-V, 10. – March 2022 version).

In T.84/16 the specification contained printing errors, but the patentee instead of requesting a reprint of the patent specification, filed an appeal, which was held to be inadmissible, the appropriate remedy in such cases being that the text of the patent specification be brought into conformity with the content of the grant decision. The Office can arrange for correction at any time by means of a note in the European Patent Bulletin and publication of a corrigendum (see R.143(2) EPC and the decision of the President of the EPO dated 15 July 2014, OJ.2014.A86).

6. Procedural status of third parties

In T.1259/09, in the course of the opposition proceedings, opponents had requested a correction of the decision to grant pursuant to R.140 EPC. The opposition division forwarded this request to the examining division. In a communication the examining division informed the opposition division that no correction of the grant decision would take place. The opponents filed an appeal against this communication of the examining division. The dispute at issue was whether the appellants (opponents), by filing their request for correction, had initiated proceedings before the examining division which were