

II.E.4.1. For a summary of the findings in G 3/89 and G 11/91, see also G 2/95 (OJ 1996, 555, point 2 of the Reasons).

In T 1946/16 the board recalled that a correction under R. 139, second sentence, EPC was a special case of an amendment within the meaning of Art. 123 EPC and that the requested correction would have to meet the requirements of Art. 123(3) EPC. The board in T 2058/18 likewise noted that Art. 123(2) EPC applied to all amendments to the patent application or the patent; these included corrections of the description, claims or drawings under R. 139, second sentence, EPC.

4.2. Obviousness of the error and the correction

In order for a correction in the description, the claims or the drawings to be allowable under R. 139, second sentence, EPC, the boards apply a two-step approach. It must be established (i) that it is obvious that an error is in fact present in the document filed with the EPO, the incorrect information having to be objectively recognisable by the skilled person using common general knowledge (G 3/89, OJ 1993, 117 and G 11/91, OJ 1993, 125, point 5 of the Reasons), and (ii) that the correction of the error is obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction (G 3/89 and G 11/91, point 6 of the Reasons). For recent decisions applying this two step approach, see e.g. T 923/13, T 1626/16, T 2058/18.

Since the prohibition of extension under Art. 123(2) EPC also applies to a correction under R. 139, second sentence, EPC (G 3/89 and G 11/91, point 1.4 of the Reasons), the parts of a European patent application or of a European patent relating to the disclosure (the description, claims and drawings) may be corrected under R. 139, second sentence, EPC only within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge and seen objectively and relative to the date of filing, from the whole of these documents as filed (G 3/89 and G 11/91, point 3 of the Reasons).

4.2.1 Documents to be taken into account for the assessment of obvious error and correction

Before a correction can be made under R. 139, second sentence, EPC it has to be established what a skilled person would derive, on the date of filing, from the parts of the European patent application relating to the disclosure. As a result of the prohibition of extension under Art. 123(2) EPC, documents other than the description, claims and drawings may only be used insofar as they are used for proving the common general knowledge on the date of filing. On the other hand, documents even if they were filed together with the European patent application, such as priority documents and the abstract may not be used. Documents not belonging to the parts of a European patent application relating to the disclosure could, under certain circumstances, be included partially or wholly in the disclosure by means of reference. Evidence of what constituted common general knowledge on that date could be furnished in any suitable form (G 3/89 and G 11/91).

In T 1008/99 the board held that, for the purposes of R. 88 EPC 1973, the error had to be **apparent from the divisional application itself**, and the parent application could not be