

In T. 939/92 (OJ 1996, 309) the examining division had raised the objection that the disputed claim was an unreasonable generalisation of the examples contained in the description. However, the board held that it did not follow from Art. 84 EPC 1973 that a claim was objectionable just because it was "unreasonably broad". The expression "supported by the description" meant that the technical features stated in the description as being essential features of the invention described must be the same as those used to define the invention in the claims, for otherwise the claims would not be true definitions but mere descriptions. If a claim concerned a group of chemical compounds per se, an objection of lack of support by the description could not properly be raised for the sole reason that the description did not contain sufficient information in order to make it credible that an alleged technical effect (which was not, however, a part of the definition of the claimed compounds) was obtained by all the compounds claimed (see, with regard to Art. 83 EPC, also T. 2001/12). The facts of the case in question differed from those underlying T. 409/91.

In T. 94/05 the board pointed out that the requirement for the claims to be supported by the description was intended to ensure that the extent of protection as defined by the patent claims corresponds to the technical contribution of the disclosed invention to the art (see also T. 409/91, T. 435/91). Therefore the claims must reflect the actual contribution to the art in such a way that the skilled person is able to perform the invention in the entire range claimed (T. 659/93). In the board's view, a purely formal support by the description, i.e. a verbatim repetition of the mention of a claimed feature, could not meet these requirements. To be allowable, functional features must disclose a clear teaching which the skilled person can carry out without undue burden (see T. 68/85, OJ 1987, 228). From this, it followed that the skilled person, at least after reading the patent specification, taking account of his common general knowledge, and possibly also after carrying out normal experiments, must actually be provided with at least a plurality of different embodiment variants. The reproducibility from the patent specification of the above-mentioned functionally defined feature was confined to the sole embodiment described. The board concluded that the functional definition in claim 1 did not adequately reflect the technical contribution described in the patent specification. Moreover, claim 1 and the description were contradictory, so that the claim was not supported by the description and the requirements under Art. 84 EPC were not met.

In T. 568/97 the claims defined the physiological effect to be achieved by a sufficiently high concentration of vasoactive intestinal polypeptide and/or prostaglandins as active agents in a pharmaceutical composition for transurethral administration. Neither individual values nor ranges of the amounts of vasoactive intestinal polypeptide and/or prostaglandins were disclosed in the patent. Furthermore, it was impossible to find out without undue burden the physiologically effective amounts as claimed merely on the basis of common general knowledge. The board held that the description of the patent lacked support within the meaning of Art. 84 EPC 1973 as to the amount of vasoactive intestinal polypeptide and/or prostaglandins required to achieve a physiologically effective dose. The functional feature not only had to be such that the skilled person could understand it; he also had to be able to implement it.