

that the subject-matter content of a European patent application as filed may not be extended (G 2/93, OJ 1995, 275).

It is not the purpose of the patent system to grant a monopoly for technical speculations that cannot be realised at the time of filing (T 1164/11). See also in this chapter II.C.6.8. "Post-published documents". On monopoly, see the discussion in e.g. T 1845/14 and the reference to this principle in T 2015/20.

According to the board in T 512/07, objections under Art. 83 EPC 1973 may under some circumstances be overcome by amending the claims, since thereby the "invention" referred to in Art. 83 EPC may be so changed that it no longer depends on the insufficiently disclosed aspects of the application for its realisation. However such objections cannot be overcome by amendment of the description and drawings, since the amendment would then add subject-matter to the application as filed. In general, the claimed subject-matter at issue had to be examined for compliance with Art. 83 EPC 1973 on the basis of the application documents as originally filed.

### 3. Parts of the application relevant for assessing sufficiency of disclosure

#### 3.1. Application as a whole

Sufficiency of disclosure within the meaning of Art. 83 EPC must be assessed on the basis of the **application as a whole** – including the description and claims – (see leading decisions T 14/83, OJ 1984, 105; and also T 169/83, OJ 1985, 193) and not of the claims alone (see e.g. T 202/83, T 179/87 of 16 January 1990, T 435/89, T 82/90, T 126/91). The drawings must be considered as ranking equally with the other elements of the application when considering whether the requirements of Art. 83 EPC (and Art. 84 EPC) have been satisfied (see T 169/83, OJ 1985, 193; T 308/90 and T 818/93).

In T 32/84 (OJ 1986, 9) it was pointed out that the fact that certain elements of an invention essential to its operation were not referred to explicitly either in the claims, or in the relevant portion of the description nor shown in the drawing of the invention as claimed did not necessarily mean that the application did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art as required by Art. 83 EPC 1973. This decision was cited, inter alia, in T 391/91, T 830/02 and T 25/09.

According to established case law, substantially any embodiment of the invention, as defined in the broadest claim, must be capable of being realised on the basis of the disclosure. This implied in particular that an objection of insufficiency could be raised against the subject-matter of any claim, independent or dependent (R. 29(3) EPC 1973, now R. 43(3) EPC). From a legal point of view it was therefore irrelevant whether or not the feature objected to was essential or to what degree the scope of protection conferred by the patent depended on the claim in question (T 226/85 (OJ 1988, 336), cited in many decisions, for example, T 1011/01 and T 1129/09).

The board in ex parte case T 206/13 could not accept the appellant's submissions to the effect that preferred or optional features defined in a claim should be disregarded in the