

In T.1075/12 the patent proprietor restricted the definitions of groups to lists of specific substituents. The board held that the more precise definitions of the groups did not result in a particular combination of specific meanings of the respective groups being singled out, namely no particular structural feature of the compounds concerned was now claimed which was not disclosed originally. The board distinguished its case from T.859/04 and T.801/02, in which more than one variable in the respective chemical formulae had been individualised.

1.6.4 Combination of original independent claim with features from a plurality of dependent claims referring back to the independent claim separately – "US style" dependencies

In T.1362/15 the board had to decide whether Art. 123(2) EPC allowed incorporating the features of a plurality of dependent claims into an independent claim in a situation in which the application as originally filed included a claims set with a "US-style" dependency (i.e. with the relevant dependent claims separately referring back to the independent claim) and an embodiment in which the features of the independent claim and the dependent claims were shown in combination – albeit together with even more features. The appellant had asked for a referral of questions relating to this situation to the Enlarged Board of Appeal and had pointed to allegedly diverging case law. The board did not consider this referral to be justified for, inter alia, the following reason: the Enlarged Board had already clearly defined the necessary and sufficient criteria to assess the requirements of Art. 123(2) EPC in, inter alia, G 2/98 (OJ 2001, 413) and G 2/10 (OJ 2012, 376), i.e. that the skilled person must be able to derive the claimed subject-matter directly and unambiguously, using common general knowledge, and, seen objectively and relative to the date of filing, from the original application as a whole. These applied irrespective of the particular dependency structure of the originally filed claims. The board analysed the allegedly diverging decisions T.2619/11 and T.1414/11 and came to the conclusion that both decisions relied on the same criteria and did not contradict each other. Regarding the "US-style" claim dependency, the board noted that there was no insurmountable limitation regarding the possible combinations of features in the claims of a US application under 35 U.S.C 112. The board refused the request for referral and decided that the subject-matter at issue extended beyond the content of the application as originally filed.

In T.895/18 the appellant (patentee) argued that the application was typical of many applications relating to new and inventive compositions which were drafted in the "USA style" and should therefore be read accordingly as disclosing also combinations of features of dependent claims that were not dependent on each other. The board rejected this approach, because there was no legal basis in the EPC for applying the requirements of Art. 123(2) EPC differently in view of a deliberately selected drafting style.

1.7. Disclaimers

1.7.1 Definition

The term "disclaimer" is used in the decisions G 1/03 (identical to G 2/03) (OJ 2004, 413, 448), G 2/10 (OJ 2012, 376) and G 1/16 (OJ 2018, A70) as meaning an