

In T.2154/11 the board held that the objections of the examining division that the expressions "metadata describing an event", "taking", "connecting" were broad and embraced well-known activities were not considered per se a valid reason for a lack of clarity. The fact that some of these method steps might be understood to refer to "mental acts" or "normal human actions" was also no valid reason for a finding of lack of clarity as long as these steps did not give rise to ambiguity, as in the case in hand. If a method step could be interpreted to refer to a normal human activity, then this assessment should be taken into account for novelty and inventive step.

The principle whereby a broad claim is not unclear per se has been applied in e.g. T.456/91, T.393/91, T.530/94, T.950/97, T.1345/08, T.2220/09, T.125/15, T.2676/16, T.901/16.

3.4. Functional features

In T.68/85 (OJ 1987, 228) the board found that functional features defining a technical result were permissible in a claim (i) if, from an objective viewpoint, such features could not otherwise be defined more precisely without restricting the scope of the invention, and (ii) if these features provided instructions which were sufficiently clear for the expert to reduce them to practice without undue burden, if necessary with reasonable experiments. The board further pointed out that the effort to define a feature in functional terms had to stop short where it jeopardised the clarity of a claim as required by Art. 84 EPC 1973. The following decisions agreed with these findings: T.139/85, T.292/85 (OJ 1989, 275), T.293/85, T.299/86 (OJ 1988, 88), T.322/87, T.418/89 (OJ 1993, 20), T.707/89, T.204/90, T.752/90, T.388/91, T.391/91, T.810/91, T.822/91, T.894/91, T.281/92, T.490/94, T.181/96, T.750/96, T.265/97, T.568/97, T.484/98, T.1186/01, T.295/02, T.499/02, T.1173/03, T.404/06, T.959/08, T.560/09, T.556/11, T.754/13, T.2067/12, T.2427/13, T.2114/14. Some of these decisions (see e.g. T.204/90, T.181/96, T.265/97) examine a third criterion, which is not strictly speaking a requirement under Art. 84 EPC 1973 and requires that (iii) the state of the art does not stand in the way of using such functional and therefore general and broad terminology.

In T.361/88 the board distinguished between two types of functional feature: the first type of functional feature is related to process steps which are known to the man skilled in the art and may easily be performed in order to obtain the desired result; the second type of functional feature consists of process steps defined by the result which is aimed at. This is also allowable as long as the man skilled in the art knows, without exceeding his normal skills and knowledge, what he has to do in order to obtain said result.

In case T.720/92 the board noted that the term "clarity" in Art. 84 EPC 1973 referred to the practical meaning of the language of the patent claims. Claims with functional features which do not enable the skilled person to carry out the invention in the light of the disclosure and on the basis of common general knowledge do not meet the requirement of clarity according to Art. 84 EPC 1973. A claim combining functional definitions limited to features, which a skilled person would have no difficulty in determining on the basis of common general knowledge, and a structural definition of the essential contribution of the applicant is not objectionable under Art. 84 EPC 1973.