

different way. In case of a discrepancy between the claims and the description, the unambiguous claim wording must be interpreted as it would be understood by the person skilled in the art without the help of the description. See also T 2328/15 and T 1642/17.

In T 197/10 the board explained that if the claims are worded so clearly and unambiguously as to be understood without difficulty by the person skilled in the art, there is no need to use the description to interpret the claims. In the event of a discrepancy between the claims and the description, the unambiguous claim wording must be interpreted as it would be understood by the person skilled in the art without the help of the description. Thus, in the event of a discrepancy between clearly defined claims and the description, those elements of the description not reflected in the claims are not, as a rule, to be taken into account for the examination of novelty and inventive step. See, similarly, T 1514/14 concerning the examination of sufficiency of disclosure.

6.3.2 Relevance of Article 69 EPC

Several decisions refer to Art. 69(1) EPC 1973 (T 23/86, OJ 1987, 316; T 16/87, OJ 1992, 212; T 238/88, OJ 1992, 709; T 476/89; T 544/89; T 565/89; T 952/90; T 717/98). Other case law emphasises that Art. 69 EPC 1973 (Art. 69 EPC) and its Protocol are primarily for use by the judicial organs which deal with infringement cases (see e.g. T 1208/97, T 223/05; also T 1404/05). The board in T 556/02 made it clear that it applied solely the general principle of law applied throughout the EPC that a document had to be interpreted as a whole (see e.g. T 23/86, OJ 1987, 316; T 860/93, OJ 1995, 47). Art. 69 EPC 1973 was a specific application of this general principle. See also T 1871/09, T 1817/14.

In T 1646/12 the appellant, citing Art. 69(1) EPC and T 1808/07, argued that the opposition division should have used the description to interpret claim 1. The board stressed that Art. 69(1) EPC concerned only the extent of protection, which in turn was relevant only for the purposes of Art. 123(3) EPC and in national infringement proceedings. A general requirement that claims be interpreted with the help of the description could not be derived from Art. 69(1) EPC. It was nevertheless a general principle that a term could be interpreted only in context. Terms in a claim therefore had to be interpreted in the overall context of the claims set and the description (see also T 1817/14). Two extremes had to be avoided. On the one hand, limiting features mentioned in the description but not in the claims could not be read into the latter (see in this chapter II.A.6.3.4). They could not be inserted this way through interpretation, but only by amending the claims. On the other hand, claims could not be considered in complete isolation from the description. The skilled person interpreting the claim had to at least ascertain whether the expressions used were to be understood in their ordinary literal sense or whether they had a special meaning defined in the description. Likewise, if the claims were obscure, the skilled person had no alternative but to search for clarification both in the other claims and in the description and drawings (see in this chapter II.A.6.3.3). Using the description to interpret the claims was therefore admissible within certain limits, and sometimes even necessary; there was no need to invoke Art. 69(1) EPC.