

According to T.1963/17, the reason for this is simply that in light of the infinite possibilities of drafting a description, it is not obvious to a skilled person how an amended description should look like. The board observed that in the case in hand, in which the originally filed description did not match the claims and applicant requested to substitute the originally filed description, it may not even have been obvious to a skilled person which invention the applicant intended to pursue. Moreover, the board agreed with J.27/10 that an interpretation of R. 56 EPC that some, or all, of the description that was originally filed in order to obtain a filing date could be amended, replaced or deleted is incorrect. See also chapter IV.A.5.4.2.

4.4. Request for correction to be filed without delay

In T.2058/18 the board noted that a request for correction must be filed without delay (G.1/12, OJ 2014, A114, point 37 of the Reasons). The appellant's (applicant's) representative pointed out that he was not an expert in the field of the invention and that it was only when consulting an expert that could qualify as a skilled person in this case, that the representative was made aware that there was a mistake in the description and claims as originally filed. He had reacted during examination proceedings as soon as he was made aware of the mistake. However, the board observed that the applicant had previously based its arguments on the erroneous features as essential distinguishing features of the invention over the closest prior art. The board underlined that it was the responsibility of the appellant to cooperate in the drafting and filing of amendments and to give clear instructions to the representative. Thus the correction could not be considered as having been filed without delay.

4.5. Correction of errors in the description, claims and drawings after grant, and in opposition proceedings

In J.42/92 the board had to decide whether a request under R. 88, second sentence, EPC 1973 could be made after grant. It came to the conclusion that a request under R. 88 EPC 1973 for amendments to the description or claims could only be filed **during the pendency of application or opposition proceedings**. Under Art. 97(4) EPC 1973, the decision to grant a European patent took effect on the date on which the European Patent Bulletin mentioned the grant. After this date, R. 88 EPC 1973 could only be applied while opposition proceedings were pending. In the case at issue, the decision to grant the patent had already taken effect, and no opposition had been filed. The appeal was therefore dismissed, since the EPO had ceased to have jurisdiction to consider a request under R. 88 EPC 1973 at the time when the request was filed (see also J.23/03 and T.493/08).

Note that G.1/10 (OJ 2013, 194) deals with the different fields of application of various provisions as compared with R.140 EPC (formerly R.89 EPC 1973), in particular R.139 EPC (points 9 and 11 of the Reasons) and Art.123 EPC (see point 13 of the Reasons).

In T.657/11 the board observed that according to G.1/10 R. 140 EPC was not available to correct the text of a granted patent and a request for such a correction was inadmissible