

#### 1.14.6 Reformulation of the technical problem

Expanding on T 13/84 (OJ 1986, 253), it was stated in T 547/90 and T 530/90 that reformulating the technical problem was not in breach of Art. 123(2) EPC 1973 provided the problem as clarified and the solution proposed could have been deduced from the application as a whole in the form originally filed (see T 871/08 of 8 December 2011, T 2076/09). In T 969/19 the board made it clear that Art. 123(2) EPC was not concerned with the issue of whether or not an objectively reformulated technical problem could be used in the course of the problem and solution approach. It could only come into play if an amended technical problem was incorporated into the description itself (see T 284/98 and T 276/06).

On the reformulation of the technical problem, see also chapters I.D.4.4. – 4.5.

#### 1.14.7 Replacement of complete description and drawings

In G 2/95 (OJ 1996, 555) the Enlarged Board observed that a correction affecting the content of the application could only be effected within the limits of Art. 123(2) EPC (as defined in G 3/89, OJ 1993, 117). The complete documents forming a European patent application, that is the description, claims and drawings, could not be replaced by way of a correction under R. 88 EPC 1973 (R. 139 EPC) by other documents which the applicants had intended to file with their request for grant.

In J 16/13 the board held that the ratio decidendi of G 2/95 (and also of J 5/06) was also applicable to all cases where at least a complete description was sought to be exchanged.

#### 1.14.8 Deletion from the description of expressions making features optional

In T 2466/13 the appellant (opponent) had raised an objection under Art. 123(2) EPC, contending that the way the patent description had been adapted, in particular the deletion of expressions showing that features included in the main claim were optional, was liable to give the proprietor an undue advantage in any infringement action, especially one alleging infringement by equivalent means. The board disagreed, observing that, since the original application had been published, the defendant in any such action would still be able to cite the amendments made during the EPO proceedings by producing it alongside the patent as granted and/or amended.

### 1.15. "Comprises", "consists of", "consists essentially of", "contains"

In T 759/10 it had to be examined whether there was a clear and unambiguous implicit disclosure in the application as filed providing a basis for the amendment from "comprises" to "consists essentially of". The appellant argued that the term **"comprising"** encompassed three alternatives, namely (i) "comprising", (ii) "consisting of" and (iii) "consisting essentially of", and that each of these alternatives would immediately come to the skilled person's mind when reading the term "comprising". The term "comprises" was therefore in itself already a sufficient basis for the term "consists essentially of". The board could not accept this argument as each term had a different technical meaning, namely (i)