

disclosed as preferred with a plurality of further restrictions based on preferred features as an amendment in accordance with Art. 123(2) EPC.

In T. 775/17, the board (referring to T. 407/10) held that under established case law combining a feature that had not originally been disclosed as preferable with a number of other limitations based on preferred features was not an amendment compatible with Art. 123(2) EPC.

In T. 1799/12 the board considered that the jurisprudence and T. 407/10 correctly referred to further circumstances that need to be taken into account, such as pointers to that selection or combination in the description and in the examples, for instance the fact that the features in question have been mentioned in the description as "preferred". By contrast, in the case at issue, no pointer was available towards the choice of a square or rectangular base wall shape, but there was a clear pointer in the opposite direction, namely towards base wall shapes without any corners ("generally circular" or "oval").

In T. 2273/10 the appellant (patent proprietor) argued that claim 1 was a combination of the invention's most preferred features, and did not involve a selection from various lists. The board disagreed. The application as filed disclosed several possibilities for each of the three features. To arrive at the claimed wording, the skilled person had to make a selection from various lists. In addition these **selections related to preferred and non-preferred features**.

Similarly, in T. 1150/15 the board rejected the proprietor's approach to combine the preferred options for each of the substituents Y, X and Z disclosed on page 75, to disregard the preferred option for R^B disclosed in the same context and to combine it with a definition which has been singled out of the most general list of options for substituent A as arbitrary. The board distinguished its case from the facts underlying T. 615/95 (see chapter II.E.1.6.3 below).

In T. 1259/16 the claimed combination of the features characterising the claimed solution – "free of free bromine" and "less than 100 ppm of metal ion impurities" – was not explicitly disclosed in the application as filed. The board considered that the **lists** relating to free bromine levels and metal ion impurities were **fully independent**. The various levels of free bromine and metal ion impurities represented **equally suitable alternatives**. The skilled person reading the application would not recognise that the lower values were necessarily more preferred, as reducing impurities to as low a level as possible was both impractical and uneconomical. The claimed combination was therefore contrary to Art. 123(2) EPC.

In T. 1476/15 it was held that there was neither an explicit nor an implicit yet direct and unambiguous disclosure in the patent application which indicated that the concentration ranges of the elements in question (polyamines and plant- and yeast-derived protein hydrolysate) had to be read hierarchically and in parallel, where each parallel position in the sequence of five increasingly preferred embodiments of these two lists was combined. Even taking into account the examples, the board could not identify why the specific concentration ranges mentioned in the claim ought to be combined. This conclusion was in line with the view expressed in T. 1511/07.