

In decision T.711/90 the board confirmed the assumption in the case law that the substitution of the term "consists of" for "contains" in a claim raised the question of clarity of the claim. When, as in the claim in question, the glass consisted of components denoted (i), (ii) and (iii), the presence of any additional component was excluded and, therefore, the proportions of the components (i), (ii) and (iii) expressed in percentages should have added up to 100 mole % for each claimed composition.

See also chapter II.E.1.15: "Comprises", "consists of", "consists essentially of", "contains".

### 6.3. Using description and drawings to interpret the claims

#### 6.3.1 General principles

The subject-matter of claims is governed by Art. 84 EPC and their function by Art. 69 EPC. According to Art. 84 EPC the claims define the invention for which protection is sought. According to Art. 69 EPC the claims determine the extent of the protection which will be conferred by the patent, through their definition of the invention. Under Art. 69 EPC the description and drawings are used to interpret the claims. The question arises whether it is possible to interpret the claims in the light of the description and drawings as provided in Art. 69 EPC merely in order to determine the extent of protection or whether it is also possible to do so in order to establish whether the conditions governing patentability and clarity have been satisfied.

In a number of decisions, such as T.23/86 (OJ 1987, 316), T.16/87 (OJ 1992, 212), T.89/89, T.121/89, T.476/89, T.544/89, T.565/89, T.952/90, T.439/92, T.458/96, T.717/98, T.500/01, T.1321/04, T.1433/05 and T.2145/13, the boards of appeal have laid down and applied the principle whereby the description and drawings are used to interpret the claims and identify their subject-matter, in particular in order to judge whether it is novel and not obvious. Likewise, in a large number of decisions (e.g. T.327/87; T.238/88, OJ 1992, 709; T.416/88; T.194/89; T.264/89; T.430/89; T.472/89; T.456/91; T.606/91; T.860/93; T.287/97; T.250/00; T.505/04; T.711/14), the boards interpreted the claims in the light of the description and drawings in order to establish whether they were clear and concise within the meaning of Art. 84 EPC 1973.

Occasionally, however, the limits to interpretation in the light of the description and drawings are emphasised (see in this chapter II.A.6.3.6). A discrepancy between the claims and the description is not a valid reason to ignore the clear linguistic structure of a claim and to interpret it differently (T.431/03) or to give a different meaning to a claim feature which in itself imparts a clear credible technical teaching to the skilled reader (T.1018/02, T.1395/07, T.1456/14, T.2769/17). In T.1023/02, though, "unfortunate" claim language ("transcription" instead of "translation") in contradiction with the terms used in the description was interpreted differently.

In T.2221/10 the board referred to established case law according to which the description can be used as the patent's "dictionary" to assess the correct meaning of ambiguous terms used in claims (see in this chapter II.A.6.3.3). However, if a term used in a claim has a clear technical meaning, the description cannot be used to interpret such a term in a