

regard to specific legal and factual circumstances. Please note that the interpretation of Art. 53(b) EPC given in G 2/12 was abandoned in G 3/19 in view of Art. 31(4) Vienna Convention.

G 1/07 made reference to Opinion G 1/04, OJ 2006, 334 (point 6 of the Reasons). In that Opinion, the Enlarged Board stated – with reference to decisions of the boards of appeal having acknowledged the existence of such an a priori principle – that the "frequently cited principle", according to which exclusion clauses from patentability laid down in the EPC are to be construed in a restrictive manner, does not apply without exception. In that Opinion concerning the definition of the term diagnostic methods practised on the human or animal body, the Enlarged Board came to its conclusion that the said exclusion was indeed to be interpreted narrowly only after a thorough examination of the wording and the purpose of the exclusion clause concerned. The same approach was also taken in the Enlarged Board's decision G 2/06 (OJ 2009, 306). There, the Enlarged Board was concerned with the interpretation of the exclusion from patentability of biotechnological inventions relating to uses of human embryos for industrial or commercial purposes under R. 28(c) EPC (and the corresponding Art. 6(2) of the EC Directive on the legal protection of biotechnological inventions). The Enlarged Board made no reference to the existence of a principle of narrow construction of exceptions from patentability. Instead, as a method for interpreting the extent of the prohibition the Enlarged Board went directly to the rules of interpretation laid down in the Vienna Convention, i.e. it looked at the terms of the provision and its object and purpose (point 16 of the Reasons). No mention was made in that decision of any narrow or restrictive view which would have to be taken because the said prohibition was an exception to patentability. The Enlarged Board decided to proceed in the same way in G 1/07.

1.2. Application of the rules of interpretation

This section provides further examples, along with the related arguments, of how the interpretation methods set out above in this chapter, particularly in III.H.1.1.2, have been applied.

In consolidated cases G 2/12 and G 2/13 (OJ 2016, A27 and A28) the term "essentially biological processes for the production of plants" in Art. 53(b) EPC needed to be construed pursuant to the general rules of interpretation. The Enlarged Board noted that it was established in the jurisprudence that the principles of interpretation provided for in Arts. 31 and 32 of the Vienna Convention were to be applied when interpreting the EPC. This question was to be analysed by means of a **methodical interpretation** of Art. 53(b) EPC in respect of, primarily, its wording and, secondarily, considering also the legislator's intention and the aspects of systematic and historical interpretation. In particular, it applied various methodical lines of interpretation which included grammatical, systematic and teleological interpretations as well as supplementary means of interpretation, principally, the preparatory work. None of these lines of interpretation led the Enlarged Board to conclude that the term "essentially biological processes for the production of plants" extended beyond the processes to products defined or obtained by such processes. This result was confirmed when the preparatory work of the EPC was taken into account as a supplementary means of interpretation.