

See also T 195/09, in which the board stated that T 108/91 had been overruled in this regard by G 1/93.

In T 1736/09 the board emphasised that, for the purpose of examination under Art. 123(3) EPC it was irrelevant whether the granted patent met the requirements of Art. 123(2) EPC or Art. 76(1) EPC. See also T 2186/12.

In T 1896/11 the appellant submitted that, taking Art. 69 EPC into account, the description had to be used to interpret the claims; since the protection conferred by claim 5 of the patent as granted necessarily extended to what was stated in the description, claim 5 could be corrected to reflect the description without infringing Art. 123(3) EPC. However, the board held that, in the case at issue, the description could not be used to give a different meaning to a claimed method step which **in itself imparted a clear and credible technical teaching** to the skilled reader. Otherwise third parties could not rely on what the claim actually stated. In order to determine whether the claimed method step in itself imparted a clear, credible technical teaching, it was necessary to examine "whether (a) the step as claimed was in itself meaningful and plausible from a technical point of view, and (b) whether there was, prima facie, any inherent incompatibility with the remaining features of the claim" (see T 1202/07). In the case in hand, the relevant feature was meaningful and plausible from a technical point of view. This approach was confirmed e.g. in T 626/16.

In T 131/15, however, the board highlighted that, in determining whether the requirements of Art. 123(3) EPC 1973 were met, it was not sufficient to look only at the claims in isolation. The approach to be followed was set out in G 2/88 (OJ 1990, 93) with reference to Art. 69(1) EPC 1973 and its Protocol. In the light of these principles, the board came to the following conclusion: Where an expression in a granted claim, taken literally and in isolation, would have the effect of excluding all of the disclosed embodiments from the scope of protection, but where a definition of the expression may be derived from the patent itself which would locate (at least some of) the disclosed embodiments within the ambit of the claim, and provided this definition was **not manifestly unreasonable**, having regard to the normal meaning of the words used in the expression, then in judging compliance with the requirements of Art. 123(3) EPC, the scope of protection should normally be considered to include at least that which would fall within the terms of the claim understood according to this definition.

### 2.3.2 Cut-off point

The decisions reported below, while likewise looking at the extent of protection, additionally address the question of whether the grant of the patent constitutes a cut-off point for making amendments to the application documents. As summarised in T 1481/14, the grant of a patent is not necessarily an automatic and final cut-off point ruling out any reinsertion of deleted subject-matter whatsoever. At best, the restrictions on further amendments to a patent under R. 80 and 138 EPC and Art. 123(3) EPC can be regarded as having such a cut-off effect.