

usually possible through the incorporation of adequate technical features able to provide inevitably said property. As a last resort, the claimed subject-matter could even have taken the form of an exemplified subject-matter. In the case at issue, the application as originally filed presented a disclosure deficiency and if there was an inescapable trap, it was rather linked to this deficiency.

T 1420/15 is an example of a case in which the patent proprietor could not escape the trap, as the unclear feature contained in claim 16 as filed, but omitted in the claim as granted, provided a technical contribution by excluding certain types of pet food compositions.

The case law on the "inescapable trap" between the requirements of Art. 123(2) EPC and Art. 123(3) EPC is reported in chapter II.E.3.

1.5. Ranges of parameters – setting upper and lower limits

1.5.1 Forming a range by combination of end points of disclosed ranges

- a) Combination of the preferred narrower range and one of the part-ranges lying within the disclosed overall range

The board in T 925/98 noted that, according to the respondent, the range 30% to 50% given in claim 1 infringed Art. 123(2) EPC 1973, since such a range was not disclosed in the originally filed documents of the patent in suit, which only disclosed a general range of 30% to 60% and a preferred range of 35% to 50%. The board held, however, that, according to the established case law, in the case of such a disclosure of both a general and a preferred range, a combination of the preferred disclosed narrower range and one of the part-ranges lying within the disclosed overall range on either side of the narrower range was unequivocally derivable from the original disclosure of the patent in suit and thus supported by it (see T 2/81, OJ 1982, 394; T 201/83, OJ 1984, 481; and T 53/82, T 571/89, T 656/92, T 522/96 and T 947/96 all referring to T 2/81). In the case in point, moreover, graphs indicated that the claimed range was in fact the most efficient one. This frequently cited decision and/or its principles were referred to, for example, in T 328/10, T 2001/10, T 227/13, T 223/17, T 516/18; see also T 1107/06.

In T 249/12 the board allowed the amendment to the range of "10-50 mass %", which combined the use of the upper limit of the less preferred broader range (50 mass %) and the lower limit of the most preferred narrower range (10 mass %). Since both end points of the new range were both specifically mentioned in the application as filed, the new range was "unequivocally and immediately apparent to the skilled person" (T 2/81), i.e. the range was directly and unambiguously disclosed in the application as filed. See also T 1143/17 which relates to the combination of the lower end point of a preferred range with the upper end point of a more preferred range.

In T 2514/16, the board observed that it was allowable to combine thresholds from different levels of preference as long as the new range could be regarded as directly and unambiguously disclosed for the skilled person (G 2/10, OJ 2012, 376). This would