

that in the present case the omitted feature was not a product feature. Thus the claim had not been extended within the meaning of Art. 123(3) EPC 1973.

In T 1191/15 a feature present in the claims as granted had been deleted from the new main request so that this request now encompassed embodiments that were not encompassed by the claims as granted (namely embodiments wherein the control means of the claimed dialysis apparatus was programmed in a certain way). This was contrary to Art. 123(3) EPC.

2.4.2 Deletion of feature from description where claim remains unchanged

In T 142/05 the board found that, even where the wording of the granted claims was unamended and clear, the mere deletion from the description of an important desired property of the patented subject-matter led to an extension of the scope of protection which contravened Art. 123(3) EPC 1973 (this is different in the case of an optional, hence not important feature, see T 71/10). The board explained that, although the claims were the most important element in determining the extent of protection, **the wording of the claims should not be seen as the sole relevant factor**; instead, the description and drawings were to be used in interpreting the claims. From this, it followed that even if the wording of a claim was clear and unambiguous, i.e. where the scope of its literal meaning was clear, reference was still to be made to the description and claims. This could lead to a different interpretation of the claim, diverging from that obtained by considering only its literal meaning. Amendments to the description and drawings could modify the content of the claims and thereby extend the scope of protection according to Art. 69(1) EPC 1973, even where the wording of the claims was clear and remained unamended. In the board's view, the deletion in the case at issue had the effect of generalising the teaching of the patent. Art. 123(3) EPC 1973 had therefore been contravened.

This approach was confirmed in T 1360/13, which related to the deletion of drawings (see below chapter II.E.2.4.5).

2.4.3 Deletion of examples for a general feature in a claim

The board in T 1052/01 took the view that deleting examples given in claim 1 as granted (here "valve, restrictor, etc.") for a general feature (here "hydraulic functional unit") did not extend the protection conferred, as these examples were embraced by the general feature which determined the extent of the protection conferred.

2.4.4 Deletion of disclaimer

In T 532/08 the board held that, in the case at issue, the disclaimer could only be omitted without extending the scope of protection if it was beyond doubt that the components (of the disclaimed suspension) identified by trade names did not comprise any of the claimed tensides. However, it could not be unequivocally established what was excluded by a disclaimer referring to trade names, as a product designated by a trade name may change over time while keeping its name.