

In T.136/12 the amended disclaimer was narrower than the disclaimer in claim 1 of the patent as granted, whereas the positive features of that claim had remained the same. The board found that the amended claim extended the scope of protection and observed in this context that the case law of the boards had consistently taken disclaimers into account when examining whether a claim amended by introducing, modifying or deleting a disclaimer fulfilled the requirements of Art. 123(3) EPC.

2.4.5 Deletion or replacement of drawings

In T.2259/09, whilst the patent as granted comprised a set of Figures, in the amended patent according to the main request all drawings were deleted to comply with the requirements of Art. 123(2) EPC, and the description was correspondingly adapted. Concerning the examination of Art. 123(3) EPC, with the deletion of the drawings from the patent specification, technical information was undoubtedly lost. Whilst this loss of information might also introduce some uncertainties about certain details of the preferred embodiments depicted in the drawings, it could not be concluded, as in the impugned decision, that it automatically broadened the protection conferred. In the case at issue, the claims were not limited to any of the details, dimensions or features specifically depicted in the (deleted) drawings. Moreover, under Art. 69(1) EPC, reference to the drawings of a patent specification may be helpful or even necessary if an ambiguity exists in the granted claim. However, in the case at issue, the impugned decision did not identify any such ambiguity; nor could the board see any. Therefore, the deletion of the drawings did not extend the scope of the protection conferred by the main request.

In T.236/12 the drawings published in the patent specification had been replaced by those originally filed. Although the published drawings had disclosed technical information not derivable from those originals, their replacement did not broaden the scope of the patent. The technical features of the claims were explained in sufficient detail in the description, as read together with the originals, so the skilled person could still get a clear idea of the protected subject-matter and how it should look.

In T.1360/13 the board considered that, in view of Art. 69(1) EPC, after grant, any information in the description and/or drawings of a patent directly related to a feature of a claim and **potentially restricting its interpretation** cannot be removed from the patent without infringing Art. 123(3) EPC. Referring to G.2/88 (OJ 1990, 93) and Art. 69 EPC, the board held that even if, after the claims have been read taken alone, no clarification seemed necessary, it could not be excluded that the description and drawings were necessary to interpret the claims, i.e. to determine the extent of the protection conferred. As a rule, the vocabulary used in a patent was unitary and dependent on the technical field of the invention and on the writer's own preferences. The description and drawings generally included explicit or implicit definitions of terms used in the claims, e.g. explanations as to the functions of the claimed features, the aims to be achieved by the invention, etc. Concentrating exclusively on the wording of the claim would mean that from the point of view of the extent of protection, the whole description and the drawings of the patent could be deleted, in which case, the intentions of the inventor would be completely ignored. In the present case, the deletion of the drawings and any references to them in the description led not only to a generalisation of the teaching of the patent but also to a