

refused to draw the analogy with G 1/03 (OJ 2004, 413) which the appellant had sought to establish, holding that a disclaimer expressly disclosed in the application as filed as not forming part of the invention could not permissibly be deleted if that would mean that some of that "non-part" was claimed after all.

## 1.8. Generalisations

1.8.1 Replacing specific feature with more general term – no inclusion of undisclosed equivalents

With reference to T 416/86 (OJ 1989, 309), T 265/88 and T 118/89, the board in T 284/94 (OJ 1999, 464) confirmed that an amendment which replaced a disclosed specific feature either by its function or by a more general term and thus incorporated undisclosed equivalents into the content of the application as filed, was not allowable under Art. 123(2) EPC 1973.

In T 685/90 the board stated that specific equivalents of explicitly disclosed features did not automatically belong to the content of a European patent application as filed, when this content was used as state of the art according to Art. 54(3) and (4) EPC 1973 against a more recent application. It therefore concluded that such equivalents could not belong to the content of a European patent application either, when this content was assessed to determine whether an amendment was admissible under Art. 123(2) EPC 1973. See also T 946/13 and T 2087/17, citing T 685/90 and applying this principle in the context of Art. 87(1) EPC. On the prohibition of including equivalents, see also T 673/89.

In T 40/97 the board considered that in a case where a number of generally similar embodiments were discussed in equivalent terms, the person skilled in the art would, in normal circumstances and when nothing pointed to the contrary, notionally associate the characteristics of an element of one embodiment described in some detail with the comparable element of another embodiment described in lesser detail.

In T 653/03 the original term "diesel engine" in claim 1 was replaced by the term "combustion engine". The board decided that the treatment of exhaust gas in the original application was always related to a diesel engine, and it could not be inferred by the skilled person that the subject-matter of the granted patent extended to a method which was suitable for any type of combustion engine. The generalisation was not admissible.

In T 868/07 the board allowed the replacement of an undisclosed feature by a more general feature disclosed in both parent and divisional applications. The board found that the general feature had been disclosed in the same context in the description and in the figures of the parent application as filed; Art. 76(1) EPC had therefore been complied with. Since the more general feature was disclosed in the same context in the divisional application as filed, the board saw also no reason for an objection under Art. 123(2) EPC.

In T 2537/10 the board found that decision T 416/86, holding that replacing a disclosed special feature by a broad general expression was to be considered an unallowable amendment under Art. 123(2) EPC if that general expression implicitly combined special