

In T 932/99 claim 1 was directed to a product per se. The claim defined only the structure of a membrane as such, independently from its installation in an apparatus for gas separation. The board pointed out that, for this reason, the indication in the claim "capable of separating oxygen from oxygen-containing gaseous mixture" merely served the purpose of defining a capability of the claimed membrane, without imparting any limitations on any actual use of the structure claimed. The respondents had argued that, if claim 1 was interpreted in the light of the description, those limitations would be apparent. However, the board held that a distinction had to be drawn between, on the one hand, the fact that it might be necessary to take into account any explicit definition as given in the description for interpreting a claim's term and, on the other hand, the attempt to use Art. 69 EPC 1973 as a basis for reading limitations derived from the description into claims in order to avoid objections based on lack of novelty or inventive step. The latter approach to interpretation, whereby features mentioned only in the description were read into claim 1 as necessary limitations, was incompatible with the EPC (referring to T 1208/97). See also T 945/99, T 2049/07.

In T 1018/02 the board emphasised that, although a claim must not be interpreted in a way which was illogical or did not make sense, the description could not be used to give a different meaning to a claim feature which in itself imparted a clear, credible technical teaching to the skilled reader. This also applied if the feature had not been initially disclosed in the form appearing in the claim. See also T 373/01, T 396/01.

In T 121/89 the board used the description to interpret an ambiguous term ("loose ignition charge"), but at the same time stressed that only features recited in or deducible from the claims could be set forth to distinguish the invention from the state of the art. The examples cited in the description did not limit the scope of the claims unless they were explicitly mentioned in them. See also T 544/89.

In T 416/87 (OJ 1990, 415), on the other hand, the board was confronted with the situation where a feature was not included in the claims which the description on its proper interpretation specified to be an overriding requirement of the invention. The board held that, following Art. 69(1) EPC 1973 and its Protocol, the claims might be interpreted as requiring this as an essential feature, even though the wording of the claims when read in isolation did not specifically require such feature (confirmed in an obiter dictum in T 717/98). See also T 620/08, T 2525/11.

6.3.5 Use in the examination relating to the clarity requirement pursuant to Article 84 EPC

In a large number of decisions (see in this chapter II.A.6.3.1) the boards interpreted the claims in the light of the description and drawings in order to establish whether they were clear and concise.

In T 456/91 the board was of the opinion that the clarity of a claim was not diminished by the mere breadth of a term of art contained in it, if the meaning of such term was unambiguous for a person skilled in the art, either per se or in the light of the description. In this case an extremely large number of compounds could be used for carrying out the