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1. Basic principles

1.1. Purpose of claims under Article 84 EPC

Art. 84 EPC provides that claims must define the matter for which protection is sought. It lays down the relevant principles governing the content and wording of the claims, providing that claims should be clear and concise and be supported by the description. It is supplemented by R. 43 EPC.

In G 2/88 (OJ 1990, 93, Corr. 469) the Enlarged Board stated that the primary aim of the wording used in a claim must be to satisfy the requirements under Art. 84 and R. 29(1) EPC 1973 (R. 43(1) EPC), having regard to the particular nature of the invention, and the purpose of the claims. The purpose of claims under the EPC is to enable the protection conferred by the patent or patent application to be determined (Art. 69 EPC), and thus the rights of the patent owner within the designated contracting states (Art. 64 EPC), having regard to the patentability requirements of Art. 52 to 57 EPC.

The boards of appeal have repeatedly confirmed that claims must be clear for the sake of legal certainty, as their purpose is to enable the protection conferred by the patent to be determined (see e.g. T 337/95, OJ 1996, 628; T 586/97; T 437/98; T 728/98, OJ 2001, 319; T 1074/00; T 560/09; T 754/13: "constant jurisprudence"; T 129/13). Legal certainty is of paramount importance in any system where the rights of the public are affected by the grant of a monopoly (T 81/14). The public should not be left in any doubt as to which subject-matter is covered and which is not (T 2086/11, T 2321/13, T 2186/14). The skilled person should be able to establish the demarcation of the scope of the claim (i.e. its extent of protection) without undue burden (T 754/13).

1.2. Types of claim

The Enlarged Board set out in G 2/88 that there are basically two different types of claim, namely a claim to a physical entity (e.g. product, apparatus) and a claim to a physical activity (e.g. method, process, use). These two basic types of claim are sometimes referred to as the two possible "categories" of claim. Within the above two basic types of claim various sub-classes are possible (e.g. a compound, a composition, a machine; or a