

was neither in a position to recognise the nature of the claimed subject-matter nor the category to which claim 1 belonged.

For the particularities of product-by-process claims, see in this chapter [II.A.7.](#)

4. Disclaimers

Disclaimers play an important role in the drafting of claims and amendments. The principles concerning the allowability of disclaimers are set out in chapter [II.E.1.7.3.e\)](#) "Drafting of disclaimers – clarity".

5. Claims supported by the description

5.1. General principles

[Art. 84 EPC](#) stipulates that the claims must be supported by the description. This requirement means that the subject-matter of the claim must be taken from the description and it is not admissible to claim something which is not described.

In decision [T.133/85](#) (OJ 1988, 441) the board took the view that a claim which did not include a feature described in the application (on the proper interpretation of the description) as an essential feature of the invention, and which was therefore inconsistent with the description, was not supported by the description for the purpose of [Art. 84 EPC 1973](#). The boards apply this principle as part of their established jurisprudence, see e.g. [T.409/91](#) (OJ 1994, 653), [T.939/92](#), [T.322/93](#), [T.556/93](#), [T.583/93](#), [T.659/93](#), [T.482/95](#), [T.616/95](#), [T.586/97](#), [T.687/98](#), [T.1076/00](#), [T.637/03](#), [T.1399/17](#). However, the requirement for all essential features to be indicated is inferred to some extent from different provisions of [Art. 84 EPC](#) (see in this chapter [II.A.3.2.](#)). In [T.2049/10](#) the board considered the topic "essential feature missing" explicitly not a question of clarity but of support by the description (both subsumed under [Art. 84 EPC](#)).

Many boards further stress that the requirement for the claims to be supported by the description was intended to ensure that the extent of protection as defined by the patent claims corresponds to the technical contribution of the disclosed invention to the art (see [T.409/91](#), OJ 1994, 653; [T.435/91](#), OJ 1995, 188; [T.1055/92](#), OJ 1995, 214; [T.659/93](#); [T.825/94](#); [T.586/97](#); [T.94/05](#); [T.1217/05](#); [T.1694/12](#); [T.809/12](#)). Therefore the claims must reflect the actual contribution to the art in such a way that the skilled person is able to perform the invention in the entire range claimed ([T.659/93](#), [T.94/05](#)). A purely formal support by the description, i.e. a verbatim repetition of the mention of a claimed feature, cannot meet these requirements ([T.94/05](#), summarised in the next section; see also [T.127/02](#), [T.1048/05](#), [T.758/13](#), [T.2483/16](#)). However, according to a different view, a review of the discussions in the various drafts to be found in the preparatory material suggests that the requirement for support of the claims was viewed rather as a formal matter to ensure that the description and claims had the same extent ([T.1020/03](#), OJ 2007, 204). In the case in point the board concluded that [Art. 84 EPC 1973](#) could not be used to force an applicant to cut down the scope of first or second medical use claims