

whenever made, including after the initiation of opposition proceedings (likewise T 2051/10, T 164/14, T 1578/13). However, in the case at issue, the amendments went beyond the mere removal of an error; namely by limiting the claims to those granted as (process) claims 6-11. Hence the basis for the decision on the appeal (and, thereby, on the opposition) was no longer that for the **decision to grant** the patent-in-suit, which decision would **definitely lose its effect** and be replaced by a new decision. In such a situation any (further) amendment of the claims, even if it aimed at the removal of an obvious mistake in the claims as granted, did not constitute a correction of an error or a mistake in a decision of the EPO within the meaning of R. 140 EPC. The board held that in opposition proceedings mistakes or errors concerning the claims, the description or the drawings of the patent as granted could be removed either by an amendment occasioned by a ground of opposition under Art. 100 EPC (see R. 80 EPC) or, insofar as the mistakes or errors concerned texts or drawings which remained unamended, by way of a correction pursuant to R. 139 EPC (which applied independently of R. 80 EPC; see also T 556/13). See also T 164/14 and T 1578/13, in which, however, the boards ultimately did not decide whether corrections could be made under R. 139 EPC in the conditions set out in T 657/11, because, in any event, the mistakes at issue in those cases were not obvious.

5. Evidence and standard of proof for allowing amendments and corrections

In accordance with the established case law of the boards of appeal, in the case of a proposed amendment under Art. 123(2) EPC or of a correction under R. 139 EPC, the factual disclosure of a European patent application as originally filed has to be established to a rigorous standard, namely the standard of certainty "beyond reasonable doubt". In T 1248/08 the board recalled this case law, in particular as established in T 113/86, T 383/88, T 581/91, T 723/02 and T 1239/03; for further decisions confirming this standard, see e.g. T 831/11, T 1710/13, T 2418/13, T 1224/14. According to T 307/05 and T 370/10, the same standard of "beyond reasonable doubt" applies when assessing the allowability of amendments under Art. 123(3) EPC. The burden of proof that amendments comply with Art. 123(2) EPC rests with the party making the amendment (T 910/06 with reference to T 1239/03; see also T 222/05 and T 1497/08).

In T 383/88 the board held that the normal standard of proof in proceedings before the boards, namely "the balance of probability", was inappropriate for determining the allowability of an amendment under Art. 123(2) EPC 1973. Instead, a rigorous standard, i.e. one equivalent to "beyond reasonable doubt" was considered by the board to be the right one to apply in such a case, since applying a lower standard could easily lead to undetected abuse by allowing amendments on the basis of ostensibly proven common general knowledge. T 383/88 also considered that the issue of the allowability of an amendment under Art. 123(2) EPC 1973 had to be decided by reference to what could be derived from the patent application as filed in the light of common general knowledge and not vice versa. Moreover, it was notoriously difficult to prove common general knowledge. For example, information might be generally disseminated, and therefore known within the community of skilled addressees, but it might well, at the same time, not be commonly accepted. The board added that it could not normally be the case that an affidavit by a single person was sufficient to discharge the burden of proof to the strict standard that was required (see also T 1046/96).