

information must enable the skilled person to achieve the envisaged result within the whole ambit of the claim containing the respective functional definition without undue difficulty, and the description with or without the relevant common general knowledge must provide a fully self-sufficient technical concept as to how this result is to be achieved. T. 409/91 was followed up in T. 713/98, where the board stated that the requirement of understanding a claim characterised by a functional feature defining a result to be achieved was one of clarity and the requirement of implementing it was one of support, both within the meaning of Art. 84 EPC 1973. Implementation, viewed in relation to the disclosure as a whole, was highly relevant to the question of sufficiency under Art. 83 EPC 1973. See also T. 1225/07.

In the inter partes case T. 435/91 (OJ 1995, 188), one of the essential technical features was defined only by its function. It was not possible to identify, on the basis of the information contained in the patent specification or of common general knowledge, compounds other than those specifically mentioned as bringing about the desired effect. The board held that the compositions must all be available to the skilled person if the definition was to meet the requirements of Art. 83 EPC 1973.

However, as long as there are no concrete grounds for believing that the invention cannot be carried out within the whole range claimed, there is no reason for not allowing more broadly based claims in an application (T. 242/92, T. 484/92). In opposition proceedings the opponent bears the burden of proving that the invention cannot be carried out within the whole range claimed (T. 418/91, T. 456/91, T. 548/91). See in this chapter II.C.9.

In T. 1404/05 the board found that where a claim is vaguely formulated and leaves several constructions open as possibilities, and on one of these constructions part of the subject-matter claimed is not sufficiently described to be carried out, the claim is open to objection under Art. 100(b) EPC. To avoid this objection the claim needs to be explicitly restricted to a construction which is also possible on the vague formulation of the claim, but which construction is not open to an Art. 100(b) EPC objection. The mere fact that the description makes clear that this latter construction is the one intended does not mean that the claim can be treated as being confined to this latter construction. Art. 69 EPC and its protocol were intended to assist a patent proprietor in contending for a broader interpretation of a claim than perhaps its wording warranted, not for cutting down the scope of a claim.

In T. 553/11 the board pointed out that if the proprietor wishes to argue for a narrow scope of a claim, this should be on the basis of the ordinary wording of the claim, and not on the basis of something appearing only in the description (following T. 1404/05). The board also referred to T. 681/01, where it was emphasised that the normal rule of claim construction is that the terms used in a claim should be given their ordinary meaning in the context of the claim in which they appear. The description may not be used to rewrite the claim and **redefine** the technical features required by the claim in a way not warranted by the wording of the claim itself. In particular the description cannot be relied on to exclude subject-matter from the claim which the ordinary meaning of the terms used would include as part of what is claimed. See also chapter II.A.6.3. "Using description and drawings to interpret the claims".