

Where, on one of several possible constructions of a vaguely formulated claim, 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 1973 (T 1404/05, see also chapter II.C.8.1. "Art. 83 EPC and support from the description").

In T 762/90 a lack of clarity was found in the use of a trade mark designating a whole series of products which differed from one another depending on phases in their industrial development. Moreover, the board expressed doubts about the use of such a designation, since it was uncertain whether the meaning of the trade mark would remain unaltered up to the end of the patent term (see also T 939/92, T 270/11; see also chapter II.E.1.7.3.e) "Drafting of disclaimers – clarity"). Similarly, in T 480/98 the board considered that a trade mark product referred to in the characterising portion of claim 1 did not have a clear technical meaning, in that it could refer to a plurality of products having different compositions and properties. In consequence there was a lack of clarity, and the claim was not allowable. According to the board in T 623/91 the exclusion of a composition by reference to the trade mark or trade designation would not introduce uncertainty and therefore not offend against Art. 84 EPC 1973, as changes in the range of chemical composition would not be likely without a corresponding change in the trade name or trade mark.

The preamble of claim 2 of the application in T 363/99 contained a reference to a German patent specification. The board considered this to be a violation of Art. 84, second sentence, EPC 1973 since it was impossible to establish the scope of the matter for which protection was sought without consulting the reference document mentioned. The fact that the indication of the publication number of the reference document provided the most concise definition of the matter for which protection was sought (Art. 84 EPC 1973) was irrelevant by comparison. When formulating a patent claim, the form that was objectively more precise always had to be chosen (T 68/85, OJ 1987, 228).

Complexity as such is not equivalent to a lack of clarity – clarity under Art. 84 EPC is not at stake in a case of mere complexity of a claim provided the subject-matter for which the protection is sought and the scope thereof are clear and unambiguous for a person skilled in the art, either per se or in the light of the description (see T 574/96 re Art. 84 EPC 1973). In T 1020/98 (OJ 2003, 533) the board confirmed that compliance with the clarity requirement of Art. 84 EPC 1973 was not dependent on the time required to establish whether a given compound was covered by the product claim. The clarity requirement was not a basis for objecting to the complexity of a claim. Clarity within the meaning of that article merely required the claims to define the subject-matter for which protection was sought clearly and unambiguously for the skilled person, if necessary in the light of the description.

In T 75/09 the board held that where higher ranking requests are refused because a feature common to all requests does not meet the requirements of Art. 84 EPC, all lower ranking requests retaining this feature have to be refused for the same reason.