

protection conferred by this use claim was not broader than that conferred by the granted process claim (see also T. 619/88).

In T. 420/86 a change from a claim for a process for treating soil, in which X was used, to a claim for the use of X for treating soil was allowed. In T. 98/85 on the other hand, a change from a "process for the preparation of a ... composition" to the "use of this ... composition as a ..." was seen as a breach of Art. 123(3) EPC 1973.

In T. 276/96 the board decided in view of G. 5/83 (OJ 1985, 64) that the change of claim of the type "Method of fabricating item A using item B providing effect C" to a claim of the type "Use of item B in a method of fabricating item A to provide effect C" did not extend the protection conferred, since with both formulations the same activity would be forbidden to competitors.

In T. 22/09 of 5 February 2016 the board held that since claim 1 as granted concerned a method of pre-treating a catalyst support, which by virtue of Art. 64(2) EPC extended the protection conferred to the pre-treated catalyst support directly obtained by the claimed method, and since instead claim 1 according to the new request concerned the use of a modifying component for suppressing the solubility of a catalyst support, i.e. defined the use of a chemical compound to obtain a particular effect on the catalyst support, the protection conferred by the patent as granted had not been extended.

2.7.7 From use claim to Swiss-type claim

In T. 1635/09 (OJ 2011, 542) claim 1 in the 23rd auxiliary request differed from claim 1 in the granted text in that the originally granted use claim was converted to the so-called Swiss form of claim, i.e. a claim for the use of a substance or mixture of substances for manufacturing a medicament for a specific therapeutic use. Under the established jurisprudence of the boards of appeal, when establishing whether the scope of protection was extended by this amendment all the granted claims must be taken into consideration. It was therefore necessary to determine whether the reformulation of a claim for the "use of an oral dosing form comprising ... for contraception ..." into a claim for the "use of a composition comprising ... for manufacturing an oral ... dosing form for contraception ..." complied with the requirements of Art. 123(3) EPC. A crucially important question here was whether the Swiss-type claim was to be regarded as for (a) the use of a substance or mixture of substances for a specific purpose or (b) the manufacture of a medicament. Citing G. 5/83 (OJ 1985, 64) and G. 2/88 (OJ 1990, 93), the board in T. 1635/09 ruled that the conversion of a claim for the use of a substance or mixture of substances for a specific purpose into a Swiss-type claim or a product claim limited to a specific use in accordance with Art. 54(5) EPC results in an extension of the scope of protection.

2.7.8 From Swiss-type claim to purpose related product claim under Article 54(5) EPC

In T. 250/05 the board held that, apart from the fact that Art. 54(5) EPC (entry into force 13 December 2007) did not apply to a patent granted in 2001, Art. 123(3) EPC would not allow the change of category of a granted use claim into a product claim, even if drafted