

T. 669/93; T. 1056/93 and T. 364/95), according to which adding non-essential and merely scope-limiting features did not invalidate a priority claim; see also "Case Law of the Boards of Appeal of the EPO", 3rd ed. 1998, p. 228 et seq. and 235 et seq.). The non-applicability of the "essentiality" criterion following G. 2/98 was confirmed in e.g. T. 1852/13 (with further references) and T. 2466/13.

As was stated in G. 2/98 (OJ 2001, 413), the extent of the right to priority is determined by, and at the same time limited to, what is disclosed in the priority application. Applying G. 2/98, the board in T. 923/00 found that the application as filed and the priority document were in essence identical. It emphasised that any conclusion in favour of or against the amendments' allowability under Art. 123(2) EPC 1973 would also apply in favour of or against entitlement to the claimed priority, and dealt with both issues jointly.

In its subsequent "disclaimer" decisions G. 1/03 and G. 2/03 (OJ 2004, 413 and 448), the Enlarged Board held that in order to avoid any inconsistencies, the disclosure as the basis for the right to priority under Art. 87(1) EPC 1973 and as the basis for amendments in an application under Art. 123(2) EPC 1973 has to be interpreted in the same way. That meant that a disclaimer, not providing a technical contribution as outlined, which was allowable during the prosecution of a European patent application does not change the identity of the invention within the meaning of Art. 87(1) EPC 1973. Therefore its introduction is allowable also when drafting and filing the European patent application without affecting the right to priority from the first application, which does not contain the disclaimer (see also T. 175/03 and T. 910/03). The Enlarged Board reaffirmed the importance of applying a uniform concept of disclosure in its further "disclaimer" decisions G. 2/10 (OJ 2012, 376) and G. 1/16 (OJ 2018, A70) – cf. "gold standard" disclosure test. See also T. 437/14 of 12 March 2019, reported in this chapter II.D.5.3.3, and T. 600/16.

For the application of the disclosure test in the context of Art. 123(2) EPC, see chapter II.E. "Amendments".

The following qualification was made in T. 282/12, a case which concerned "partial priority" (cf. also G. 1/15, OJ 2017, A82): assessing priority by performing a test under Art. 123(2) EPC could lead to wrong conclusions in certain circumstances because the concept of "partial" validity of an amendment does not exist, whereas "partial priority" does (see also fuller summaries in chapters II.D.4.1. and II.D.5.3.3 below).

3.1.3 Disclosure in the previous application as a whole

G. 2/98 (OJ 2001, 413) stated that pursuant to Art. 4H Paris Convention, priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application whose priority is claimed, provided that the application as a whole specifically discloses such elements. Priority for a claim is to be acknowledged if the subject-matter of the claim is specifically disclosed, be it explicitly or implicitly, in the application documents relating to the disclosure, in particular, in the form of a claim or of an embodiment or example specified in the description of the application whose priority is claimed. Art. 88(4) EPC corresponds almost literally to Art. 4H Paris Convention.