

specified". The boundaries of the term "comprising substantially" were therefore to be drawn where the essential characteristics of the specified subject-matter ceased. The scope of the term "comprising substantially" was therefore interpreted as being identical to that of "consisting essentially of". However, in view of the unequivocal character of the words "consisting of" as compared to "comprising", the expression "consisting essentially of" was to be given preference. See also T. 1730/09, T. 274/16.

In T. 1599/06 the board likewise had to interpret the term "comprising". It emphasised that the meaning of terms in a patent claim has to be determined from the point of view of the skilled person, who reads the claim in the context of the application and against the background of his/her common general knowledge. The claim was directed to a vaccinating agent comprising at least one specific purified and isolated protein of *Mycobacterium tuberculosis*. The examining division had interpreted the term "comprising" broadly and held that the claimed subject matter lacked novelty in relation to a partially purified protein fraction which, in their view, contained inter alia the specified proteins. In the board's view, however, the skilled person would derive from the application as a whole the information that the specific characteristic of the vaccinating agents according to the invention was their generation from isolated and purified *Mycobacterium tuberculosis* proteins. Therefore, he/she would have considered that the definition in claim 1 covered vaccinating agents that, firstly, were constituted from isolated and purified proteins as mentioned in the claims and, secondly, contained those proteins as their main constituents.

In T. 390/08 the board held that the definition of a composition as "consisting of" compulsory and optional components met the requirements of Art. 84 EPC, as such a composition defined a "closed" composition from which elements other than those mentioned were excluded. See also T. 1190/01, T. 1998/07.

In T. 2027/13 the claimed composition was defined by an open formulation (in view of the word "comprising"), which already implied the presence not only of the optional excipients, but also of any additional pharmaceutically acceptable components (including impurities) and even of further release controlling agents, and the expression "consisting essentially of", which referred to a single ingredient of the composition. As the usual reading of this expression did not make sense in the case in hand, the skilled person reading the claim was at a loss as to the possible limitation introduced by the expression.

In T. 1023/02 the board expressed its view that a claim using "comprising" language should generally not be construed as covering subject-matter which included further steps of a nature that would manifestly counteract the specified technical purpose of the step(s) recited in the claim.

In T. 405/00 the board considered that, according to the language conventional for patent claims in the field of chemistry, the wording "composition comprising a persalt" defined exclusively the mandatory presence of at least one of the specific chemical compounds belonging to the group of persalts.