

more general interpretation of the claim. The board distinguished its case from T. 2259/09 and T. 236/12.

2.4.6 Deletion of feature in a claim mentioned "in particular"

In T. 260/10 the feature "having at least one optical display unit and in particular at least one operating unit ..." in claim 1 as granted had been replaced and the words "and in particular at least one operating unit" thereby deleted. The board found that it generally **depended on the specific context** whether a feature following the expression "in particular" had to be regarded as optional. As a rule, an optional feature in the main claim was one which was not essential to the claimed teaching but instead served as an example illustrating other features. The wording used in claim 1 as granted meant that the claimed domestic appliance included not only an optical display unit but also an operating unit, the expression "in particular" having to be construed in the sense of "above all" or "especially". The operating unit was specified not as an example of a possible component, but rather as an essential part of the domestic appliance. In this case, "in particular" gave special emphasis to the operating unit as part of the appliance. The scope of protection was limited by this non-optional feature and its deletion therefore infringed Art. 123(3) EPC (see also T. 916/08).

2.4.7 Deletion of a "preferred" feature in a claim

In T. 795/95 the board did not share the appellant's view that deleting the feature "preferably polyvinyl or polyethylene" from the preamble of granted Claim 1 extended the protection conferred. The formulation "preferably polyvinyl or polyethylene" had no bearing on the scope of protection, which was determined by the more general term "plastic" and not the specific preferred substances polyvinyl or polyethylene. Deleting a "preferred" feature did not extend the scope of protection if such feature was encompassed by an earlier and general one (in this case, "plastic") which determined the protection conferred.

2.4.8 Replacement of a restrictive term by a less restrictive term

In T. 371/88 (OJ 1992, 157) the board held that Art. 123(3) EPC 1973 was not contravened if a restrictive term in a granted claim which in its strict literal sense did not embrace an embodiment set out in the description was replaced by a less restrictive term clearly embracing also this embodiment, provided two conditions were fulfilled: The restrictive term should not be so clear in its technical meaning in the given context that it could be used to determine the extent of protection without interpretation by reference to the description and drawings. Moreover, it had to be quite clear from the description and drawings and also from the examination procedure up to grant that the further embodiment belonged to the invention and that it was never intended to be excluded from the protection conferred by the patent (see also T. 673/89 confirming T. 371/88; T. 738/95 distinguishing its case from T. 371/88; T. 750/02, which held that the first condition set out in T. 371/88 was not fulfilled; T. 749/03, which held that both conditions were met and which is summarised in chapter II.E.2.4.9 below).