

see also T 2130/11 (summarised in chapter II.E.1.7.3.e) "Drafting of disclaimers – clarity" below).

(i) Disclosure of the interfering document not novelty destroying

In T 747/00 the board concluded that since, in the absence of a novelty-destroying disclosure in document (5), the disclaimer removed subject-matter without any need to do so, that disclaimer necessarily removed more than was necessary to restore novelty, which was not allowable (see also T 201/99).

The board in T 1224/14 found that a disclaimer was no longer needed to restore novelty over the prior-art example 5A of D1 because the example had become irrelevant for novelty purposes following a limitation of the claimed subject-matter. The disclaimer thus removed more than was necessary to restore novelty and was therefore at odds with the decision in G 1/03.

(ii) Uncertainty about anticipation by prior art document

In T 1532/16 the disclaimer at issue was held unallowable by the opposition division on the grounds that it could not be concluded with certainty that D5 actually disclosed the subject-matter as defined by the positive features of the claim. The board agreed that the disclaimed examples of D5 could not be seen as providing an unambiguous disclosure of compositions within the terms of the positive features of operative claim 1. However, this did not necessarily mean that the requirements of Art. 123(2) EPC were not met. As the wording of the **examples** was **carefully repeated**, nothing more than what these examples disclosed was potentially removed from the claims; but to the extent that the examples were not novelty destroying, indeed nothing was in fact removed.

(iii) Disclaimer covered more than what was disclosed in the prior art

In T 1050/99 the board concluded that the disclaimer covered more than was disclosed in the prior art and thus removed from the claim more than was necessary to restore novelty. See also T 285/00 which concerned a disclaimer largely not based on the disclosure of a prior art document cited under Art. 54(3) EPC 1973, thereby rendering the remaining claimed subject-matter more distant from a relevant prior art document cited under Art. 54(2) EPC 1973.

In T 10/01 the scope of the disclaimer was broader than was necessary to restore novelty. The board nevertheless referred to point 3 of the Reasons for G 1/03, saying that it could also be inferred from that decision that a disclaimer that was broader than strictly necessary to restore novelty might be allowed, depending on the circumstances of the case, if that proved necessary to prevent any lack of clarity in the claim that might otherwise result. However, in the case at issue there was no apparent justification for the disclaimer being broader than the disclosure in document (1).

In T 8/07, however, the board observed that G 1/03 had stated that a disclaimer may serve exclusively the purpose for which it is intended. Further, the necessity for a disclaimer was