

as filed did this value form the lower (or indeed any) end point of a range of thicknesses. Recalling the relevant case law namely, T.201/83, T.1067/97 and T.714/00 (see also in this chapter II.E.1.9. "Intermediate generalisations"), dealing with extracting an isolated feature, the board examined whether or not there existed a **functional or structural relationship** between the coating layer thickness, in particular its lower limit, and the remaining features of the claim. The board concluded that the condition of absence of any clearly recognisable functional or structural relationship was not satisfied in the present case.

In T.517/07 a newly introduced upper limit had been disclosed in the original application documents only as an isolated value in example 1. The board decided that **singling out** an individual value from a specific embodiment and applying it as a new upper limit in claim 1 created a new – now capped – value range that was not disclosed in the original documents.

1.5.3 Setting new end point with not expressly disclosed value – "less than", "below" and rounding values

T.985/06 concerned amending the upper limit of a range, supported in the description as filed, to a new (lower) value not thus supported, by changing it from "1.05:1 to 1.4:1" to "1.05:1 to less than 1.4:1". The board acknowledged that "1.05:1 to 1.4:1" included all values within the stated range. However, the application as filed disclosed only the range in general; it did not specifically, and thus directly and unambiguously, disclose all values within it. The amendment therefore contravened Art.123(2) EPC.

In T.1990/10 the board had to decide whether the application as filed provided a basis for the temperature range "below 35°C" in claim 1. The application as filed disclosed various temperatures, both specific temperature values ("30°C") and temperature ranges, such as open-ended ranges ("below 37°C") and closed ranges with defined upper and lower-end values ("30°C to 35°C"). The board considered that the term "below" was explicitly disclosed only for defining the broadest mentioned temperature range, namely "below 37°C". The board held that "below 35°C" was also not implicitly derivable from the broadest open-ended range "below 37°C" in combination with the upper-end value of the closed range "30°C to 35°C". Applying the criteria of T.2/81, the combination of the lower-end and the upper-end values of the closed range with the broadest temperature range would result in the temperature ranges "30°C to below 37°C" and "35°C to below 37°C", not however, in the open-ended temperature range "below 35°C". In addition, the closed temperature range "30°C to 35°C" included the specific temperature "35°C" whereas the open-ended range "below 35°C" in claim 1 explicitly excluded this value.

In T.83/13 claim 1 as granted included the feature "an amount of less than 15% by weight", whereas the claim as filed and the original description had mentioned amounts of between 5% and 20% and between 8 and 15%. In the board's view, the wording "an amount of less than 15% by weight" included concentration values differing by one or more decimal places from which, depending on the precision of the measurement method or simply by applying rounding rules, the whole value of "15% by weight" could be arrived at. Replacing the concentration value of "15.0% by weight" with "an amount of less than 15%