

In T.1937/17 the board held that, other than for the purposes envisaged in G.1/93 (OJ 1994, 541), a "technical contribution" was of no relevance when deciding on the allowability of amendments under Art. 123(2) EPC. Instead, the gold standard set out in G.2/10 was the only criterion that had to be applied. Similarly, in T.768/20 the board found that G.1/93 concerned a limited exception (for disclaimers) to the general rule – referred to as the "gold standard" – governing the allowability of amendments. On the basis of a detailed analysis of the case law of the Enlarged Board of Appeal, the board rejected the argument made by the appellant (patent proprietor) that the gold standard was limited to amendments of the type making a technical contribution to the claimed invention.

As can be seen from the "gold standard", the assessment of the requirements of Art. 123(2) EPC is to be done from the standpoint of the **skilled person** (see chapter II.E.1.3.2 "Standpoint of the skilled person" below).

The subject-matter must be at least implicitly disclosed (T.860/00; see also G.2/10, OJ 2012, 376), see in this chapter II.E.1.3.3 "Implicit disclosure" below.

The boards have emphasised with regard to various tests developed for different cases of amendments that they are only meant to provide an indication of whether an amendment complies with Art. 123(2) EPC as interpreted according to the "gold standard". They may assist in determining the allowability of an amendment but do not take the place of the "gold standard" and should not lead to a different result. See e.g. T.648/10, T.2561/11, T.46/15, T.1420/15, T.1472/15, T.553/15, T.85/16, T.1189/16 and T.437/17 with regard to the "essentiality test", T.1471/10 and T.1791/12 with regard to "intermediate generalisation", T.1255/18 with regard to the "two-lists principle" and T.873/94, OJ 1997, 456, T.60/03 and T.150/07 with regard to the "novelty test"; note however that special criteria apply for undisclosed disclaimers; for more details on these tests, see chapter II.E.1.4.4 "The essentiality or three-point test", chapter II.E.1.9 "Intermediate generalisations", chapter II.E.1.3.7 "Novelty test" and chapter II.E.1.7 "Disclaimers".

In T.1121/17 the board recalled that the relevant question for the purposes of Art. 123(2) EPC was whether the amendments remained within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, from the whole of the application as filed ("gold standard" of G.2/10, OJ 2012, 376). An amendment having the effect of broadening the scope of protection of a claim as originally filed, for instance by generalising it so as to allow the presence of some materials in amounts which were originally excluded from the claim, did not infringe Art. 123(2) EPC if the amended subject-matter derived directly and unambiguously from the whole of the application as filed.

### 1.3.2 Standpoint of the skilled person

Any amendment can only be made within the limits of what a **skilled person** would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the documents as filed (G.2/10, "gold standard", see above chapter II.E.1.3.1).