

In T. 516/18, in order to be able to compare the claimed subject-matter with the disclosure provided by the application as filed, the board first determined the effective subject-matter resulting from the amendments in the original claims. The board recalled that, the claim must be read and construed by a person skilled in the art with a mind willing to understand, thereby giving the words the meaning and the scope that they have in the technical field relevant for the invention, including in view of the technical content of the claim. However, according to established case law of the boards of appeal, using the description and the drawings to interpret the claims was considered admissible and even necessary if the person skilled in the art, in an attempt to construe the claim with a mind willing to understand, was confronted with obscure and/or inconsistent features. In the view of the board, this was presently the case.

In T. 1127/16, however, the board held that the fact that a claim of a patent was to be construed by a mind willing to understand (T. 190/99) did not mean that the description and the drawings had automatically to be consulted when an "ambiguous" feature (i.e. a feature which at least theoretically allows more than one interpretation) occurred in the claim, or where the claim as a whole included one or more inconsistencies, in order to resolve that unambiguity or inconsistency. Rather, the claim should essentially be read and interpreted **on its own merits** (T. 1018/02, T. 1279/04, T. 1404/05, T. 197/10). The board underlined that otherwise an applicant (patent proprietor) could arguably dispense with providing a clear and unambiguous formulation of claim features, e.g. during the grant proceedings, in order to be able to fall back on a more description-based interpretation at will during subsequent opposition proceedings. Analysing claim 1 of the main request on a linguistic level, the board decided that the feature at issue would be read in a certain way. On a technical level, the skilled person would also conclude that this interpretation was entirely clear, coherent, and consistent with the other features of claim 1. This interpretation of the feature at issue lead, however, to the infringement of Art. 123(2) EPC, since no such feature was disclosed in the application as filed.

In T. 195/20 the board held that the issue was not how a linguist would construe the meaning of the sentence in question but how the person skilled in the art would. While a linguistic analysis could be helpful in determining how a skilled person would understand a phrase in a claim, the skilled person would not stop at determining the semantic roles of words in a phrase but would interpret the phrase in the context of the claimed subject-matter and the application as a whole.

On a related issue, see also chapter II.E.1.4.7 "Elimination of inconsistencies and unclear features" below.

e) Construction with regard to all technically logical interpretations

In T. 1408/04 the board held that while the claims had to be interpreted by a "mind willing to understand" and not by "a mind desirous of misunderstanding", this was understood to mean only that technically illogical interpretations should be excluded (see T. 190/99). The terms to be interpreted had a wider technical interpretation than envisaged by the appellant. A "mind willing to understand" did not require that a broad term needed to be interpreted more narrowly (even if the narrow interpretation referred to a structure which