

Art. 123(2) EPC 1973 if it contained a **feature whose definition was amended in the description** in a non-allowable way. The specific definition of a feature which according to the description was an overriding requirement of the claimed invention was applied by a skilled reader to interpret that feature whenever it was mentioned in the patent. Since in this case the definition had no basis in the application as filed, claim 1 did not meet the requirements of Art. 123(2) EPC 1973. See also T 471/20, in which the facts of the case were found to be different from T 500/01.

In T 1239/03 it was not in dispute between the parties that no part of the patent contained a definition of the ethylene content of the elastomeric copolymer in terms of weight percent. Prior to the amendment, preference was given to the interpretation "mol percent", which, with the deletion of example 3, had shifted towards "weight percent". In such a case, where it was certain that a shift in the interpretation of the claims had occurred, but uncertain if this would lead to an addition of subject-matter, the board took the view that it should be incumbent upon the patent proprietor or applicant as the author of such amendment(s) to demonstrate that the requirements of Art. 123(2) EPC 1973 were complied with in making them. In the case at issue, the patent proprietor was unable to do so. See also T 471/20, in which the facts of the case were found to be different from T 500/01.

In T 1227/10 the claim as granted was similar to the claim as originally filed. However, other than in the patent as granted, the original application also contained a figure 1 labelled as prior art and a corresponding passage of the description. The board found that the original application did not include the possibility of using a filter as gas solid separator for a certain purpose, whilst the patent as granted encompassed such a possibility. Hence, the deletion of original figure 1 and of the related passage of the description had modified the application in such a way that the granted claim 1 included subject-matter which was excluded from the originally filed invention.

1.14.5 Shift in the information provided by the examples after amendment of claims

T 97/05 concerned an amendment of a claim resulting in a shift in the information provided by examples. During the opposition proceedings, claim 1 was modified by replacing the term "chemically" with "covalently" in order to specify the nature of the bond between the anionic groups and the core. The information provided by the description was that the bonding between the core and the anionic group was "chemical" and that one type or species of "chemical" bonding was "covalent". In the board's view a consequence of the amendment of the claims by replacement of the generic term "chemically bonded" by the specific term "covalently bonded" was that the examples of the patent acquired by association information, i.e. that the anionic groups were covalently bonded to the core, which was not – even implicitly – contained by the same examples in the application as filed. Thus there was a shift in the information provided by the examples in the patent as amended according to the main request compared to that provided by the same examples in the application as filed, even though the examples themselves had not been modified (by analogy with T 1239/03). Therefore the main request did not meet the requirements of Art. 123(2) EPC 1973.