

In T 98/19 the appellants (opponents) requested that the board examine the issue of double patenting of its own motion. The board did not accede to the request. The board held that double patenting did not constitute a ground for opposition, in line with T 936/04. In the case in hand, the patent in suit had not been amended during the opposition proceedings.

In G 4/19 (OJ 2022, A24) the Enlarged Board stated that the reference to Art. 97(2) EPC in the referred question 1 made it clear that this question was restricted to the applicability of the prohibition during substantive examination proceedings under Art. 94 EPC before the examining division.