

it was only concerned with the extent of protection conferred. In the absence of an objection of lack of unity under Art. 82 EPC, the board failed to see how R. 42(1)(c) EPC could be the legal basis for requiring the applicant, as a general rule, to bring the description in line with claims intended for grant, and to remove passages of the description that disclosed embodiments which were not claimed. A number of decisions have relied on R. 48(1)(c) EPC as a potential legal basis for requiring the description to be adapted to the subject-matter as claimed. However, the board held that there was general acceptance in the travaux préparatoires that the application should not be refused even if the application as filed contained statements or other matter contrary to "ordre public" or morality. It was therefore difficult to conceive that the legislator intended to impose more severe sanctions on less offensive matter, in particular to provide a ground for refusal based on the inclusion of merely "irrelevant or unnecessary" matter. T 1989/18 was followed in T 1444/20, but not in T 1024/18, T 121/20, T 2766/17, T 2293/18.

6. Interpretation of claims

6.1. General principles

According to the established case law, the skilled person should try, with synthetical propensity, i.e. building up rather than tearing down, to arrive at an interpretation of the claim which is technically sensible and takes into account the whole disclosure of the patent. The patent must be construed by a mind willing to understand, not a mind desirous of misunderstanding (see inter alia T 190/99, T 920/00, T 500/01, T 749/03, T 405/06, T 2480/11, T 2456/12, T 383/14, T 1477/15, T 448/16).

According to T 2764/19, claims of a European patent application are typically directed to a reader skilled in the field (and aware of the respective terminology) of that application. Given that such a technically skilled reader does not normally need any further description-based guidance, claims should essentially be read and interpreted on their own merits, rather than with the aid of the description and drawings (see e.g. T 223/05, T 1404/05, T 1127/16). The wording of the claims should typically be given its broadest technically sensible meaning by such a skilled reader. See also the decisions in this chapter II.A.6.3. "Using description and drawings to interpret the claims".

A considerable number of decisions have held that the skilled person, when considering a claim, should rule out interpretations which are illogical or which do not make technical sense (see inter alia T 190/99, T 552/00, T 920/00, T 1023/02, T 749/03, T 859/03, T 1537/05, T 1204/06, T 681/15). Some decisions (T 1408/04, T 1582/08, T 493/09, T 5/14, T 2110/16) have emphasised that this is understood to mean only that technically illogical interpretations should be excluded. A mind willing to understand does not require that a broad term need be interpreted more narrowly (even if, as in the case underlying T 1408/04, the narrower interpretation would refer to a structure which is very common, but not exclusive, in the technical field concerned).

In T 1771/06 a claim specifically referred with closed language to the characterising part (GBSS gene fragment in the antisense direction) of the gene construct and, in an attempt to generalise, left open other structural elements necessary to operate the system ("comprising a fragment ... which codes for, said fragment consisting of a nucleotide