

(i) the use of a physical entity to achieve an effect, and

(ii) the use of a physical entity to produce a product.

A use claim of the latter category (ii) is to be considered as a process claim comprising physical steps for producing the product using the physical entity with the consequence that this type of use claim is a process claim within the meaning of Art. 64(2) EPC 1973. Pursuant to that article, the product insofar as it is **directly obtained** by that process, is also protected. Hence, the product, when obtained by that process, is within the scope of protection conferred by that type of use claim. Consequently, the use claim as amended conferred protection to the claimed use and to the product directly obtained by the claimed process, which, in the case at issue, extended the protection conferred (for a case where the issue of Art. 64(2) EPC 1973 was not considered, see however T 879/91).

The board in T 75/90 allowed a switch from a claim for a "transport box ... adapted for the method according to one of the claims 1 to 3" to one for the "use of transport box adapted for the method".

b) From product claim to a claim directed to using a product to achieve an effect

In T 134/95 a patent had been granted in respect of a "container for medical use", designed for the separate storage and the mixing of compounds. The protection conferred therefore related to the apparatus and, necessarily, to its use at least for the purposes of storage and mixing. After amendment, the claim became a use claim, covering only the use of the container and no longer protecting the apparatus as such. Having pointed out that inventions of this kind were designed with a particular object in mind and could not normally be used for other purposes, the board noted that in this case, the change of category, replacing the granted claim with a claim for the use of the container, had the effect of limiting the scope of protection. The two stages of the process therefore in no way had the effect of modifying the starting solutions with a view to obtaining or manufacturing a product. This use therefore fell into the category "use of a physical entity to obtain an effect or result" (see G 2/88, OJ 1990, 93), and on this basis the change of category was allowable.

A change from a product claim to a claim for the use of the product to produce an effect was also allowed in T 568/94, T 78/97, T 977/02.

c) From product claim to a claim directed to using a product for producing another product – Article 64(2) EPC

In T 912/91 the board held that the change of claim category from the granted product claims for composite bodies to use of graphite for obtaining a sintered composite ceramic body having certain characteristics did not broaden the scope of protection of the granted claims. Even if it were considered that the use claim was notionally equivalent to a claim to a process including the step of using the graphite in the sintered body and that the effect of Art. 64(2) EPC 1973 was to confer protection on the product resulting from this process as well, this would not represent an extension of protection within the meaning of