

The board in T 1269/06 held that, for the assessment of whether, contrary to Art. 100(c) EPC 1973, the subject-matter of the patent extends beyond the content of the application as filed, the key question is whether the amendments made in the description, or – as in the case at issue – the claims, did indeed provide the skilled person with additional, technically relevant information which was not contained in the original application documents. This cannot be inferred from the fact alone that terms not present in the application documents were subsequently introduced, or from a purely semantic analysis of the contested passages. Instead, the party or department raising the objection must be able to identify clearly the technical teaching as such which has supposedly been added.

In T 99/13 the board recalled, in line with the case law (see T 667/08, T 1269/06, quoted in the decision; see also e.g. T 988/91, T 494/09), that the assessment of the requirements of Art. 123(2) EPC should be done on the same basis as for all other patentability issues (e.g. novelty and inventive step), namely from the standpoint of the skilled person on a technical and reasonable basis **avoiding artificial and semantic constructions**. The skilled person, reading claim 1 as originally filed **from the standpoint of a technician working in the field**, would read the broad condition expressed therein with regard to the viscosity measurement, as a condition to be met at the temperature of use of the claimed formulation and would turn to the description to find further information in this respect. See also T 2255/12 which guards against an **overly formalistic approach** in which more emphasis is given to the literal content of the original application rather than the technical information that it conveys. In the same vein, see T 1690/15. See also T 195/20.

**Literal support** for amendments in a patent application is **not required** under Art. 123(2) EPC, insofar as the amended or added features reflect the technical information that the skilled person reading the original disclosure would have derived from its content (description, claims and drawings) considered in its entirety (T 1728/12 citing decision T 667/08; see also T 1731/07, T 45/12, T 801/13, T 1717/13 and T 640/14). See also in this chapter II.E.1.3.3 "Implicit disclosure" below.

In T 1717/13 the board noted that the respondent/opponent's objections primarily pointed to differences in the wording between the application as filed and the claim amendments. It was, however, generally accepted that for the purposes of Art. 123(2) EPC an explicit basis for an amendment in the original application documents was not required as long as the amendment was clearly and unambiguously derivable, using common general knowledge, from the application as filed.

The board in T 2619/11 took the view that the focus of the first-instance decision was **disproportionately directed to the structure of the claims** as filed to the detriment of what was really disclosed to the skilled person by the documents as filed. The application was directed to a technical audience rather than to a philologist or logician, for which audience an attempt to derive information from the structure of dependent claims would lead to an artificial result. T 1363/12 considered that T 2619/11 did not lay down a new test (namely, of what was "really disclosed" to the skilled person) different from the "gold standard" (see in this chapter II.E.1.3.1) (see also T 938/11). See also T 1194/15 (referring to T 2619/11) which accepted in the case at issue that the incorporated features were