

sequence selected from ... SEQ ID No: ..."). According to the board this was not an unusual claim formulation. The board did not accept the appellant's argument that the scope of the claim extended to gene constructs which comprised any DNA in addition to the GBSS gene fragments. The skilled person would certainly take into account the fact that the gene construct was made for the purpose of introducing the GBSS DNA fragment into the potato cells and integrating it into the genome. Accordingly, the gene construct would be thought to contain all necessary DNA elements for these steps to take place.

In T.409/97 the board held that an erroneous statement in the introduction to the description was of no assistance in interpreting the claim and establishing the subject-matter for which protection was being sought, where this statement contradicted its actual content.

Two methods having no technical bearing on each other cannot form a single multi-step process (i.e. a "technical whole") even though they are linguistically linked together in a claim (T.380/01).

A prerequisite for arriving at a technically sensible claim interpretation is that the claim is technically consistent: if two features are separately clear, but inconsistent with each other from a technical point of view, then their combination, and the claimed matter, cannot be clear (T.935/14).

In T.1513/12 the board noted that an interpretation of a claim agreed by the parties to the proceedings was not to be regarded as binding on the board: the "principle of party disposition" was not to be understood as meaning that the parties to the proceedings could choose an interpretation of the patent which, although it might be satisfactory for them, might have implications for others not party to the proceedings.

In T.1603/13 the board stated that claims could not be interpreted in a manner that would contradict the idea of the invention as disclosed in the original application. The case law on correction of errors on the basis of the common general knowledge could not be extended to cases where the deviation from the common general knowledge and in particular from generally accepted laws of physics in the description had been deliberately chosen in order to describe the invention and thus could not be identified as an error.

See also chapter I.C.8.1.3 c) "Interpretation of process claims".

6.2. Meaning of terms and phrases: "comprising (substantially)", "consisting (essentially) of", "containing"

In T.759/91 and T.522/91 the claims contained the expression "comprising substantially". The board was of the opinion that this term lacked clear, explicit boundaries and its scope needed interpretation. While in everyday language the word "comprise" might have both the meaning "include" or "comprehend" and "consist of", in drafting patent claims legal certainty normally required it to be interpreted by the broader meaning "include" or "comprehend" (see e.g. T.457/02). The word "substantially" imposed a restriction on the word "comprising" in the sense that "to a large extent only that is comprised which is