

In T.2151/14 the board had to deal with the omission from claim 1 as granted of the term "publishing" used in connection with the server to which the claimed method claim related. The board noted that in the application as filed, the term "published" appeared to be used as a synonym for "made available", which, however, was an implicit function of a server. Beyond this, in its broadest interpretation, the term "publishing" in claim 1 as granted had no technical significance. It could therefore be omitted without infringing Art. 123(3) EPC (see G 1/93, OJ 1994, 541, point 4 of the reasons). See also T.958/15.

3.2.4 Added undisclosed feature, which does not provide a technical contribution and does not contravene Article 123(2) EPC

G 1/93 (OJ 1994, 541) stated that the underlying idea of Art. 123(2) EPC 1973 was clearly that an applicant should not be allowed to improve his position by adding subject-matter not disclosed in the application as filed, which would give him an unwarranted advantage and could be damaging to the legal security of third parties relying on the content of the original application. If, however, an added feature merely excluded protection for part of the subject-matter of the claimed invention as covered by the application as filed, the adding of such a feature could not reasonably be considered to give any unwarranted advantage to the applicant. Nor did it adversely affect the interests of third parties. Therefore, a feature which had not been disclosed in the application as filed but which had been added to the application during examination was not to be considered as subject-matter which extended beyond the content of the application as filed within the meaning of Art. 123(2) EPC 1973, if it **merely limited the protection conferred** by the patent as granted by excluding protection for part of the subject-matter of the claimed invention as covered by the application as filed, **without providing a technical contribution** to the subject-matter of the claimed invention (see also T.112/95).

These principles were in general confirmed in G 2/10 (OJ 2012, 376), see also G 2/98 (OJ 2001, 413). Pursuant to G 2/10 it was, however, evident from the context that by introducing the "technical contribution" criterion in G 1/93 the Enlarged Board had not intended to amend the definition concerning when an amendment was allowable under Art. 123(2) EPC generally, but that it only had sought a way of avoiding the potentially fatal consequences of the patentee being caught in the "inescapable trap" between the requirements of Art. 123(2) and (3) EPC. See also T.1937/17 and T.768/20.

The question of whether an added feature made a technical contribution has been discussed in numerous decisions.

In T.384/91 (OJ 1995, 745) it was held that the added feature did make a technical contribution. This decision was based on the following considerations: the example mentioned by the Enlarged Board illustrated a case where the feature was clearly not merely a limitation. However, the borderline beyond which a feature was no longer to be considered as making a technical contribution to the subject-matter of the claimed invention and was merely limiting the protection conferred, was not co-terminous with this example but lay between it and the limit of complete technical irrelevance. According to the board this view was consistent with the fact that the Enlarged Board had rejected relevance as a criterion for novelty and inventive step, which would also have implied a