

manufacturing method, a process of producing a compound, a method of testing, etc.). Furthermore, claims including both features relating to physical activities and features relating to physical entities are also possible. There are no rigid lines of demarcation between the various possible forms of claim.

1.3. Technical features

Under the EPC the claims must define the matter for which protection is sought "in terms of the technical features of the invention" (R. 43(1) EPC). In G 2/88 the Enlarged Board described the technical features of the invention as being the physical features which are essential to it. The technical features of a claim to a physical entity are the physical parameters of the entity, and the technical features of a claim to an activity are the physical steps which define such activity. The Enlarged Board also pointed out, however, that the boards of appeal had in a number of cases allowed the technical features to be defined functionally in certain instances. See in this chapter II.A.3.4.

1.4. Examination of clarity post-grant

Art. 84 EPC is not a ground for opposition. However, when substantive amendments are made to a patent during an opposition, consideration has to be given to whether the amendments introduce any contravention of any requirement of the EPC, including Art. 84 EPC (T 301/87, OJ 1990, 335). In G 3/14 the Enlarged Board analysed whether, and if so to what extent, the requirements of Art. 84 EPC may be examined in opposition and opposition appeal proceedings, in particular if the amended claim is a mere combination of a granted independent claim and granted dependent claims or elements thereof. The Enlarged Board approved T 301/87 and held that, for the purposes of Art. 101(3) EPC, the claims may be examined for compliance with Art. 84 EPC only when, and then only to the extent that the amendment introduces non-compliance with Art. 84 EPC. G 3/14 has been applied in e.g. T 1977/13, T 1905/13, T 565/11, T 248/13, T 1287/14, T 2311/15, T 2321/15, T 1221/19 (clarity of adapted description). See also chapter IV.C.5.2.2 "Extent of power to examine amended claims for compliance with Article 84 EPC".

In G 2/19 (OJ 2020, A87), the Enlarged Board of Appeal held as follows:

Where, although a clarity objection based on Art. 84, second sentence, EPC is not a valid ground for opposition (Art. 100 EPC), a third party within the meaning of Art. 115 EPC chooses to file an "appeal" in order to have this objection nevertheless heard at a higher instance, this amounts to an attempt to circumvent the rules and is thus a clearly inadmissible means of redress.

In T 1661/16 the board found that independent claim 7 lacked clarity: the last feature, added during the opposition procedure and objected to by the appellant (opponent), left it unclear to the skilled person what further structural or functional limitation to the claimed arrangement could be implied by this feature. Rejecting different arguments from the patent proprietor, the board emphasised that the clarity requirement of Art. 84 EPC for an amendment was a substantive one, and that the subjective component in the task of