

In T.484/92 the board concluded that, in contrast to T.409/91, the requirement of support by the description had been met and the appellant was entitled to claim the alleged invention in broad functional terms, i.e. in terms of the desired end effect, because, having disclosed one mechanism for achieving that goal, there were alternative ways of performing the invention at the disposal of the person skilled in the art, which would become apparent to him upon reading the description, based on his common general knowledge.

5.3. Bringing the description into line with amended claims

In T.977/94 the board decided that if the patentee amended his claims he had also to bring the description into line with them, because of its fundamental importance. An invention was only claimable to the extent that it was supported by the description (Art. 84, second sentence, EPC 1973), and the claims were interpreted in the light of the description (Art. 69 EPC 1973). So it was necessary to check that the essential elements of the invention claimed were also described as such in the description. See also T.300/04, T.1399/17.

In T.295/02 the board found that an inconsistency between a claim and the provisional description was not a valid reason to refuse the application if the inconsistency arose from an amendment, if it was apparent that the text of the description was not intended by the applicant to form the agreed basis of any decision, especially one concerning its consistency with the amended claims, and if the appellant was prepared to adapt the description to conform to a definite allowable set of claims.

In T.1808/06 the board recalled that, in order to meet the requirement of Art. 84 EPC that the claims have to be supported by the description, any disclosure in the description and/or drawings inconsistent with the amended subject-matter should normally be excised (see also T.1883/11, T.1252/11, T.237/16). Reference to embodiments no longer covered by amended claims must be deleted, unless these embodiments can reasonably be considered to be useful for highlighting specific aspects of the amended subject-matter. In such a case, the fact that an embodiment is not covered by the claims must be prominently stated (see also T.987/16). Reference to Art. 69(1) EPC was not an appropriate justification for a less stringent adaptation of the description and in so far misleading as it could be understood to suggest a direct applicability of its contents at the examination or opposition stage. This was clearly not the case as Art. 69(1) EPC related to the scope of protection (see in this chapter II.A.6.3.2). It was only in situations where the removal of inconsistencies was not possible for procedural reasons (e.g. no amendment possible of the granted version) that – purely as an auxiliary construction – Art. 69(1) EPC could be invoked for an interpretation of the claimed subject-matter.

In T.1989/18 the board observed that the description could not be relied upon to resolve a clarity issue in a claim, nor could it give rise to any such issue if the definition of the subject-matter in a claim was clear per se. In particular, if the claims were clear in themselves and supported by the description, their clarity was not affected if the description contained subject-matter which was not claimed. Art. 84 EPC could not serve as a legal basis for a refusal in such instances. When assessing clarity, Art. 69 EPC was of no relevance since