

In T.1279/04 the board did not share the appellant's (patent proprietor's) view that, for the purposes of assessing novelty in opposition proceedings, claims should be interpreted in accordance with Art. 69(1) EPC 1973 and the Protocol on its interpretation (see also T.1047/11, T.1578/13). Art. 69(1) EPC 1973 and its Protocol related to the extent of protection conferred by the patent or patent application, which was primarily of concern in infringement proceedings. They served to determine a fair protection – inter alia by reference to the description and drawings – in circumstances where the claim wording was set in stone. By contrast, in examination and opposition proceedings the value of future legal certainty was paramount. In this forum the function of the claims was to define the matter for which protection was sought (Art. 84 EPC 1973, first sentence). There was no case for anything other than a strict definitional approach (for an interpretation of this approach, see T.1534/12), given that in this procedural stage the claim could and should be amended to ensure legally certain patentability, in particular novelty and inventive step over any known prior art. Amendment rather than protracted argument should be the answer to genuine difficulties of interpretation in all aspects of the examination and opposition procedure, it being acknowledged that amendments to a patent as granted should be occasioned by grounds for opposition. See also T.145/14.

Likewise in T.1808/06 the board emphasised that, when the description has to be amended with regard to the requirement of Art. 84 EPC, 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.

See also in this chapter II.A.6.3.4 "Reading additional features and limitations into the claims".

6.3.3 Interpretation of ambiguous terms or confirmation of the text of a claim

Many decisions which use the description and drawings to interpret the claims concern the interpretation of relative, ambiguous or unclear terms or cite the description merely to confirm the most obvious interpretation of the text of a claim (e.g. T.23/86, OJ 1987, 316; T.16/87, OJ 1992, 212; T.952/90; T.439/92; T.458/96; T.717/98; T.556/02; T.2145/13).

In decision T.50/90 the board pointed out that the description and drawings were used to interpret relative terms contained in the claims when the extent of protection had to be determined.

When the technical content of the claims and the description clearly establish how an invention operates, these features cannot be disregarded for the purposes of assessing patentability by interpreting them merely as defining an intended use (T.458/96).

In several decisions the boards have stated that terms used in patent documents should be given their normal meaning in the relevant art, unless the description gives them a special meaning (see e.g. T.1321/04, T.1089/11, T.25/15, T.1844/15). According to the established case law, the patent document may be its own dictionary (see e.g. T.311/93, T.523/00, T.1192/02, T.61/03, T.1321/04, T.1388/09, T.2480/11, T.1817/14; see also in