

In T.795/92 the board stated that Art. 123(2) EPC 1973 clearly precluded allowing an amendment if there was any doubt as to whether or not it was derivable from the original application. In the case at issue, in spite of a certain probability in favour of the appellant's (patentee's) position, the amendment was not allowable because there were various known methods for calculating the value in question, not all leading to identical results, and the application did not directly and unambiguously disclose which method had to be used.

The board in T.307/05 stated that, as indicated in the decision T.64/03, it was established case law that a **very rigorous standard**, namely that of "beyond reasonable doubt", was to be applied when checking the allowability of amendments under Art. 123(2) and 123(3) EPC. A similar rigorous standard was also expressed in the decision T.581/91 relied on by the board in its communication by reference to the decision T.113/86, in which it was stated that the **slightest doubt** that the unamended patent could be construed differently to the patent as amended would preclude the allowability of the amendment (see also T.370/10, T.2285/09, T.2418/13). While it was true that, as argued by the appellant, decision T.113/86 referred to voluntary amendments requested by the patentee and not necessitated by any ground of opposition, the fact that the amendment would be, as in the present case, necessitated by a ground of opposition (i.e. Art. 100(c) EPC) could not, in the board's view, justify the application of a lower standard of proof than the one mentioned in that decision. On the contrary, a very rigorous standard was even more justified in the case in question, since allowing such amendments while using a lower standard of proof might give an unwarranted advantage to the patentee in the overcoming of a ground of opposition.

In T.1248/08, in the application as filed, a number pertaining to a value used in example 1 was illegible and indecipherable. It was not clear whether it should read "0.08" or "0.09", or even "0.05". The board was not persuaded by the appellant's arguments that the actual disclosure of that figure was unequivocal and that it read "0.09". The board held that the arguments of the appellant adopting proof "on the balance of probability", in particular a **survey**, had to fail. According to this survey – conducted amongst partners and staff at the firm of the appellant's representative – a total of 67 out of 72 test persons had indicated the relevant entry in Table 1 to be "0.09" without qualification. However, it was also found that two respondents had indicated another figure ("0.08") and that three further respondents who indicated "0.09" had also considered other possibilities. In the board's opinion, therefore, these results demonstrated that the value in question could not be considered to be "0.09" with a certainty "beyond reasonable doubt". In any event, a question of accuracy and disclosure could not be decided by a poll. With reference to G 11/91, the board also decided that the disclosure of the priority document could not be used to dispel doubts as to the meaning of an ambiguous part of the application. The same applied to the family documents, for the reason that the text of another patent application based on the same priority document did not need to be identical to the European patent application. See also T.2058/18.

In T.2275/17 the calculation method for a certain parameter was replaced by a specific value. The board agreed with the proprietor that no specific evidence had been presented to demonstrate that this shift in the scope of claim 1 necessarily led to a problem under