

and has frequently been cited by the boards of appeal when applying principles laid down in it.

### 1.1. Principles of interpretation of the Vienna Convention

It is established in the jurisprudence that the principles of interpretation provided for in Art. 31 and 32 Vienna Convention are to be applied when interpreting the EPC. Decisions and opinions given by national courts in interpreting the law may also be taken into consideration (G 2/12, G 2/13, G 3/19, OJ 2020, A119). These principles have been acknowledged and applied by the Enlarged Board and the boards of appeal alike (G 5/83, G 2/02 and G 3/02, OJ 2004, 483; G 2/08, OJ 2010, 456; G 3/14, OJ 2015, A102; G 1/16, OJ 2018, A70; G 1/18, OJ 2020, A26; J 10/98, OJ 2003, 184; T 128/82, OJ 1984, 164; T 1173/97, OJ 1999, 609; T 1807/15, OJ 2021, A92; J 12/18).

#### 1.1.1 The interpretation of good faith in accordance with the ordinary meaning

In G 2/08 (OJ 2010, 456) the Enlarged Board stated that from the reading of Art. 31 and 32 of the Vienna Convention taken together it follows that the provisions of a treaty (here the EPC) must first be construed according to the ordinary meaning of the terms in their context and in the light of its **object and purpose**, which means that the judge is not entitled to depart from clear provisions of law, this principle pertaining to the requirement of good faith. From the wording of Art. 32 Vienna Convention it can also be derived that **preparatory documents** are primarily to be drawn into consideration in order to confirm a meaning or to determine a meaning if the first and ordinary means of construction would lead to ambiguity or to an absurd result (see also decision G 1/07 of 15 February 2010, OJ 2011, 134, point 3.1 of the Reasons; G 1/18, point III. of the opinion).

In G 2/12 and G 2/13 (OJ 2016, A27 and A28) the Enlarged Board stated that this objective method of interpretation is directed to establishing the "authentic" meaning of the relevant provision and its legal terms. The starting point of interpretation is thus the wording, i.e. the "objective" meaning, regardless of the original "subjective" intention of the contracting parties. To this end, the provisions are to be read in their context so that they comply with the object and purpose of the EPC.

In T 1173/97 the board analysed some aspects of the meaning of the expression "computer programs as such", with the emphasis on the "as such", and arrived at the conclusion that a computer program product is not excluded from patentability if it possesses the potential to bring about a "further" technical effect. The board was of the opinion that that interpretation to the exclusion of computer programs as such under Art. 52(2)(c) and (3) EPC 1973 was in full agreement with the provisions of the Vienna Convention. In its interpretation the board did not go beyond the ordinary meaning given to the terms of the EPC. The meaning it attributed to the expression "as such" in Art. 52(3) EPC 1973 was, in its opinion, not a special meaning within the meaning of Art. 31(4) Vienna Convention, which would have required the consent of the parties to the EPC. This decision has been mentioned here since it refers to the Vienna Convention; for the current state of play for the patentability of computer programs, see chapter I.A.2.4 and I.D.9.2.9.