

1.12.2 Incorrect structural formula

In T 552/91 (OJ 1995, 100) the question arose as to whether and in what form protection could be obtained for groups of chemical substances and individual compounds whose originally disclosed structural formula proved incorrect. The applicant's main request was aimed at securing such protection by a further substance claim for the group of compounds with the structural formula subsequently found to be correct. This request was refused on the grounds that it would violate Art. 123(2) EPC 1973. The board held that the subsequently amended general formula gave the skilled person for the first time crucial information about the true chemical structure of the group of substances. This led to conclusions regarding properties that could be put to use. The information added to the application through the amendment of the general formula and relating to the true composition of the group of substances could not have been obtained from the application as originally filed (for decisions referring to T 552/91, see T 1074/97 and T 2003/07; for a further example of the correction of an error in a formula, see T 1728/07).

1.12.3 Amendment based on erroneous figure in the disclosure

In T 740/91 the board allowed a change in the upper limit of a range from 5 % to 0.6 %. The value of 0.6 % was explicitly disclosed in example IV. However, the patentee conceded that this figure had been inserted in error in place of the true figure of 0.49 %. The board concluded that the fact that the figure was wrong did not alter the fact that it was actually and credibly disclosed. It could thus be relied on as the basis for the new upper limit. This interpretation of Art. 123(2) EPC 1973 was consistent with its underlying intention, which was to protect the public from being faced at a later stage with claims which were wider in their scope than what had been disclosed in the application as filed, and published for the information of the public, including the applicant's competitors. In this case, any such competitor who had read the application as first published had formed the view that the originally claimed range of 0.1 to 5 % was too wide in the light of the prior art, and had thought that the broad claim could not validly be sustained. He would have seen at once that the highest figure for the cured epoxy resin given in any example was 0.6 %, as clearly disclosed in example IV, and therefore could not have been taken by surprise if the upper limit of 5 % were later to be reduced to 0.6 %.

1.12.4 Incorrect information in earlier application as filed but correct information directly and unambiguously derivable

In T 1088/06 an appeal was filed against the decision of the examining division refusing the European patent application, which had been filed as a divisional application, on the ground that the application extended beyond the content of the earlier application as filed. Both the expression " 10^{-4} to 10^{-9} " and the expression " 10^4 to 10^9 " had occurred several times in the earlier application; the divisional application referred to a range between about 10^4 to 10^9 Ohm/cm². The examining division held that the correct range could not be directly and unambiguously derived from the parent application as originally disclosed. The board could not agree. If information in the earlier application was **objectively recognisable** by the person skilled in the art as information that was **incorrect**, and if the person skilled in the art would derive the correct information directly and unambiguously,