2.1. Correction of the text of a patent

Under the boards' case law prior to **G 1/10** (e.g. **T 850/95**, OJ 1997, 152; **T 425/97**, **T 965/98**) the text of a patent could be corrected under R. 140 EPC if it was not, and obviously could not be, in the form intended by the decision-making department.

T 367/96 of 21 June 2001 and **G 1/97** introduced a narrower interpretation of R. 140 EPC. According to this, R. 89 EPC 1973 had to be interpreted narrowly and only allowed for the correction of formal errors in the written text of the decision notified to the parties in accordance with R. 111 EPC (R. 68 EPC 1973). It did not, however, pave the way for re-examination of the factual or legal issues on which a decision was based, nor for reversal of any conclusion derived by the decision-making department from a consideration of these issues.

In **G 1/10** (OJ 2013, 194), the Enlarged Board went further, holding that, although patent documents referred to in a grant decision become an integral part of the decision, they cannot be corrected under R. 140 EPC. Since R. 140 EPC is not available to correct the text of a patent, a patent proprietor's request for such a correction is inadmissible whenever made, including during opposition or limitation proceedings (now established case law of the Boards of Appeal, see e.g. **T 2051/10**, **T 657/11**, **T 1578/13**, **T 164/14**). The Enlarged Board's decision was limited to corrections within grant decisions of the description, claims and drawings (patent documents), and not concerned with corrections of bibliographic data.

The Enlarged Board stated that the absence of a possibility to request patent corrections under R. 140 EPC should not prejudice patent proprietors. If a correction is obvious (as it should be to satisfy R. 140 EPC) then there will be no surprise or adverse effect on opponents or others, because all concerned should read the patent as if corrected and an actual correction is unnecessary. If, however a correction is less than immediately obvious, it should not be allowed under R. 140 EPC anyway, which is confined to correction of "obvious mistakes". If, given the opportunity to check the patent text before approving it, an applicant does not draw any errors to the attention of the examining division and thus ensures that his approval is limited to the correct text, then the responsibility for any errors remaining in that text after grant should be his alone, whether the error was made (or introduced) by him or by the examining division.

If however the examining division proceeds to make a decision to grant which contains an error subsequently made by it, so that the granted text is not that approved by the proprietor, then the proprietor is adversely affected by that decision and is entitled to appeal. A patent proprietor may seek to amend his patent during opposition or limitation proceedings and such an amendment could remove a perceived error, however, it would have to satisfy all the legal requirements for amendments including Art. 123 EPC.

In **T 506/16** the board held that according to **G 1/10**, the obligation to check the text in which the patent is to be granted lies with the applicant, and if it does not draw the examining division's attention to any errors, then the appellant alone bears the