

as a purpose-related product claim. Therefore, in the case at issue, the amended claims had to remain in the "Swiss form" in order not to contravene Art. 123(3) EPC.

In T 1780/12, in the context of double patenting, the board understood that the board in T 250/05 had considered that the scope of protection conferred by a purpose-related product claim was in fact larger than the scope of protection conferred by a Swiss-type claim. See also T 879/12.

In T 1673/11 claim 1 of the main request was drafted in the format of a purpose-limited product claim as provided for by Art. 54(5) EPC, whereas all claims as granted had been in the so called "Swiss-type" form. For the respondent, the protection conferred by both types of claims was the same. The board disagreed. The purpose-limited product claim conferred protection on the product, whenever it was being used for the treatment of infantile Pompe's disease. Since the claim did not refer to a step of manufacture of a medicament, the product claimed was not limited to a manufactured medicament, packaged and/or with instructions for use in the treatment of infantile Pompe's disease. Even if by virtue of Art. 64(2) EPC the protection conferred by granted claim 1 extended to the product directly obtained by the manufacturing process referred to in said claim, the protection conferred by claim 1 of the main request was broader. Nor could the board follow the appellant's argument that since the use limitation of the claims of the main request and of the granted claims was the same, their scope of protection was identical. For example, once the patent was amended, a medicament containing the product, packaged and provided with instructions for the use in a treatment other than that of infantile Pompe's disease was encompassed by the scope of claim 1 of the main request when said medicament was being used for the treatment of infantile Pompe's disease. The protection conferred by granted claim 1 did not encompass such use. The board concluded that the amendment of the contested patent in such a way extended the protection it conferred, contrary to Art. 123(3) EPC.

3. Relationship between Article 123(2) and Article 123(3) EPC

This chapter concerns the "inescapable trap" of Art. 123(2) EPC in combination with Art. 123(3) EPC when the applicant inadmissibly adds a limiting feature to the claim. A similar trap may exist in the situation in which there is no violation of Art. 123(2) EPC but a lack of novelty due to loss of priority, see T 1983/14 summarised in chapter II.E.2.4.1 above. For the situation in which an unclear feature (Art. 84 EPC) is deleted from the claim and the argument that this also might lead to an "inescapable trap", see T 81/13 summarised in chapter II.E.1.4.7 above.

3.1. Inescapable trap

In T 384/91 (OJ 1994, 169) the question was referred to the Enlarged Board whether, given the requirements of Art. 123(2) and (3) EPC 1973, a patent could be maintained in opposition proceedings if its subject-matter extended beyond the content of the application as filed, whilst at the same time the added feature limited its scope of protection. The conflict here was that the "limiting extension" had to be deleted as a breach of