

In T 495/06 the appellant's argument that the amendments were "not inconsistent" with the original disclosure failed to persuade the board, since the applicant thereby invoked a less stringent criterion for compliance with Art. 123(2) EPC than that developed in the jurisprudence of the boards of appeal, namely the question whether the amendment was "directly and unambiguously derivable" from the application documents as originally filed.

In earlier decisions, such as in T 514/88 (OJ 1992, 570) the boards observed that the relevant question was whether or not the amendment was "consistent with the original disclosure"; the boards clarified that this meant direct and unambiguous derivability from and no contradiction of the totality of the original disclosure (see also T 527/88 and T 685/90).

b) Reasonable plausibility of the included feature

In T 824/06 the opposition division had rejected the main request because its subject-matter included a temperature maximum for the first *and* the second cooling step whereas the application as originally filed disclosed the requirement that the surface is brought down to this maximum only in relation to the overall cooling treatment. The proprietor had argued that reducing the temperature to this value during the first cooling would be reasonable. The board stated that for an amendment to be allowable under Art. 123(2) EPC its direct and unambiguous disclosure was required; reasonable plausibility was insufficient.

1.3.6 Criteria not relevant for assessing compliance with Article 123(2) EPC

a) Indication in the description that subject-matter is known to the skilled person

In T 903/16 the examining division had argued that the original disclosure did not indicate or imply that the devices described therein could be new and inventive and had considered the later claiming of such devices as an infringement of Art. 123(2) EPC. The board emphasised that the fact that in the application the disclosed range of devices is stated to be within the means known to the skilled person may be considered when examining other EPC requirements, but it has no bearing on the question of disclosure for the purposes of Art. 123(2) EPC.

b) Enabling disclosure

In T 1724/08 the board held that the criterion of "direct and unambiguous disclosure" was quite different from the criterion submitted by the appellant, namely whether a person skilled in the art in view of the disclosure was enabled to achieve the envisaged result, i.e. the claimed functionality, without undue difficulty. This latter criterion would allow many different new definitions of subject-matter, none of which would need to be derivable "directly" and "unambiguously" from the earlier application as filed.

In T 2593/11 the examining division had taken the view that it was not self-evident that devices according to claim 1 could actually be manufactured using a specific fabric and, therefore, the manufacturing of the device using this fabric was not disclosed. The board