

consideration when working on the invention (see G 1/03, OJ 2004, 413). Thus the disclosure of D1 could not be considered to constitute an accidental anticipation.

In T 1146/01 the board held that comparative examples of D1, although teaching what not to do, nevertheless served to elucidate the teaching of the document as a whole and were closely related to the other experiments disclosed in the document. Although it could be said that a comparative example had a "negative relevance", it was neither remote from nor unconnected from the disclosure in the document. Thus, although the comparative examples of D1 provided a teaching not to be followed, this did not mean that their information was not part of the disclosure of D1 or would not be considered by an inventor working on his invention.

In T 1218/14 the board clarified the meaning of the criterion mentioned in G 1/03 (OJ 2004, 413) that an accidentally novelty-destroying disclosure had to be completely irrelevant for inventive step. The finding that the claimed subject-matter was inventive in view of D1 as a secondary document did not mean that D1 was irrelevant to inventive step within the meaning of this criterion. This criterion had to be understood not as an alternative, or additional criterion, but as a consequence of the criterion in G 1/03 and G 1/16 (OJ 2018, A70) that, from a technical point of view, said disclosure was so unrelated and remote that the person skilled in the art would never have taken it into consideration when making or working the invention.

Other decisions too have had to establish whether or not the anticipation was accidental. In the following decisions, the boards ruled that the anticipation was **not** accidental and that the disclaimers were therefore inadmissible: T 1086/99, T 584/01, T 506/02, T 285/00, T 134/01 (field of pharmaceuticals, same illness; findings summarised by the board in T 1911/08, in which account was also taken of T 739/01, T 580/01 and T 639/01), T 351/12, T 632/12. For decisions in which the boards found that the anticipation was accidental, see e.g. T 717/99 and T 3077/19 (technical field of E4, namely car blankets, considered remote from therapeutic treatment).

b) Drafting of disclaimers – disclaimer to remove no more than necessary

Regarding the drafting of disclaimers, the Enlarged Board of Appeal stated in G 1/03 and G 2/03 (OJ 2004, 413 and 448) and confirmed in G 1/16 (OJ 2018, A70) that the disclaimer should not remove more than was necessary to restore novelty or to disclaim subject-matter excluded from patentability for non-technical reasons. The need for a disclaimer was not an opportunity for the applicant to reshape his claims arbitrarily. In G 2/10 (OJ 2012, 396) the Enlarged Board held that the requirement that "the disclaimer should not remove more than is necessary to restore novelty" was not suitable for the disclaiming of disclosed subject-matter, since in that case the wording of the disclaimer must be configured in accordance with the disclosure of the disclaimed subject-matter in the application as filed.

As to the relationship between the requirement that "the disclaimer should not remove more than is necessary to restore novelty" and the requirement of clarity and conciseness,