

security of third parties relying on the content of the original application (see G 1/93, OJ 1994, 541); otherwise, at a later stage the public could be faced with claims extending beyond what was disclosed in the application as filed and published (T 740/91 and T 1227/10). The public may not be confronted with an extent of protection, which could not have been established by a skilled person having studied the whole content of the technical disclosure of the originally filed patent application (T 157/90; see also T 187/91 and T 2327/18, which cites G 2/10, OJ 2012, 376, point 4.5.5 of the Reasons).

The **"gold standard"** (G 2/10, OJ 2012, 376) for assessing compliance with Art. 123(2) EPC is the following: any amendment to the parts of a European patent application or of a European patent relating to the disclosure (the description, claims and drawings) is subject to the mandatory prohibition on extension laid down in Art. 123(2) EPC and can therefore, irrespective of the context of the amendment made, only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of these documents as filed (G 3/89, OJ 1993, 117; G 11/91, OJ 1993, 125). After the amendment the skilled person may not be presented with new technical information (G 2/10; see however G 1/16 for undisclosed disclaimers). For details, see in this chapter II.E.1.3. "Standard for assessing compliance with Article 123(2) EPC" further below; for more details on G 1/16, OJ 2018, A70, see chapter II.E.1.7. "Disclaimer" below.

Art. 123(2) EPC applies to all amendments to the patent application or patent. These include corrections of the description, claims or drawings under R. 139, second sentence, EPC (for details, see in this chapter II.E.4. "Correction of errors in the description, claims and drawings – Rule 139 EPC").

The Enlarged Board has stressed the importance of applying a **uniform concept of disclosure** (with reference to Art. 54, 87 and 123 EPC; see G 2/10, OJ 2012, 376, point 4.6 of the Reasons, citing G 1/03, OJ 2004, 413; see also G 1/15, OJ 2017, A82, with reference to G 2/98, OJ 2001, 413). See also e.g. T 330/14.

In the case of divisional applications, the same principles are to be applied for determining whether subject-matter extends beyond the content of the earlier application as filed (G 1/05, OJ 2008, 271, point 5.1 of the Reasons). The decisions dealing with such cases are therefore also reported in this chapter.

The same principles also apply to the ground for opposition under Art. 100(c) EPC.

The ground for opposition under Art. 100(c) EPC and the corresponding requirement of Art. 123(2) EPC in regard to any amendment carried out on the patent in the course of the opposition and opposition appeal proceedings are of equal fundamental importance compared to other requirements, such as e.g. novelty, inventive step or sufficiency of disclosure, when it comes to deciding whether a patent can be maintained; also, extension of subject-matter in the terms of Art. 123(2) EPC is not a question of "form" of the patent, which might fall under the heading of a "formal requirement", but a substantive one (T 2171/14).