

technical subject-matter had been added or not. Since the members of a board of appeal were only required to be technically (or legally) qualified under Art. 21 EPC 1973, it would be up to the applicant (or patent proprietor) in such circumstances to provide evidence permitting a board to determine to its satisfaction how a person skilled in the relevant non-technical field would interpret the original patent application and the application (or patent) after amendment. For the case law on non-technical distinguishing features in the framework of novelty, see chapter I.C.5.2.8 above.

### 1.3.9 Claim interpretation when assessing compliance with Article 123(2) EPC

#### a) Standpoint of the skilled person

In T 99/13 the board recalled that, in line with the case law (see T 667/08, T 1269/06), the assessment of the requirements of Art. 123(2) EPC should be done on the same basis as for all other patentability issues (e.g. novelty and inventive step), namely from the standpoint of the skilled person on a technical and reasonable basis avoiding artificial and semantic constructions. For details see above chapter II.E.1.3.2, which also contains references to decisions confirming or rejecting the application of the jurisprudence referring to "a mind willing to understand" when assessing compliance with Art. 123(2) EPC; on this latter point, see also below in points c) and d) the abstracts of decisions T 1946/10, T 2002/13, T 1127/16, T 516/18. Generally on claim interpretation, see also chapter II.A.6.1.

#### b) Claim feature in itself imparts clear credible teaching

The board in T 1018/02 stated that although a claim was not to be interpreted in a way which was illogical or did not make sense, the description could not be used to give a different meaning to a claim feature which in itself imparted a clear, credible technical teaching to the skilled reader. That also applied if the feature had not initially been disclosed in the form appearing in the claim (see also e.g. T 1195/01, T 474/15). In the case at issue the claim feature in question would have had to be deleted to achieve consistency with the original disclosure; however this was not possible under Art. 123(3) EPC 1973. See also T 197/10, which (in the context of examination of novelty) confirmed the approach that, in the event of a discrepancy between clearly defined claims and the description, those elements of the description not reflected in the claims are not, as a rule, to be taken into account.

In T 30/17 the board (considering added subject-matter) noted that Art. 69 EPC and its Protocol did not provide a basis for excluding what is literally covered by the terms of the claims, as these provisions related to the patent's (or patent application's) "extent of protection", which was primarily of concern in infringement proceedings. The board emphasised that in examination and opposition proceedings the value of future **legal certainty** was paramount. In the case in hand, the respondent (proprietor) had argued that the expression at issue in claim 1 as granted was linguistically meaningless and that the meaning could only be found by taking into consideration the claim context, the description and the general knowledge of the skilled person in the art. The board, however, considered that the expression was per se not ambiguous and emphasised that a (purported)