

presence. However, in the case at issue, the application as filed was silent as regards the components which, in addition to those defined in claim 1 at issue, could be allowed in the claimed refractory without affecting its essential characteristics.

In T 107/14 the appellant (opponent) argued that claim 1 extended beyond the content of the application as filed because it was directed to an alloy **"consisting of"** the given elements, whereas claim 1 as originally filed related to an alloy "comprising" the given elements. The board held that, since the originally filed claim 1 already disclosed that the rest of the composition consisted of Ni, not allowing for the presence of further elements, and thus was already directed to closed compositions, the composition stipulated by claim 1, "consisting of" the given elements, was already disclosed in the application as originally filed.

In T 1634/13 the claim as granted combined the subject matter of various claims as filed, with the terms "comprising" and "containing" being replaced by the terms "consisting in" or "consisting of". The board held that specific examples in the application taught that the terms "comprising"/"containing" included the term "consisting" as a particular, originally disclosed meaning. While it was true that the change in wording restricted the subject-matter with respect to the original wording, such a restriction was not objectionable under Art. 123(2) EPC. In particular, there had been **no singling out** within the meaning of G 2/10.

In T 1173/17 "comprising" was replaced by "consisting of" in claim 1 of auxiliary request 2. The board distinguished its case from T 107/14 and T 725/08 and considered that the subject-matter of claim 1 was not directly and unambiguously derivable from the original application.

On issues of clarity raised by the terms "comprising (substantially)", "consisting (essentially) of", "containing", see chapter II.A.6.2.

1.16. Different sets of claims for different contracting states

In T 658/03 the board stated that any change of attribution of claimed subject-matter in an application or patent having different (sets of) claims for different contracting states, to a contracting state under which that subject-matter was not previously included, amounted to an amendment within the meaning of Art. 123 EPC 1973. Such an amendment was subject, in principle, to full examination as to its conformity with the requirements of the Convention

2. Article 123(3) EPC – extension of the protection conferred

According to Art. 123(3) EPC the European patent may not be amended in such a way as to extend the protection it confers. This refers to the patent as a whole. The wording of Art. 123(3) EPC 1973 had referred only to the claims of the patent; however, already under the EPC 1973, the boards had held that amendments to the description and the drawings could also extend the protection conferred within the meaning of Art. 123(3) EPC 1973 (see T 1149/97, OJ 2000, 259).