

assessment under Art. 123(3) EPC, the board considered that the feature "by heat" in relation to a drying device was connected to the printing press but not to the PQCA; in view of its new holistic interpretation, the deletion of the feature extended the scope of protection of the patent.

In T 2174/16 the board recalled that the principle of legal certainty for third parties was of utmost importance when determining the scope of protection conferred by the patent as granted.

2.4. Deletions and replacements

2.4.1 Deletion of a limiting feature in a claim – inescapable trap

A granted claim cannot be amended by deleting limiting subject-matter from the claims, because such amendment would extend the protection conferred, which is prohibited by Art. 123(3) EPC; if the limiting subject-matter had been added in contravention of Art. 123(2) EPC, the applicant is caught in an "inescapable trap", see G 1/93 and chapter II.E.3.1.

In T 1407/05 the board considered that claim feature A described essential technical characteristics of the claims as granted. Feature A was removed from the wording of the claims in all pending requests; all other claim features remained essentially the same. The board held that the removal of a positive technical feature from an independent claim *prima facie* resulted in a broadening of the scope of protection afforded by it and therefore contravened Art. 123(3) EPC.

In T 1983/14 the applicant had added a limiting feature to the claim during examination. The opposition division found that, as a consequence of adding this feature, the patent proprietor had lost its right to priority and its own use of the invention during the priority period had been prejudicial to novelty. The board agreed and held in addition that the problem of the added feature could not have been overcome by amendment. This was because Art. 123(3) EPC prevented the removal, after grant, of a problematic, limiting feature.

In T 666/97 the product claim of the auxiliary request no longer included a process feature which was included in the product claim as granted. In the board's view, it followed from the fact that the subject-matter for which protection was claimed in the auxiliary request was a product that it could only be characterised by features manifest in/on the product itself. That meant that manipulations taking place during product manufacture but not resulting in product features were of no relevance to the definition of the claimed product and hence to the scope of protection of the claim. That was an unavoidable implication of the established case law of the boards of appeal, under which the subject-matter of a **product-by-process claim** derives its novelty not from new procedural steps but purely from structural features (see T 205/83, OJ 1985, 363). Thus, to resolve the issue of compliance with the requirements of Art. 123(3) EPC 1973, what had to be decided was whether the omitted product-by-process feature was technically significant for the definition of the claimed product, i.e. whether it was a product feature. The board found