

In T.1724/08 the board held that the broadening of individual disclosed features, in particular those of an independent claim as filed, was not prohibited by Art. 76(1) EPC 1973; such amendments likewise required a direct and unambiguous disclosure in the earlier application as filed (see also T.1727/09).

1.4.2 Basis in the application as originally filed – gold standard

The requirement of Art. 123(2) EPC as applied to the claims means that it is only permissible to delete features from an independent claim if there is a clear and unambiguous basis for a claim lacking these features in the application as originally filed (T.1726/06, referring to T.66/85, OJ 1989, 167).

The board in T.755/12 pointed out that, although some tests such as the essentiality test (see in this chapter II.E.1.4.4 below) have been used as an **aid** in assessing the allowability of amendments, they could not replace the need to answer the question of what a skilled person would objectively have derived from the description, claims and drawings of a European patent application on the date of filing (G.3/89, OJ 1993, 117, see in this chapter II.E.1.3.1 "Gold standard: directly and unambiguously derivable" above). For further decisions highlighting that these tests are only tools and do not take the place of the "gold standard", see T.648/10 and the decisions cited in chapter II.E.1.4.4 b) and c).

In T.558/13, which concerned a divisional application, claim 1 according to the main request differed from claim 1 of the earlier application as filed in that the following feature had been omitted: "... a plurality of power sources are independently provided for each of the plurality of groups." Instead, claim 1 of the main request specified that the read out circuit comprised a plurality of sample and hold circuits. The board considered that the concept of the invention as consistently presented in the earlier application as filed required the provision of independent power sources. It accepted the appellant's argument that the shifted timing of the reset and sample and hold circuits provided the new technical advantage of "reducing a line noise caused by an external noise". Nevertheless, in the board's view, it was not sufficient to prove that the omitted feature was "not indispensable for achieving the effect of reducing line noise caused by external noise". Such reasoning did not take sufficient account of the **information conveyed by the earlier application as a whole**, which was primarily concerned with providing independent power sources and which only presented the additional technical effect caused by the shifted timing as a side issue. There was no room for speculation as to which features of the disclosed invention(s) might be omitted on further reflection, if there was no explicit or implicit disclosure of the generalised subject-matter remaining after the omission of these features.

1.4.3 Omission of a feature presented as essential

For cases in which the amendment consists of the replacement or removal of a feature from an independent claim, the boards occasionally apply the test of decision T.260/85 (OJ 1989, 105). In T.260/85 it was stated that it was **not** permissible to delete from an **independent claim** a feature which the application as originally filed **consistently presented as being an essential feature** of the invention, since this would constitute a