

alternatives is fully encompassed by all the less preferred and broader options in the list), the conclusions had been less consistent (see T.812/09, T.2237/10, T.27/16 and T.615/95). Moreover, the boards had generally regarded amendments based on multiple deletions of elements from one or several lists of alternatives as an allowable restriction, provided that such amendments did not result in singling out particular combinations of specific meaning (see T.615/95 and G.1/93, OJ 1994, 541). The board considered that selections from lists of converging alternatives should not be treated in the same way as selections from lists of non-converging alternatives for the following reasons: In the case of non-converging alternatives, selecting specific elements from such lists led to a singling out of an invention from among several distinct alternatives, which might provide an unwarranted advantage. On the other hand, when fall-back positions for a feature were described in terms of a list of converging alternatives, each of the narrower elements was fully encompassed by all the preceding less preferred options. Thus, amending a claim by selecting one element from a list of converging alternatives did not lead to a singling out of an invention from among a plurality of distinct options, but simply to a subject-matter based on a more or less restricted version of said feature. There was thus an analogy to deleting options from a list of non-converging alternatives (as in T.615/95). The board emphasised that the above considerations did not allow the conclusion that amendments based on selections from lists of converging alternatives necessarily met the requirements of Art.123(2) EPC. It needed to be assessed whether the specific combination was supported by the content of the application as filed. For the board, at least the following two conditions needed to be met: i) the combination should not be associated with an undisclosed technical contribution; and ii) the combination should be supported by a pointer in the application as filed. Such pointers could be provided by the example(s) (as in T.27/16 and T.615/95) or by specific embodiment(s) of the application, as this/these generally represented the most detailed and preferred form(s) of the invention.

Again in T.1482/17, the same board considered the contested amendments to be compatible with Art.123(2) EPC because the claim in question was based on combinations of more or less preferred options taken from lists of converging alternatives, the resulting subject-matter was not associated with any non-disclosed technical contribution and the original application contained a pointer towards the feature combinations resulting from the multiple selection. In particular, two of the examples in the application fell within the scope of the claimed subject-matter.

In T.1937/17 the respondent (proprietor) argued that the parameter value lists and the list of possible structures in the case in hand were lists of converging alternatives of the kind explained in T.1621/16. Furthermore, the description explicitly linked the features disclosed in these lists in terms of their purpose and effects. This provided a disclosed technical contribution and a pointer, as required by T.1621/16. The board disagreed. It noted that a distinction had to be made between what was possibly rendered obvious to a skilled person in the light of the disclosure with certain pointers, and what was directly and unambiguously, even if implicitly, derivable from the disclosure for the skilled person using common general knowledge. As regards the requirement stated in T.1621/16 that the subject-matter resulting from the combination of convergent options from lists "is not associated with an undisclosed technical contribution", the board, citing G.2/98 (OJ 2001, 413) and G.2/10 (OJ 2012, 376), explained that the distinction in G.1/93