

Referring to T.598/12, the board in T.2489/13 confirmed that the criterion of whether alternatives are well known in the field could not be taken as a valid approach for the investigation of at least an implicit disclosure.

b) Results of reflection and imagination of the skilled person

The board in T.89/00, citing T.260/85 (OJ 1989, 105), T.64/96 and T.415/91, held that, according to the case law of the boards of appeal, a distinction must be made between what the original documents of a patent directly and unambiguously disclosed to a skilled person and what said skilled person on the basis of this disclosure may do upon reflection and using his imagination. His thinking is **not part** of the content of the original documents of the patent. See also T.553/15.

In T.782/16 the board held that for a correct application of the gold standard, a distinction needed to be made between subject-matter which was disclosed either implicitly or explicitly in the original (or earlier) application and therefore could be directly derived from it, and subject-matter which was the result of an intellectual process, in particular a complex one, carried out on what was disclosed.

c) General open-ended statement in description

In T.1538/12 the board held that the general statements at the end of the description (e.g. "other variations and modifications of the exemplary embodiments described above may be made" or "other embodiments will be apparent to those skilled in the art") did not constitute, and thus could not replace, a direct and unambiguous disclosure of the particular generalisation. The general statements at the end of the description were furthermore open ended and attempted to burden the skilled reader with having to work out which combinations of features from the detailed embodiments might be claimed together, while the applicant was supposedly dispensed from having to present his invention in terms more general than mere detailed description of particular embodiments. See also T.1365/16.

1.3.5 Conditions insufficient for compliance with Article 123(2) EPC

a) Consistency with original disclosure

In T.962/98 the appellant argued that the claimed subject-matter derived from Example 1D and the content of the application as originally filed. In particular, tests carried out on the composition of Example 1D showed that the "four surfactants" could be applied in a more general context, present claim 1 being, furthermore, consistent with the description. Contrary to the appellant's submissions, in order to assess whether an amendment complied with the requirements of Art. 123(2) EPC 1973, the question was neither whether or not a skilled person could design other compositions in the light of the directions given by the tests nor whether or not the amended subject-matter was consistent with the description. On intermediate generalisations, see below in chapter II.E.1.9.