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Case Law of the Boards of Appeal, 11th edition (update 2026) – references in issue 6/2026 and following

In the table summarising the decision data for an abstract, the links to the CLB, 11th edition, lead to the [HTML version](#), which was updated in June 2026. In the body of any given abstract, references to the CLB mirror those provided by the board in the underlying decision.

Edited by

Legal Research Service of the Boards of Appeal

For comments and requests please contact: BOA_legalresearchservice@epo.org

Abstracts of decisions

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1. Article 056 EPC | T 0847/24 | Board 3.2.02

Article 056 EPC

Case Number	T 0847/24
Board	3.2.02
Date of decision	2026.03.25
Language of the proceedings	EN
Internal distribution code	C
Inter partes/ex parte	Inter partes
EPC Articles	Article 056 EPC
EPC Rules	
RPBA	
Other legal provisions	
Keywords	inventive step – non-technical distinguishing feature – simulations – link to physical reality
Cited decisions	G 0001/19
Case Law Book	I.D.9.2.12b , 11th edition

See also abstracts under [Art. 69](#) and [123\(3\)](#) EPC.

In [T 847/24](#) the contested patent related to a method for configuring a surgical guide and an associated implant for maxillofacial osteosynthesis, both customised to a patient. The board found that feature 1.6 was the only feature distinguishing the subject-matter of claim 1 of the main request from the method disclosed in D2. Feature 1.6 was non-technical when considered in isolation since it merely corresponded to the generation of abstract data representing a 3D structure for an implant.

Manufacturing an implant having the 3D structure determined in accordance with feature 1.6 would undisputedly allow this feature to have an impact on physical reality and thus to contribute to achieving a technical effect, for example by leading to a physical implant having the advantages mentioned by the appellant. However, the outcome of the claimed method was not a physical implant but merely abstract data defining a 3D structure for such an implant. Notably, claim 1 of the main request did not refer to any manufacturing step.

The board noted that the step of configuring the implant may involve further processing of the 3D structure determined in accordance with feature 1.6. However, even in that case, the configuring step would still merely produce further data defining the configured implant. The fact that the data produced by the claimed method, in defining the 3D structure of the configured implant, may reflect the

properties of a physical object that may exist at some later point, namely the implant once manufactured did not change that conclusion. Rather, this physical object remains purely hypothetical as long as an implant having this structure is not manufactured. In the absence of a manufacturing step in claim 1, the data remains, first and foremost, mere data, which can be used in many different ways (see G 1/19).

In accordance with G 1/19, only those technical effects that are at least implied in the claim should be considered in the assessment of inventive step. If the claimed process results in a set of numerical values, whether a resulting technical effect can be considered in the assessment of inventive step depends on the further use of such data. If such further use is not, at least implicitly, specified in the claim, it is to be disregarded for this purpose. The board acknowledged that manufacturing the implant was a possible, even probable, use of this data. However, that was not sufficient for the data to contribute to the technical character of the claimed method.

The indication in feature 1.1 that the implant was "for maxillofacial osteosynthesis" does not imply a technical use of the data resulting from the claimed method but merely indicates the suitability of the implant for that medical use. Moreover, the data resulting from the claimed method is not defined in claim 1 as being specifically adapted for a technical use. This might have been the case, for example, if the claim had required the data to be formatted so as to be directly readable by, or usable in, a specific manufacturing apparatus, such as a 3D printing device. Claim 1, however, contains no such limitation. Furthermore, the board held that other uses which do not have any technical effect can also be realistically envisaged. For example, a comparison with existing implants. In such a case, no impact on physical reality would result from carrying out the claimed method.

The argument that the pre-operative 3D model was generated using data indicative of the anatomy of a real existing patient (feature 1.2) and that the implant configured by the method was customised so as to achieve a desired maxillofacial reconstruction for that patient, anchored the claimed method in physical reality and thus rendered the data produced by the method itself technical in nature was not persuasive.

Indirect measurements, in which the physical state of an object is typically calculated, are still related to physical reality and thus are of a technical nature, regardless of what use is made of the results (G 1/19). However, claim 1 is not directed to determining, by calculation, the physical state or a physical property of an existing object. Rather, it is directed to determining abstract data defining the 3D structure of an implant which does not yet physically exist. The fact that the method starts from data indicative of a pre-operative anatomy does not change the nature of the data ultimately produced by the claimed method, nor does it imply any further technical use of this data.

The board therefore concluded that the subject-matter of claim 1 of the main request did not involve an inventive step.

063-07-26

2. Article 069 EPC | T 0847/24 | Board 3.2.02

Article 069 EPC

Case Number	T 0847/24
Board	3.2.02
Date of decision	2026.03.25
Language of the proceedings	EN
Internal distribution code	C
Inter partes/ex parte	Inter partes
EPC Articles	Articles 084, 069(1) EPC
EPC Rules	
RPBA	
Other legal provisions	Protocol on the Interpretation of Article 69 EPC
Keywords	claim interpretation – consultation of the description and drawings to interpret the claims – principles established in G 1/24 – correct interpretation of a claim cannot be left open
Cited decisions	G 0001/04, G 0003/14, G 0001/24, T 1473/19, T 0367/20, T 0177/22, T 1345/23 NanoString Technologies -v- 10x Genomics, UPC_CoA_335/2023, App_576355/2023 of 26 February 2024, as rectified by the order of 11 March 2024
Case Law Book	II.A.6.2.2 , II.A.6.1 , 11th edition

See also abstracts under [Art. 56](#) and [123\(3\)](#) EPC.

In [T 847/24](#) the board addressed the principles of claim interpretation endorsed by the Enlarged Board in G 1/24. The first principle was that the claims were the starting point and the basis for assessing the patentability of an invention. The board understood this as a recognition that the claims defined the claimed subject-matter and that it was the claims themselves which were being interpreted. Accordingly, the claims, on the one hand, and the description and the drawings, on the other, were not on the same footing. This understanding of the significance to be given to the claims aligned with Art. 69 EPC (see T 1473/19), the wording and principles of which the Enlarged Board appeared to consider applicable by analogy. It was also consistent with the Enlarged Board's statement that this first principle of claim interpretation was a settled point in the case law of the boards.

The second principle endorsed by the Enlarged Board was that the description and drawings had to always be consulted to interpret the claims, and not only if the

person skilled in the art found a claim to be unclear or ambiguous when read in isolation. According to the board, it followed from this that, without prejudice to the requirement under Art. 84 EPC that claims had to be clear in themselves, a claim should not be read in isolation. In other words, the meaning of a claim and its features was not to be determined in the abstract or on the basis of the skilled person's common general knowledge alone, but in the specific context in which it was used, which included the description and the drawings (as well as other claims). Such consultation could have an impact on the result of the interpretation. This impact was not limited to merely defining the person skilled in the art for the purposes of claim interpretation (see T 439/22).

The board noted that the above understanding of G 1/24 conformed with the Enlarged Board's reference to the harmonisation philosophy behind the EPC and its aim of preventing the EPO from adopting a practice of claim interpretation which would be contrary to the practice of the national courts of EPC contracting states and the UPC. It also fitted seamlessly with the direct applicability of Art. 69(1) EPC and the Protocol thereto in proceedings before the EPO when interpreting a claim to assess compliance with Art. 123(3) EPC.

The board pointed out that determining a patent claim's subject-matter, i.e. establishing the meaning of the claimed features, was not distinguishable from interpreting that claim and its features (see T 1473/19), and that the terms in a given patent claim had to be interpreted in a uniform, consistent and objective manner (see T 1345/23, T 177/22, and T 1473/19). It followed that the same claim interpretation step which, in accordance with G 1/24, had to be carried out when assessing e.g. novelty also had, for reasons of consistency, to be carried out when e.g. assessing added subject-matter, sufficiency of disclosure or extension of protection. This also aligned with the UPC Court of Appeal's statement in its order of 26 February 2024 in *NanoString Technologies v. 10x Genomics*, UPC_CoA_335/2023, according to which the "principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent", the term "validity" not being limited to "patentability" under Art. 52 to 57 EPC.

According to the board, the requirement "to interpret patent claims" pursuant to G 1/24 implied that the correct interpretation of a claim could not, if decisive for the outcome, be left open. As to a possible lack of clarity or ambiguity in a claim, this could, as such, only be addressed under Art. 84 EPC, which is not a ground for opposition. Such a deficiency could not be invoked indirectly under a different legal provision not concerned with this issue, such as Art. 123(2) or (3) EPC. A lack of clarity can have ramifications for how the deciding body interprets the claim under consideration and determines the claimed subject-matter, which may in turn have an impact on the outcome of the assessment of a ground for opposition under Art. 100 EPC. However, adopting e.g. a broad interpretation had to be distinguished from leaving the interpretation open or adopting two mutually exclusive claim interpretations simultaneously (see T 367/20).

064-07-26

3. Article 112a EPC | R 0010/24 | EBA

Article 112a EPC

Case Number	R 0010/24
Board	EBA
Date of decision	2025.10.06
Language of the proceedings	DE
Internal distribution code	C
Inter partes/ex parte	Inter partes
EPC Articles	Articles 112a, 113(1) EPC
EPC Rules	Rule 104(b) EPC
RPBA	Articles 12, 13, 15(1) RPBA 2020
Other legal provisions	
Keywords	petition for review – fundamental violation of Article 113 EPC (no) – clearly unallowable
Cited decisions	R 0010/11, R 0006/17, R 0006/20, R 0012/22
Case Law Book	V.B.3.5.3 , 11th edition

In [R 10/24](#) konzentrierte sich die Große Beschwerdekammer ("GBK") bei der Überprüfung auf zwei geltend gemachte schwerwiegende Verfahrensmängel:

- (i) Die Beschwerdekammer habe entschieden, ohne über einen hierfür relevanten Antrag, nämlich über den in der mündlichen Verhandlung vorgelegten Hilfsantrag, zu entscheiden (R. 104 b) im Zusammenhang mit Art. 112a (2) d) EPÜ).
- (ii) Als Folge sei auch der Anspruch auf rechtliches Gehör verletzt (Art. 112a (2) c) EPÜ).

Die GBK stellte zunächst fest, dass der erste geltend gemachte Verfahrensmangel, die Nichtentscheidung über den Hilfsantrag, offensichtlich nicht verwirklicht ist. In Bezug auf den zweiten geltend gemachten Verfahrensmangel, den schwerwiegenden Verstoß gegen Art. 113 (1) EPÜ, erinnerte die GBK zunächst daran, dass nach Art. 113 (1) EPÜ Entscheidungen des EPA nur auf Gründe gestützt werden dürfen, zu denen die Beteiligten sich äußern konnten. Zur Frage, ob und ggf. unter welchen Voraussetzungen die Nichtzulassung eines (Hilfs-)Antrags einen Gehörsverstoß darstellen kann, war der GBK zufolge zunächst von Bedeutung, dass sie im Rahmen von Art. 112a EPÜ keine vollständige Überprüfung einer Entscheidung auf deren Vereinbarkeit mit dem EPÜ oder anderem Recht durchführen kann.

Die GBK erklärte, dass aus diesem Grundsatz von einem Teil der Rechtsprechung gefolgert worden ist, dass derjenige, der Änderungen des Vorbringens vornimmt, zu

dessen Zulassung (lediglich) ausreichend zu hören ist, ohne dass die GBK die Entscheidung über die Nichtzulassung des Vorbringens inhaltlich bewerten könnte. Nach einem anderen Teil der Rechtsprechung, so die GBK weiter, ist von der GBK die Ausübung des Ermessens im Rahmen der Zulassung auch in begrenztem Umfang inhaltlich zu überprüfen, und zwar nicht nur auf Willkür. Vielmehr ist die Ausübung des Ermessens darüber hinaus auch auf offensichtliche Unrichtigkeit zu überprüfen, ohne dass die zu überprüfende Ermessensausübung wiederholt oder ersetzt wird (s. R 6/20, R 12/22, R 10/11, R 6/17). Der GBK zufolge scheint die letztere Meinung mittlerweile vorzuherrschen.

Die GBK hält diese Meinung für überzeugend: Wegen der Intensität des Eingriffs einer Nichtzulassung geänderten Vorbringens durch Vorschriften der VOBK, d.h. deren Art. 12 und 13, sind Auslegung und Anwendung dieser das rechtliche Gehör qualifizierenden Vorschriften einer inhaltlichen Kontrolle nicht lediglich auf Willkür zu unterziehen. Insoweit ist das Recht auf rechtliches Gehör etwa auch bei einer offenkundig unrichtigen Anwendung solcher Vorschriften (im Sinne einer Ermessensüberschreitung oder eines anderen Ermessens Fehlgebrauchs bzw. eines Ermessensnichtsgebrauchs) verletzt.

Nachdem die GBK bestätigte, dass die Antragstellerin ausreichend Gelegenheit gehabt hatte, sich zur Frage der Voraussetzungen für die Berücksichtigung des Hilfsantrags zu äußern, wandte die GBK den Ansatz der begrenzten Überprüfung an und prüfte den vorliegenden Fall auf offensichtliche Unrichtigkeit der mangelnden Berücksichtigung des Hilfsantrags.

Die GBK stellte fest, dass die Kammer in der zu überprüfenden Entscheidung zur Auffassung gelangt ist, dass weder die Mitteilung gemäß Art. 15 (1) VOBK oder die Diskussion in der mündlichen Verhandlung vor der Beschwerdekammer, noch die Änderung der Meinung der Kammer im Vergleich zur Mitteilung die erforderlichen außergewöhnlichen Umstände für die Einreichung des Hilfsantrags erst in der mündlichen Verhandlung vor der Kammer bedingen könnten. Sie hatte den Hilfsantrag daher gemäß Art. 13 (2) VOBK nicht berücksichtigt, und sich bei dieser Anwendung von Art. 13 (2) VOBK auf die geltende Rechtsprechungspraxis der Beschwerdekammern gestützt.

Die GBK entschied daher, dass, wenn eine Beschwerdekammer der herrschenden Praxis zu Art. 13 (2) VOBK folgt und auf dieser Grundlage einen Hilfsantrag nicht berücksichtigt, darin keine offensichtlich unrichtige Anwendung des Rechts gesehen werden kann. Das gilt auch dann, wenn diese Praxis Bedenken begegnen sollte, wie denjenigen, die die Antragstellerin geäußert hat: Die Anforderungen der Kammer im Zusammenhang mit der Berücksichtigung des Hilfsantrags stellten einen Verstoß gegen das Gebot der Verfahrensökonomie dar.

Der Antrag auf Überprüfung wurde daher als offensichtlich unbegründet verworfen.

065-07-26

4. Article 112(1) EPC | T 0873/24 | Board 3.3.05

Article 112(1) EPC

Case Number	T 0873/24
Board	3.3.05
Date of decision	2026.02.03
Language of the proceedings	EN
Internal distribution code	A
Inter partes/ex parte	Inter partes
EPC Articles	Article 112(1) EPC
EPC Rules	
RPBA	
Other legal provisions	
Keywords	referral to the Enlarged Board of Appeal – by the board of appeal – admissibility – point of law of fundamental importance – uniform application of law
Cited decisions	G 0003/98, G 0002/03, G 0002/07, G 0001/24, T 0116/18 of 28 July 2023
Case Law Book	V.B.2.3.4 , V.B.2.3.7 , V.B.2.3.8 , 11th edition

[See also abstract under Art. 123\(2\) EPC.](#)

In [T 873/24](#) the board explained that if, in the underlying case, Art. 123(2) EPC was not complied with, the main request and most of the (over one hundred) auxiliary requests would fall. This objection therefore had the greatest impact on the outcome of the proceedings. Against this background, the board decided to assess the question of compliance with Art. 123(2) EPC before dealing with the objections under Art. 56 EPC. It concluded that a decision of the Enlarged Board was required to determine which approach should be followed regarding the extent to which the description is to be relied upon when interpreting claims (questions 2 and 3 referred to the Enlarged Board, included in the abstract under Art. 123(2) EPC).

The board noted that the answers to questions 2 and 3 touched upon fundamental principles of the EPC and would become relevant in a multitude of cases before the divisions of the EPO and the boards of appeal. These questions thus related to points of law of fundamental importance and were relevant not only during the grant procedure but also to any later proceedings before the courts of the member states throughout the lifetime of a patent. To clarify these points of law and to ensure the future uniform application of the law in view of the divergent case law listed by the

board in the present decision, the board considered a decision of the Enlarged Board to be required within the meaning of Art. 112(1)(a) EPC.

The board further recalled that, according to Art. 112(1)(a) EPC, a board shall refer any question to the Enlarged Board if it considers that a decision is "required for the above purposes", namely harmonisation of the case law and clarification of fundamental points of law. Case law had read into the term "required" the further requirement that, for a referral to be admissible, the referred questions need to be relevant to the referring board's decision. Some boards had interpreted this requirement very strictly, meaning that, where several grounds for opposition had been raised by the opponent(s), the referral was admissible only when the board had concluded that the patent would be maintained despite the other invoked grounds for opposition which were not the subject of the referral, see e.g. T 116/18 of 28 July 2023 (T 116/18) with reference to G 3/98. In G 3/98 it had been stated that "the referred question may not have a merely theoretical significance for the original proceedings ... as would be the case if the referring board were to reach the same decision on the basis of the file regardless of the answer to the referred question". The board acknowledged that, according to T 116/18, a referral in the case in hand would not yet be admissible, but saw a need to diverge from that view.

The board also stated that the requirements under which divergent case law may be clarified by referring questions to the Enlarged Board constituted a point of law of fundamental importance and were central to the effective functioning of the whole system. This was particularly true at present, as a second transnational court applying the EPC entailed new challenges for achieving a harmonised pan-European interpretation of the articles and rules of the EPC. Hence, in this context, not only the questions of substantive law referred to in the present decision but also the admissibility issue itself concerned a point of law of fundamental importance.

The board considered that a referral to the Enlarged Board was necessary in order to clarify whether T 116/18 was indeed the relevant test for the admissibility of a referral. As reasons for not following T 116/18, the board indicated, inter alia, that (a) the board in T 116/18 had drawn a conclusion from G 3/98 which could not be derived from that decision in such general terms and (b) this was in line with other decisions of the Enlarged Board, some of which were even less strict (G 1/24, G 2/07, G 2/03).

Question 1 referred to the Enlarged Board (referral pending under G 1/26 – "Coated steel strips") reads as follows:

"1. May a decision be considered to be "required" for the purposes of Article 112(1) EPC, if the referring Board demonstrates that the point of law in question arises out of the context of the case pending before it and, in the circumstances of the proceedings, it is reasonable for the Board to examine it and decide on it next?"

066-07-26

5. Article 113(1) EPC | T 0842/24 | Board 3.3.03

Article 113(1) EPC

Case Number	T 0842/24
Board	3.3.03
Date of decision	2026.05.21
Language of the proceedings	EN
Internal distribution code	C
Inter partes/ex parte	Inter partes
EPC Articles	Article 113(1) EPC
EPC Rules	
RPBA	
Other legal provisions	
Keywords	right to be heard – opposition procedure – substantial procedural violation (yes)
Cited decisions	G 0004/95, G 0001/21, R 0017/11, T 0526/21
Case Law Book	III.B.2.5.1 , III.C.2 , 11th edition

[See also abstract under Art. 114\(2\) EPC.](#)

In [T 842/24](#) the opponent submitted that the plasticizer insufficiency objection ("the Objection") had not been taken into account by the opposition division. In the opponent's view, this constituted a violation of its right to be heard justifying a remittal to the opposition division and the reimbursement of the appeal fee. The patent proprietor, however, argued that no procedural violation had occurred in this respect, since the Objection had not been actively maintained in the oral proceedings.

The board indicated that the Objection had been raised by letter of 13 July 2023 and addressed again by letter of 16 February 2024. Although the Objection had not been specifically addressed in the opponent's subsequent letter of 28 March 2024, that letter stated at the end that all the arguments put forward in the written submissions of 16 February 2024 were highly relevant and therefore had to be taken into account by the opposition division. The board acknowledged that the minutes of the oral proceedings did not indicate that the Objection had been discussed. In the board's view, however, not addressing during the oral proceedings an objection submitted in writing did not necessarily imply that the objection had been withdrawn. This was because written submissions formed the basis of EPO proceedings and were complemented, where necessary, by an opportunity for a party to present and argue its case orally (G 4/95, G 1/21). Parties had the opportunity to repeat or expand upon some of the written submissions they considered necessary for defending their case, but were under no obligation to address all written submissions orally.

The patent proprietor was of the opinion that decision R 17/11 was relevant. The board held that, in that case, the Enlarged Board had not concluded that the absence of a petitioner's argument about the status as prior art of a document during the oral proceedings necessarily implied that this point was no longer maintained by the petitioner, but only that the technical board may have gathered from the discussion on that document that this point was no longer maintained.

The board found that whether an objection had been withdrawn or abandoned depended on the particular context underlying the contested decision. Decision T 526/21, cited by the patent proprietor, concerned a situation where the discussion during the oral proceedings about the choice of the closest prior art had not concerned two further documents on the basis of which additional inventive step attacks had been submitted in writing. In that situation, it had been considered that those attacks had not been maintained, as those two further documents had no longer been argued to represent a possible starting point for the assessment of inventive step.

According to the board, however, nothing in the debate during the oral proceedings in the present case implied that the opponent had not maintained the Objection. On that basis, the opposition division's failure to give due consideration to the Objection which, according to the opponent's submissions was an essential aspect of the alleged insufficiency of disclosure of the subject-matter of claim 1, constituted a substantial violation of the opponent's right to be heard in contravention of Art. 113(1) EPC.

067-07-26

6. Article 114(2) EPC | T 0842/24 | Board 3.3.03

Article 114(2) EPC

Case Number	T 0842/24
Board	3.3.03
Date of decision	2026.05.21
Language of the proceedings	EN
Internal distribution code	C
Inter partes/ex parte	Inter partes
EPC Articles	Articles 113(1), 114(2) EPC
EPC Rules	
RPBA	Articles 12(2), (4), (6), 13 RPBA 2020
Other legal provisions	
Keywords	late submissions – evidence admitted by first instance – review of discretionary decision to admit evidence
Cited decisions	G 0007/93, G 0004/95, T 0640/91, T 1209/05, T 1652/08, T 1852/11, T 2513/11, T 1568/12, T 0776/17, T 0989/23
Case Law Book	IV.C.4.5.2 , V.A.3.4 , 11th edition

[See also abstract under Art. 113\(1\) EPC.](#)

In [T 842/24](#) the board found that there was no legal basis for reversing in appeal a decision by the opposition division to admit new evidence (D29) into the opposition proceedings and thus to retroactively reject in appeal specific facts which had been admitted into the opposition proceedings if that evidence formed the basis of the decision taken on substantive grounds. It noted that this reasoning was not in conflict with T 989/23 where the auxiliary request admitted at the opposition division's discretion did not form the basis for the decision to maintain the patent in amended form.

The board recalled that the jurisprudence of the boards of appeal regarding the review of the opposition division's discretionary power under Art. 114(2) EPC was based on a principle established in T 640/91 and G 7/93. However, it noted that this principle was established in the context of reviewing a decision not to admit (emphasis by the board) a requested amendment after issuance of a R. 51(6) EPC 1973 communication (G 7/93) or not inviting a party to file further observations before issuance of a decision to refuse the application (T 640/91), and that it was also applied when reviewing discretionary decisions not to take a party's means of defence into account, e.g. documents. The board was aware that in a few cases this

principle had also been invoked in the context of reviewing the opposition division's discretionary decisions to admit (emphasis by the board) documentary evidence on which the reasons for the decisions were based. This had been mainly limited to cases of errors in exercising discretion or procedural errors (T 1209/05, T 1652/08, T 1852/11, T 2513/11). In other decisions it had been questioned whether submissions admitted and forming the basis for the contested decision (evidence, claim requests) could be at all excluded from the proceedings in appeal even if the opposition division had exceeded the proper limits of its discretion in admitting them. The board nevertheless noted that in none of these decisions were the circumstances of the case such as to justify reversal of the discretionary decision.

Given the procedural asymmetry between situations where evidence was admitted or not admitted, the board had strong reservations as to whether the principle established in T 640/91 and G 7/93 was also appropriate for reviewing the discretion exercised in a decision to admit evidence into the proceedings. It explained that, in the context of non-admittance, the only way to challenge a substantive decision that did not take a (non-admitted) means of defence into account was to contest the non-admittance thereof. A review by a board of the discretion exercised by the opposition division was also imperative, if it was submitted that the exercise of its discretionary power constituted a substantial procedural violation.

On the other hand, a review of a decision by the opposition division to admit evidence or a claims amendment into the proceedings was not a necessary means to safeguard a party's right for a proper defence. The board held that the admittance of new evidence, even if its filing was not justified, did not lead itself (emphasis by the board) to an unequal treatment of the parties and therefore a procedural violation. Rather it was the absence of a proper opportunity for the opposing party to respond to that new piece of evidence and submissions based thereupon, once it had been admitted, which constituted a breach of the right to be heard. Art. 113(1) EPC reflected the principle that for inter partes proceedings each party should have a proper opportunity to reply to the case presented by an opposing party (G 4/95). The board noted that T 776/17 also made such a distinction.

The board added that a decision by the opposition division on substantive issues, based on evidence which has been admitted into the proceedings, could still be challenged in substance, on the ground that this evidence lacks relevance or probative value. It did not find any reason why a decision to admit an auxiliary request or piece of evidence should be reviewed on appeal if a party requested it, in order to determine whether discretion was exercised appropriately. The board should instead just fully review the appealed decision in substance. In view of this the board considered that it could not be derived from G 7/93 that the criteria stated therein for overruling the way in which a department of first instance has exercised its discretion also applied to the case where evidence was admitted and the decision taken on substantive grounds was based thereon. The board thus concluded that under the present circumstances it was not empowered to review the way the opposition division used its discretion to admit D29 into the proceedings.

068-07-26

7. Article 123(2) EPC | T 0855/24 | Board 3.4.02

Article 123(2) EPC

Case Number	T 0855/24
Board	3.4.02
Date of decision	2026.05.22
Language of the proceedings	DE
Internal distribution code	D
Inter partes/ex parte	Inter partes
EPC Articles	Article 123(2) EPC
EPC Rules	
RPBA	
Other legal provisions	
Keywords	amendments – added subject-matter (yes) – amendments in the description
Cited decisions	
Case Law Book	II.E.1.14 , 11th edition

In [T 855/24](#) stimmte die Kammer der Beschwerdeführerin zu, dass durch die Nichtstreichung des Absatzes [0042] im ersten Hilfsantrag eine Erweiterung vorlag, die gegen Art. 123 (2) EPÜ verstieß.

Im ersten Hilfsantrag wurde eine selektive Streichung von Absätzen durchgeführt, wobei unter anderem der Absatz [0042] nicht gestrichen wurde. In Absatz [0042] fand sich unter anderem die Aussage, dass "Gemäß einem weiteren Ausführungsbeispiel der Erfindung [...] das Temperaturmesssignal [...] für eine Kompensation von temperaturabhängigen Effekten der optischen Messeinrichtung verwendet" werde.

Entgegen den Argumenten der Beschwerdegegnerin und den in der angefochtenen Entscheidung angegebenen Gründen hielt es die Kammer für unzutreffend, dass Absatz [0042] Vorrichtungsmerkmale des beanspruchten Brandmelders offenbarte. Sie stellte fest, dass sich die strittigen Absätze [0031] bis [0045] in einem Teil der Beschreibung befanden, welcher ausnahmslos den Wortlaut der erteilten Verfahrensansprüche wiederholte und deren technische Wirkung erläuterte. Zwar war der Absatz [0042] der Kammer zufolge nicht explizit auf ein Verfahren bezogen, jedoch ergab sich dies nach ihrer Überzeugung zweifelsfrei für die Fachperson aus dem Gesamtkontext der Absätze [0031] bis [0045]. Dies galt für die Kammer umso mehr, als der Absatz [0042] nahezu wortlautidentisch mit dem erteilten Verfahrensanspruch 10 war. Sie vermochte daher nicht zu erkennen, warum für die Fachperson aus den Absätzen [0031] bis [0045] unmittelbar und eindeutig

entnehmbar sein sollte, dass die dort angegebenen Merkmale und Wirkungen des vormals beanspruchten Verfahrens sich in Vorrichtungsmerkmalen des Brandmelders niederschlagen sollten. Entscheidend war der Kammer zufolge nicht die formale Nummerierung der Absätze der Beschreibung, sondern der technische Inhalt und der Offenbarungszusammenhang der betroffenen Textstellen. Die Kammer erklärte, dass auch bei fortlaufend nummerierten Absätzen jeweils zu prüfen ist, ob durch selektive Streichungen neue technische Informationen entstehen oder bestehende Informationen in einen geänderten technischen Zusammenhang gestellt werden und dadurch einen anderen Inhalt bekommen. Vorliegend ergab sich für die Kammer die unzulässige Erweiterung nicht aus der bloßen Tatsache, dass einzelne Absätze gestrichen wurden, sondern daraus, dass durch die selektive Beibehaltung des Absatzes [0042] ein Zusammenhang zwischen der dort beschriebenen Temperaturkompensation und dem beanspruchten Brandmelder hergestellt wurde, der für die Fachperson aus der ursprünglichen Offenbarung nicht unmittelbar und eindeutig hervorging.

069-07-26

8. Article 123(2) EPC | T 0873/24 | Board 3.3.05

Article 123(2) EPC

Case Number	T 0873/24
Board	3.3.05
Date of decision	2026.02.03
Language of the proceedings	EN
Internal distribution code	A
Inter partes/ex parte	Inter partes
EPC Articles	Articles 76, 100(c), 112(1), 123(2) EPC
EPC Rules	
RPBA	
Other legal provisions	
Keywords	referral to the Enlarged Board of Appeal – amendments – added subject-matter – claim interpretation
Cited decisions	G 0001/03, G 0002/10, G 0001/15, G 0001/24, T 1239/03, T 1473/19, T 0367/20, T 0439/22 of 11 December 2025, T 2048/22, T 2067/22, T 0618/23, T 0727/23, T 0873/23, T 0981/23, T 1052/23, T 1071/23, T 1973/23, T 2001/23, T 2047/23, T 0072/24, T 0405/24, T 0412/24, T 0837/24, T 0847/24, T 0235/25
Case Law Book	II.E.1.3.9 , II.A.6.2.2c , 11th edition

[See also abstract under Art. 112\(1\) EPC.](#)

In [T 873/24](#), in each of the originally filed sets of claims of the application, the parent and the grandparent application, the titanium to nitrogen ratio was explicitly defined by expressing their respective amounts in weight percent, as being in excess of 3.42, thus resulting in a weight ratio. In contrast, claim 1, feature F1.3 of the patent in suit did not specify that the amounts of titanium and nitrogen had to be expressed as weight percent in order to determine the ratio. Appellant 2 argued that subject-matter had been added since the application as filed (as well as the parent and grandparent applications) only disclosed a ratio based on weight but not a generalisation of the ratio by omission of the unit, as claimed.

According to the board, the case hinged on the extent to which the information found in the description might influence the interpretation of claim 1 and on what possible interpretations of the claim needed to be originally disclosed.

The board observed that most decisions acknowledged that the principles of G 1/24 as to the role of the description in claim interpretation also applied to the assessment under Art. 76(1) and 123(2) EPC. Generally, most decisions adopted a two-step approach, first interpreting the amended claim and then assessing whether the amended claim contained added subject-matter. The board identified three approaches regarding the extent to which the description was relied upon during this first step of interpreting the amended claims. Under the first approach, the description was consulted only to define the skilled person. Under the second, there was no broadening or limitation of claims based on the patent specification. The third was a holistic approach permitting broadening and/or narrowing the interpretation in view of the patent specification. The board noted that the three approaches led to a different outcome when applied to the case in hand. Under the first and second approaches, the amendment to claim 1 would be deemed to add subject-matter. The third approach would lead to the conclusion that feature F1.3 fulfilled the requirements of Art. 123(2) EPC.

After addressing the admissibility of the referral (see abstract under Art. 112(1) EPC), the board referred the following questions to the Enlarged Board (referral pending under G 1/26 – "Coated steel strips"):

- "1. May a decision be considered to be "required" for the purposes of Article 112(1) EPC, if the referring Board demonstrates that the point of law in question arises out of the context of the case pending before it and, in the circumstances of the proceedings, it is reasonable for the Board to examine it and decide on it next?
2. (a) Does the fact that the claims are the starting point and the basis for assessing the patentability of an invention generally preclude a feature which is only disclosed in the description or the drawings of a patent from being read into the meaning of a granted claim, in particular if this leads to a restrictive reading of terms used in the claim?
2. (b) If the answer to question 2.a) is no: is claim interpretation the result of both reading the claims and consulting the description and drawings as a unitary process and does the claim being the starting point and the basis for assessing the patentability rule out only those interpretations which can be derived from the patent as a whole but would clearly contradict the general technical understanding of the terms used in the claim?
3. (a) When assessing compliance with Article 123(2) EPC, must a term used in a claim be assessed against all interpretations that make technical sense to the skilled reader on the basis of the claim alone?
3. (b) If the answer to question 3.a) is no: is it sufficient that only the interpretations of the subject-matter of the claim established against the background of the patent specification as a whole are directly and unambiguously derivable from the application as filed?"

070-07-26

9. Article 123(3) EPC | T 0847/24 | Board 3.2.02

Article 123(3) EPC

Case Number	T 0847/24
Board	3.2.02
Date of decision	2026.03.25
Language of the proceedings	EN
Internal distribution code	C
Inter partes/ex parte	Inter partes
EPC Articles	Articles 064(2), 069(1), 123(3) EPC
EPC Rules	
RPBA	
Other legal provisions	Protocol on the Interpretation of Article 69 EPC
Keywords	extension of the protection conferred (yes) – application of Art. 69 EPC (yes) – computer-implemented method for configuring a physical object – added manufacturing step
Cited decisions	G 0001/24, T 1635/09, T 1791/16, T 1473/19, T 0367/20, T 0177/22, T 1345/23, T 0837/24
Case Law Book	II.E.2.3.3 , II.E.2.5 , 11th edition

See also abstracts under [Art. 56](#) and [69 EPC](#).

In [T 847/24](#) the granted claim 1 defined a computer-implemented method for configuring a physical object (an implant) which, when carried out, merely resulted in data representing that object. Claim 1 of auxiliary request 1 differed from claim 1 as granted in that, inter alia, the claimed method further included the production of the configured object. The board held that the amended claim, including the step of manufacturing the configured object, was, in view of Art. 64(2) EPC, not allowable under Art. 123(3) EPC.

Regarding claim interpretation, the board referred to the Enlarged Board's statement in G 1/24 that the departments of the EPO, in the course of their duties, are required to interpret patent claims when assessing the patentability of an invention, and pointed out that determining a patent claim's subject-matter was not distinguishable from interpreting that claim and its features. The terms in a patent claim had to be interpreted in a uniform, consistent and objective manner. It followed that the same claim interpretation step which, in accordance with G 1/24, had to be carried out when assessing e.g. novelty had also, for reasons of consistency, to be carried out when e.g. assessing added subject-matter, sufficiency of disclosure or extension of protection. The board disagreed with decisions T 1791/16 and T 837/24, which dealt

with cases in which the claims in question allowed for several technically meaningful interpretations and in which the deciding boards had considered that all these interpretations had to meet the requirements of Art. 123(2) and Art. 123(3) EPC respectively. According to the board, the requirement "to interpret patent claims" pursuant to G 1/24 implied that the correct interpretation of a claim could not – if decisive for the outcome – be left open.

When assessing whether claim 1 of auxiliary request 1 (which included the step of manufacturing the configured implant) extended the scope of protection, the board considered, in view of the wording of Art. 123(3) and Art. 64(2) EPC and the Enlarged Board's statement in G 2/88 (point 5.1 of the Reasons), that assessing a possible extension of a patent's scope of protection under Art. 123(3) EPC had to include possible changes of the scope of protection due to Art. 64(2) EPC (see e.g. T 1635/09).

The parties did not dispute, and the board agreed, that claim 1 of auxiliary request 1, which explicitly included a step of producing the implant, conferred protection not only to the claimed method but also, pursuant to Art. 64(2) EPC, to a physical implant produced in accordance with that method. It was also not in dispute that a method comprising all the steps of claim 1 as granted and, in addition, a production step also fell within the scope of claim 1 as granted, because the added step merely limited the method defined in claim 1 as granted. For this reason, the addition of a production step to claim 1 as granted did not extend the protection conferred to a method that would not have been protected by the patent as granted.

What was controversial, however, was whether the physical implant directly obtained by the more limited method according to claim 1 of auxiliary request 1 had been protected by claim 1 as granted. The board pointed out that Art. 64(2) EPC required that the product in question be "directly" obtained by the claimed method, which meant that the protection conferred by a process claim did not, as a rule, extend to products obtained only by carrying out further steps which were neither defined in that claim nor implied by it. According to the board, what was directly obtained when carrying out the claimed method was merely data. Having regard to the purpose of Art. 64(2) EPC, a physical medium storing that data could still be considered to fall within its scope. However, using the data obtained by carrying out the defined method when manufacturing a physical implant was an entirely different matter. A physical implant was, in terms of its characteristics, far removed from mere data configuring that implant. Therefore, a physical implant was not "directly" obtained, within the meaning of Art. 64(2) EPC, by the method defined in claim 1 as granted. In the board's view, the appellant's position was not supported by the fact that the patent specification (which had, for the purposes of assessing the extent of protection, to be used to interpret the claims in direct application of Art. 69(1) EPC) stated that an implant "may be produced based on the defined structure" determined in accordance with the method defined in claim 1 as granted. This indicated the opposite, namely that the production of the implant was optional and not a constituent or defining feature of the claimed method.

071-07-26

10. Rule 043(7) EPC

| T 0903/24

| Board 3.2.03

Rule 043(7) EPC

Case Number	T 0903/24
Board	3.2.03
Date of decision	2026.03.17
Language of the proceedings	DE
Internal distribution code	D
Inter partes/ex parte	Inter partes
EPC Articles	Article 069(1) EPC
EPC Rules	Rule 043(7) EPC
RPBA	
Other legal provisions	
Keywords	reference signs – claim interpretation – use of reference signs to interpret the claims (yes)
Cited decisions	G 0001/24
Case Law Book	II.A.6.2.2a , II.A.6.1 , 11th edition

In [T 903/24](#) war die Auslegung des Merkmals M0106 entscheidend für die Neuheit des Gegenstands von Anspruch 1 des Hauptantrags. Dieses Merkmal verlangte, dass "das erste Verkleidungselement auf der Schmalseite wenigstens lokal mehrere übereinanderliegende Lagen des Flachmaterials aufweist".

Die Kammer stellte fest, dass der Ausdruck "übereinanderliegende Lagen" nach dem allgemeinen Sprachverständnis nicht bedeutet, dass die Lagen direkt miteinander in Kontakt stehen und sich berühren müssen. Dasselbe ergab sich bei Berücksichtigung der in der Beschreibung erläuterten funktionalen Bedeutung der "übereinanderliegenden Lagen" für die Versteifung und Formstabilität der wärmeisolierenden Wand sowie für die Wärmebrückenbildung durch diese Lagen.

Die Kammer merkte an, dass die drei "übereinanderliegenden" zwar als direkt miteinander in Kontakt stehende Lagen in den Figuren 2 und 3 des Streitpatents dargestellt waren, das Patent jedoch keine Erläuterung oder Definition dahingehend enthielt, dass "übereinanderliegende" Lagen sich stets berühren müssten. Vielmehr enthielten die Ausführungsformen der Figuren 5, 6 und 7 Hinweise, dass dies gerade nicht so zu verstehen war.

Die Kammer fügte hinzu, dass der erteilte Anspruch 7, der "mehrere übereinanderliegende Lagen (40, 41, 49)" definierte, sich auf die Ausführungsform in Figur 6 bezog. Aufgrund der Bezugszeichen war ersichtlich, dass die Lagen 40, 41 und 49 in Figur 6 im Sinne des Patents "übereinanderliegende Lagen" waren, auch

wenn sich zwischen den Lagen 40 und 49 ein anderes Element befand und sich diese daher nicht berührten und nicht direkt miteinander in Kontakt standen.

Weiterhin stellte die Kammer fest, dass R. 43 (7) Satz 2 EPÜ besagt, dass Bezugszeichen nicht zu einer einschränkende Auslegung des Patentanspruchs herangezogen werden dürfen. Dies bedeutet insbesondere, dass im Patentanspruch angeführte Bezugszeichen den Anspruchsgegenstand nicht auf Ausführungsbeispiele beschränken, die den Zeichnungen bzw. Figuren entsprechen, in denen diese Bezugszeichen verwendet werden. Dies war bei der oben dargelegten Begründung auch nicht der Fall. Gemäß R. 43 (7) EPÜ sollen Bezugszeichen das Verständnis des Patentanspruchs erleichtern. Dies war etwa dann der Fall, wenn durch Bezugszeichen erläutert wurde, in welchem Zusammenhang Merkmale des Patentanspruchs in einem im Patent genannten Ausführungsbeispiel zueinander standen.

Die Kammer wies darauf hin, dass Figur 6 Teil der bei der Anspruchsauslegung gemäß G 1/24 stets heranzuziehenden Beschreibung und Zeichnungen war. Laut Kammer erleichterten die Bezugszeichen in Anspruch 7 das Verständnis des Verhältnisses von dem in Figur 6 gezeigten Ausführungsbeispiel zu Anspruch 7. Die Berücksichtigung der Bezugszeichen dahingehend, dass jedes der Bezugszeichen auf eine der in Figur 6 gezeigten "übereinanderliegenden Lagen" verwies, stand insofern im Einklang mit R. 43 (7) EPÜ. Der Umstand, dass sich hieraus über Figur 6 indirekt eine erläuternde Rückwirkung der Bezugszeichen auf das Verständnis der im Anspruch verwendeten Begriffe ergab, entsprach der gemäß R. 43 (7) Satz 1 EPÜ erwünschten Funktion der Bezugszeichen, das Verständnis des Patentanspruchs zu erleichtern. Anspruch 7 war ein abhängiger Anspruch, der sich (mittelbar) auf Anspruch 1 bezog, in dem der Begriff "übereinanderliegend" ebenso wie in Anspruch 7 verwendet wurde. Der Begriff war in diesen beiden Ansprüchen daher einheitlich auszulegen.

Die Kammer kam zu dem Schluss, dass der Ausdruck "übereinanderliegende Lagen" in Anspruch 1 nicht auf Lagen beschränkt war, die in direktem Kontakt zueinander standen und sich berührten. Dieses Verständnis ergab sich nicht aus einer bloßen Betrachtung der Bezugszeichen, sondern aus der gemäß G 1/24 bei der Auslegung von Ansprüchen stets gebotenen Heranziehung der Beschreibung und Zeichnungen (einschließlich der Referenzzeichen) aus der Sicht der Fachperson, ggf. unter Einbeziehung der funktionalen und üblichen sprachlichen Bedeutung der im Anspruch verwendeten Begriffe.

Der Gegenstand von Anspruch 1 des Hauptantrags war daher nicht neu.

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Contact

Legal Research Service of the Boards of Appeal
Boards of Appeal of the European Patent Office
BOA_legalresearchservice@epo.org