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# **Caselaw**

## **Boards of Appeal**

### **European Patent Office**

**headnotes and catchwords**  
**50 most most frequently cited decisions decisions**

compiled by  
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This decision was cited 75 times overall and 32.08 times per year. The underlying European patent application [04024119.2](#) is in the IPC class [A01C15/00](#). This decision was rendered on 2008-03-31 and was published on the website of the EPO on 2009-03-25.

**References in this decisions:**, [Art 80](#), [Art 106](#), [Art 108](#), [Art 109](#), [Art 111](#), [R 40](#), [R 56](#), [R 99](#), [Art 106](#), [Art 108](#), [Art 109](#), [Art 111](#), [R 43](#), [R 43](#), [R 43](#), [R 64](#), [R 67](#), [G 0002/97](#), [J 0003/87](#), [J 0018/96](#)

**Headword:**

Zur Frage der Anwendbarkeit des EPÜ 1973 bzw. des EPÜ 2000 nach den Übergangsbestimmungen zum EPÜ 2000 (siehe 1, 3, 6 und 7 der Entscheidungsgründe).

This decision was cited 179 times overall and 28.33 times per year. The underlying European patent application [92116446.3](#) is in the IPC class [C03C17/36](#). This decision was rendered on 2004-04-08 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 52](#), [Art 53](#), [Art 54](#), [Art 54](#), [Art 54](#), [Art 56](#), [Art 57](#), [Art 60](#), [Art 84](#), [Art 87](#), [Art 112](#), [Art 123](#), [Art 123](#), [Art 139](#), [R 27](#), [R 29](#), [G 0005/83](#), [G 0001/93](#), [G 0002/98](#), [T 0013/84](#), [T 0292/85](#), [T 0313/86](#), [T 0170/87](#), [T 0301/87](#), [T 0238/88](#), [T 0939/92](#), [T 0074/93](#), [T 0608/96](#), [T 0323/97](#), [T 1071/97](#), [T 0351/98](#), [T 0451/99](#), [T 0507/99](#)

**Headword:**

I. An amendment to a claim by the introduction of a disclaimer may not be refused under Article 123(2) EPC for the sole reason that neither the disclaimer nor the subject-matter excluded by it from the scope of the claim have a basis in the application as filed.

II. The following criteria are to be applied for assessing the allowability of a disclaimer which is not disclosed in the application as filed:

II.1 A disclaimer may be allowable in order to:

- restore novelty by delimiting a claim against state of the art under Article 54(3) and (4) EPC;
- restore novelty by delimiting a claim against an accidental anticipation under Article 54(2) EPC; an anticipation is accidental if it is so unrelated to and remote from the claimed invention that the person skilled in the art would never have taken it into consideration when making the invention; and
- disclaim subject-matter which, under Articles 52 to 57 EPC, is excluded from patentability for non-technical reasons.

II.2 A disclaimer should not remove more than is necessary either to restore novelty or to disclaim subject-matter excluded from patentability for non-technical reasons.

II.3 A disclaimer which is or becomes relevant for the assessment of inventive step or sufficiency of disclosure adds subject-matter contrary to Article 123(2) EPC.

II.4 A claim containing a disclaimer must meet the requirements of clarity and conciseness of Article 84 EPC.

## G 0010/91 (1993-03-31)

This decision was cited 402 times overall and 23.17 times per year. The underlying European patent application [91101158.3](#) is in the IPC class . This decision was rendered on 1993-03-31 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 99](#), [Art 100](#), [Art 101](#), [Art 102](#), [Art 110](#), [Art 114](#), [R 55](#), [R 56](#), [R 66](#)

### Headword:

1. An Opposition Division or a Board of Appeal is not obliged to consider all the grounds for opposition referred to in Article 100 EPC, going beyond the grounds covered by the statement under Rule 55(c) EPC.
2. In principle, the Opposition Division shall examine only such grounds for opposition which have been properly submitted and substantiated in accordance with Article 99(1) in conjunction with Rule 55(c) EPC. Exceptionally, the Opposition Division may in application of Article 114(1) EPC consider other grounds for opposition which, prima facie, in whole or in part would seem to prejudice the maintenance of the European patent.
3. Fresh grounds for opposition may be considered in appeal proceedings only with the approval of the patentee.

## G 0009/91 (1989-07-20)

This decision was cited 441 times overall and 20.95 times per year. The underlying European patent application [89401380.4](#) is in the IPC class [C08F8/32](#). This decision was rendered on 1989-07-20 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 101](#), [Art 102](#), [Art 110](#), [Art 114](#), [R 55](#), [R 56](#)

### Headword:

The power of an Opposition Division or a Board of Appeal to examine and decide on the maintenance of a European patent under Articles 101 and 102 EPC depends upon the extent to which the patent is opposed in the notice of opposition pursuant to Rule 55(c) EPC. However, subject-matters of claims depending on an independent claim, which falls in opposition or appeal proceedings, may be examined as to their patentability even if they have not been explicitly opposed, provided their validity is prima facie in doubt on the basis of already available information.

## G 0002/98 (2001-05-31)

This decision was cited 172 times overall and 18.74 times per year. The underlying European patent application [89905055.3](#) is in the IPC class . This decision was rendered on 2001-05-31 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 54](#), [Art 54](#), [Art 56](#), [Art 60](#), [Art 83](#), [Art 84](#), [Art 87](#), [Art 87](#), [Art 88](#), [Art 88](#), [Art 88](#), [Art 89](#), [Art 93](#), [Art 112](#), [Art 123](#), [Art 123](#), [G 0001/93](#), [G 0003/93](#), [T 0116/84](#), [T 0184/84](#), [T 0016/87](#), [T 0085/87](#), [T 0295/87](#), [T 0301/87](#), [T 0073/88](#), [T 0255/91](#), [T 0582/91](#), [T 0311/93](#), [T 0669/93](#), [T 1056/93](#), [T 0364/95](#), [T 0077/97](#), [J 0015/80](#)

### Headword:

The requirement for claiming priority of "the same invention", referred to in Article 87(1) EPC, means that priority of a previous application in respect of a claim in a European patent application in accordance with Article 88 EPC is to be acknowledged only if the skilled person can derive the subject-matter of the claim directly and unambiguously, using common general knowledge, from the previous application as a whole.

## T 0641/00 (2002-09-26)

This decision was cited 91 times overall and 11.59 times per year. The underlying European patent application [92907791.5](#) is in the IPC class [H04B7/26](#). This decision was rendered on 2002-09-26 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 52](#), [Art 52](#), [Art 56](#), [T 0026/81](#), [T 0026/86](#), [T 0072/95](#), [T 0470/95](#), [T 0931/95](#), [T 0027/97](#), [T 0157/97](#), [T 0158/97](#), [T 0176/97](#), [T 1053/98](#)

### Headword:

I. Lorsqu'une invention se compose d'un ensemble de caractéristiques techniques et non techniques et qu'elle présente globalement un caractère technique, l'exigence d'activité inventive doit être appréciée en tenant compte de toutes les caractéristiques qui contribuent audit caractère technique, les caractéristiques qui n'apportent pas une telle contribution ne pouvant étayer l'existence d'une activité inventive.

II. Bien que la formulation du problème technique à résoudre ne doive ni comporter d'indices de solution ni anticiper partiellement la solution, une caractéristique donnée n'est pas automatiquement exclue de la formulation du problème au seul motif qu'elle figure dans la revendication. En particulier, lorsque la revendication se réfère à un but à atteindre dans un domaine non technique, ce but peut légitimement être énoncé dans la formulation du problème en tant que partie du cadre dans lequel s'inscrit le problème technique à résoudre, notamment en tant que contrainte à respecter.

This decision was cited 99 times overall and 10.6 times per year. The underlying European patent application [86308961.1](#) is in the IPC class [G02B5/12](#). This decision was rendered on 2001-04-02 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 100](#), [Art 101](#), [Art 102](#), [Art 102](#), [Art 102](#), [Art 106](#), [Art 107](#), [Art 108](#), [Art 112](#), [Art 114](#), [Art 123](#), [Art 123](#), [Art 125](#), [R 57](#), [R 58](#), [R 64](#), [R 66](#), [R 87](#), [G 0002/91](#), [G 0008/91](#), [G 0009/91](#), [G 0010/91](#), [G 0009/92](#), [G 0004/93](#), [G 0001/95](#), [T 0406/86](#), [T 0295/87](#), [T 0060/91](#), [T 0488/91](#), [T 0096/92](#), [T 0923/92](#), [T 0752/93](#), [T 0579/94](#), [T 1002/95](#), [T 0315/97](#)

**Headword:**

In principle, an amended claim, which would put the opponent and sole appellant in a worse situation than if it had not appealed, must be rejected. However, an exception to this principle may be made in order to meet an objection put forward by the opponent/appellant or the Board during the appeal proceedings, in circumstances where the patent as maintained in amended form would otherwise have to be revoked as a direct consequence of an inadmissible amendment held allowable by the Opposition Division in its interlocutory decision.

In such circumstances, in order to overcome the deficiency, the patent proprietor/respondent may be allowed to file requests, as follows:

- in the first place, for an amendment introducing one or more originally disclosed features which limit the scope of the patent as maintained;
- if such a limitation is not possible, for an amendment introducing one or more originally disclosed features which extend the scope of the patent as maintained, but within the limits of Article 123(3) EPC;
- finally, if such amendments are not possible, for deletion of the inadmissible amendment, but within the limits of Article 123(3) EPC.

## T 0258/03 (2004-04-21)

This decision was cited 62 times overall and 9.87 times per year. The underlying European patent application [97306722.6](#) is in the IPC class [G06F17/60](#). This decision was rendered on 2004-04-21 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 52](#), [Art 52](#), [Art 52](#), [Art 54](#), [Art 56](#), [Art 57](#), [T 0052/85](#), [T 0026/86](#), [T 0038/86](#), [T 0769/92](#), [T 0931/95](#), [T 1173/97](#), [T 0641/00](#)

### Headword:

I. A method involving technical means is an invention within the meaning of Article 52(1) EPC (as distinguished from decision T 931/95-Controlling pension benefits system/PBS PARTNERSHIP)(see points 4.1 to 4.4 of the reasons).  
II. Method steps consisting of modifications to a business scheme and aimed at circumventing a technical problem rather than solving it by technical means cannot contribute to the technical character of the subject-matter claimed (see point 5.7 of the reasons).

## G 0001/06 (2007-06-28)

This decision was cited 29 times overall and 9.37 times per year. The underlying European patent application [01128824.8](#) is in the IPC class [G09G3/36](#). This decision was rendered on 2007-06-28 and was published on the website of the EPO on 2007-07-17.

**References in this decisions:**, [Art 54](#), [Art 75](#), [Art 76](#), [Art 76](#), [Art 76](#), [Art 77](#), [Art 82](#), [Art 96](#), [Art 97](#), [Art 100](#), [Art 102](#), [Art 112](#), [Art 113](#), [Art 123](#), [Art 123](#), [Art 138](#), [Art 138](#), [R 25](#), [R 25](#), [R 51](#), [R 86](#), [R 86](#), [G 0001/93](#), [G 0004/98](#), [J 0015/85](#), [J 0002/01](#), [T 0514/88](#), [T 0527/88](#), [T 0122/90](#), [T 0860/90](#), [T 0441/92](#), [T 0873/94](#), [T 0276/97](#), [T 0904/97](#), [T 1074/97](#), [T 0555/00](#), [T 0561/00](#), [T 0743/00](#), [T 1004/90](#), [T 1158/01](#), [T 0720/02](#), [T 0797/02](#), [T 0039/03](#), [T 0090/03](#), [T 0873/04](#), [T 1040/04](#), [T 1092/04](#), [T 1409/05](#)

### Headword:

In the case of a sequence of applications consisting of a root (originating) application followed by divisional applications, each divided from its predecessor, it is a necessary and sufficient condition for a divisional application of that sequence to comply with Article 76(1), second sentence, EPC that anything disclosed in that divisional application be directly and unambiguously derivable from what is disclosed in each of the preceding applications as filed.

This decision was cited 183 times overall and 8.28 times per year. The underlying European patent application [91101158.3](#) is in the IPC class [G02B5/00](#). This decision was rendered on 1988-06-28 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 123](#), [Art 123](#), [T 0231/89](#), [G 0003/89](#)

**Headword:**

1. If a European patent as granted contains subject-matter which extends beyond the content of the application as filed within the meaning of Article 123(2) EPC and which also limits the scope of protection conferred by the patent, such patent cannot be maintained in opposition proceedings unamended, because the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent. Nor can it be amended by deleting such limiting subject-matter from the claims, because such amendment would extend the protection conferred, which is prohibited by Article 123(3) EPC. Such a patent can, therefore, only be maintained if there is a basis in the application as filed for replacing such subject-matter without violating Article 123(3) EPC.
2. A feature which has not been disclosed in the application as filed but which has been added to the application during examination and which, without providing a technical contribution to the subject-matter of the claimed invention, merely limits the protection conferred by the patent as granted by excluding protection for part of the subject-matter of the claimed invention as covered by the application as filed, is not to be considered as subject-matter which extends beyond the content of the application as filed within the meaning of Article 123(2) EPC. The ground for opposition under Article 100(c) EPC therefore does not prejudice the maintenance of a European patent which includes such a feature.

This decision was cited 151 times overall and 8.1 times per year. The underlying European patent application [95927728.6](#) is in the IPC class [C07D0013](#). This decision was rendered on 1991-12-13 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 84](#), [Art 56](#), [T 0181/82](#), [T 0021/83](#), [T 0157/87](#), [T 0133/85](#), [T 0409/91](#), [T 0766/91](#), [T 0435/91](#), [T 0024/81](#), [T 0439/92](#), [T 0465/92](#), [T 0220/84](#), [T 0001/80](#), [T 0119/82](#), [T 0022/82](#), [T 0131/87](#), [T 0742/89](#), [T 0626/90](#), [T 0741/91](#), [T 0219/83](#), [T 0020/81](#), [T 0964/92](#), [T 0845/90](#)

**Headword:**

1. If a claim concerns a group of chemical compounds per se, an objection of lack of support by the description pursuant to Article 84 EPC cannot properly be raised for the sole reason that the description does not contain sufficient information in order to make it credible that an alleged technical effect (which is not, however, a part of the definition of the claimed compounds) is obtained by all the compounds claimed (see Reasons No. 2.2.2).
2. The question as to whether or not such a technical effect is achieved by all the chemical compounds covered by such a claim may properly arise under Article 56 EPC, if this technical effect turns out to be the sole reason for the alleged inventiveness of these compounds (Reasons Nos. 2.4 to 2.6).

This decision was cited 37 times overall and 7.99 times per year. The underlying European patent application [99104880.2](#) is in the IPC class . This decision was rendered on 2005-12-16 and was published on the website of the EPO on 2005-12-24.

**References in this decisions:**, [Art 4](#), [Art 52](#), [Art 52](#), [Art 52](#), [Art 57](#), [Art 84](#), [Art 112](#), [R 29](#), [T 0116/85](#), [T 0385/86](#), [T 0603/89](#), [T 0775/92](#), [T 0530/93](#), [T 1165/97](#), [T 0807/98](#), [T 0310/99](#), [T 0964/99](#)

**Headword:**

1. In order that the subject-matter of a claim relating to a diagnostic method practised on the human or animal body falls under the prohibition of Article 52(4) EPC, the claim is to include the features relating to:

- (i) the diagnosis for curative purposes stricto sensu representing the deductive medical or veterinary decision phase as a purely intellectual exercise,
- (ii) the preceding steps which are constitutive for making that diagnosis, and
- (iii) the specific interactions with the human or animal body which occur when carrying those out among these preceding steps which are of a technical nature.

2. Whether or not a method is a diagnostic method within the meaning of Article 52(4) EPC may neither depend on the participation of a medical or veterinary practitioner, by being present or by bearing the responsibility, nor on the fact that all method steps can also, or only, be practised by medical or technical support staff, the patient himself or herself or an automated system. Moreover, no distinction is to be made in this context between essential method steps having diagnostic character and non-essential method steps lacking it.

3. In a diagnostic method under Article 52(4) EPC, the method steps of a technical nature belonging to the preceding steps which are constitutive for making the diagnosis for curative purposes stricto sensu must satisfy the criterion "practised on the human or animal body".

4. Article 52(4) EPC does not require a specific type and intensity of interaction with the human or animal body; a preceding step of a technical nature thus satisfies the criterion "practised on the human or animal body" if its performance implies any interaction with the human or animal body, necessitating the presence of the latter.

## G 0010/93 (1993-12-06)

This decision was cited 125 times overall and 7.5 times per year. The underlying European patent application [91301994.9](#) is in the IPC class [G01P21/00](#). This decision was rendered on 1993-12-06 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 96](#), [Art 97](#), [Art 110](#), [Art 111](#), [Art 114](#), [G 0009/91](#), [G 0010/91](#), [G 0009/92](#), [G 0010/92](#)

### Headword:

In an appeal from a decision of an examining division in which a European patent application was refused the board of appeal has the power to examine whether the application or the invention to which it relates meets the requirements of the EPC. The same is true for requirements which the examining division did not take into consideration in the examination proceedings or which it regarded as having been met. If there is reason to believe that such a requirement has not been met, the board shall include this ground in the proceedings.

## T 0409/91 (1993-03-18)

This decision was cited 128 times overall and 7.36 times per year. The underlying European patent application [91904092.3](#) is in the IPC class [C10L1/24](#). This decision was rendered on 1993-03-18 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 83](#), [Art 84](#), [R 29](#), [R 29](#)

### Headword:

The questions of sufficiency and of support by the description are questions of fact which have to be answered on the basis of the available evidence having regard to the balance of probabilities in each individual case. Although the requirements of sufficient disclosure of the invention (Art. 83 EPC) and support by the description (Art. 84 EPC) are related to different parts of the patent application, they give effect to the same legal principle that the patent monopoly should be justified by the technical contribution to the art. Therefore, the extent to which an invention is sufficiently disclosed is also highly relevant for the answer to the question of support (points 3.3 to 3.5 of the Reasons).

## G 0002/03 (2004-04-08)

This decision was cited 46 times overall and 7.28 times per year. The underlying European patent application [86902998.3](#) is in the IPC class [C12Q1/70](#). This decision was rendered on 2004-04-08 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 52](#), [Art 53](#), [Art 54](#), [Art 54](#), [Art 54](#), [Art 56](#), [Art 57](#), [Art 60](#), [Art 84](#), [Art 87](#), [Art 112](#), [Art 123](#), [Art 123](#), [Art 139](#), [R 27](#), [R 29](#), [G 0005/83](#), [G 0001/93](#), [G 0002/98](#), [T 0013/84](#), [T 0292/85](#), [T 0313/86](#), [T 0170/87](#), [T 0301/87](#), [T 0238/88](#), [T 0939/92](#), [T 0074/93](#), [T 0608/96](#), [T 0323/97](#), [T 1071/97](#), [T 0351/98](#), [T 0451/99](#), [T 0507/99](#)

## G 0001/05 (2004-11-23)

This decision was cited 39 times overall and 6.85 times per year. The underlying European patent application [01305949.8](#) is in the IPC class . This decision was rendered on 2004-11-23 and was published on the website of the EPO on 2007-01-20.

**References in this decisions:**, [Art 24](#), [Art 24](#), [Art 24](#), [Art 24](#), [Art 76](#), [Art 105](#), [Art 112](#), [Art 123](#), [R 66](#), [G 0005/91](#), [J 0015/04](#), [T 0261/88](#), [T 0843/91](#), [T 0241/98](#), [T 0954/98](#), [T 0797/02](#), [T 0190/03](#)

### Headword:

I. If a member of a Board of Appeal in a notice of withdrawal gives a ground which may by its nature constitute a possible ground for an objection of partiality that ground should normally be respected by the decision on replacement of the Board member concerned (Reasons, point 7).

II. As regards proceedings before the Enlarged Board of Appeal and unless there are specific circumstances throwing doubt on the Board member's ability to approach the parties' submissions with an open mind on a later occasion there cannot be any objectively justified, i.e. reasonable suspicion of partiality against a member of the Enlarged Board of Appeal within the meaning of Article 24(3), first sentence, EPC for the reason that a position on the matter was adopted in a prior decision of a Board of Appeal in which the Board member concerned had participated (Reasons, point 27).

## G 0002/04 (2005-05-25)

This decision was cited 33 times overall and 6.36 times per year. The underlying European patent application [92305862.2](#) is in the IPC class [C12Q1/68](#). This decision was rendered on 2005-05-25 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 58](#), [Art 99](#), [Art 105](#), [Art 107](#), [Art 108](#), [Art 112](#), [Art 114](#), [Art 134](#), [R 20](#), [R 60](#), [R 61](#), [R 64](#), [R 65](#), [R 88](#), [R 101](#), [R 101](#), [G 0004/88](#), [G 0009/91](#), [G 0010/91](#), [G 0008/92](#), [G 0009/93](#), [G 0001/97](#), [G 0003/97](#), [G 0003/99](#), [J 0016/94](#), [J 0027/94](#), [T 0563/89](#), [T 0659/92](#), [T 0670/95](#), [T 0298/97](#), [T 0097/98](#), [T 0964/98](#), [T 0711/99](#), [T 0009/00](#), [T 0715/01](#), [T 0854/02](#)

### Headword:

(see Order)

## G 0004/92 (1992-09-03)

This decision was cited 110 times overall and 6.14 times per year. The underlying European patent application [85308677.5](#) is in the IPC class . This decision was rendered on 1992-09-03 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 113](#), [Art 114](#), [Art 114](#), [R 71](#)

### Headword:

1. A decision against a party who has been duly summoned but who fails to appear at oral proceedings may not be based on facts put forward for the first time during those oral proceedings.
2. Similarly, new evidence may not be considered unless it has been previously notified and it merely supports the assertions of the party who submits it, whereas new arguments may in principle be used to support the reasons for the decision.

## G 0001/97 (1999-12-10)

This decision was cited 65 times overall and 6.1 times per year. The underlying European patent application [83810210.1](#) is in the IPC class [G04B37/16](#). This decision was rendered on 1999-12-10 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 21](#), [Art 23](#), [Art 23](#), [Art 24](#), [Art 106](#), [Art 110](#), [Art 111](#), [Art 113](#), [Art 114](#), [Art 116](#), [Art 121](#), [Art 122](#), [Art 125](#), [Art 127](#), [R 10](#), [R 11](#), [R 65](#), [R 66](#), [R 67](#), [R 89](#), [R 90](#), [R 92](#), [R 92](#), [G 0001/86](#), [G 0005/88](#), [G 0009/93](#), [G 0004/97](#), [J 0012/85](#), [J 0002/93](#), [T 0073/88](#), [T 0079/89](#), [T 0105/89](#), [T 0905/90](#), [T 0669/90](#), [T 0843/91](#), [T 0167/93](#), [T 0557/94](#), [T 0460/95](#), [T 0770/95](#), [W 0003/93](#)

### Headword:

- I. In the context of the European Patent Convention, the jurisdictional measure to be taken in response to requests based on the alleged violation of a fundamental procedural principle and aimed at the revision of a final decision of a board of appeal having the force of res judicata should be the refusal of the requests as inadmissible.
- II. The decision on inadmissibility is to be issued by the board of appeal which took the decision forming the subject of the request for revision. The decision may be issued immediately and without further procedural formalities.
- III. This jurisdictional measure applies only to requests directed against a decision of a board of appeal bearing a date after that of the present decision.
- IV. If the Legal Division of the EPO is asked to decide on the entry in the Register of European Patents of a request directed against a decision of a board of appeal, it must refrain from ordering that the entry be made if the request, in whatever form, is based on the alleged violation of a fundamental procedural principle and aimed at the revision of a final decision of a board of appeal.

## G 0005/83 (1984-07-31)

This decision was cited 157 times overall and 6.03 times per year. The underlying European patent application [91101158.3](#) is in the IPC class . This decision was rendered on 1984-07-31 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 52](#), [Art 52](#), [Art 54](#), [Art 57](#)

### Headword:

- I. A European Patent with claims directed to the use may not be granted for the use of a substance or composition for the treatment of the human or animal body by therapy.
- II. A European patent may be granted with claims directed to the use of a substance or composition for the manufacture of a medicament for a specified new and inventive therapeutic application.

## G 0004/93 (1994-07-14)

This decision was cited 95 times overall and 5.91 times per year. The underlying European patent application [86308961.1](#) is in the IPC class [H04N5/04](#). This decision was rendered on 1994-07-14 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 101](#), [Art 107](#), [Art 111](#), [Art 114](#), [R 58](#), [R 64](#), [R 65](#), [R 66](#), [T 0123/85](#), [T 0576/89](#), [T 0060/91](#), [T 0369/91](#), [T 0096/92](#), [G 0002/91](#), [G 0007/91](#), [G 0008/91](#), [G 0005/91](#), [G 0010/91](#)

### Headword:

I. If the patent proprietor is the sole appellant against an interlocutory decision maintaining a patent in amended form, neither the Board of Appeal nor the non-appealing opponent as a party to the proceedings as of right under Article 107, second sentence, EPC, may challenge the maintenance of the patent as amended in accordance with the interlocutory decision.

II. If the opponent is the sole appellant against an interlocutory decision maintaining a patent in amended form, the patent proprietor is primarily restricted during the appeal proceedings to defending the patent in the form in which it was maintained by the Opposition Division in its interlocutory decision. Amendments proposed by the patent proprietor as a party to the proceedings as of right under Article 107, second sentence, EPC, may be rejected as inadmissible by the Board of Appeal if they are neither appropriate nor necessary.

## T 0190/99 (2001-03-06)

This decision was cited 55 times overall and 5.84 times per year. The underlying European patent application [91301994.9](#) is in the IPC class [A44B19/40](#). This decision was rendered on 2001-03-06 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 56](#), [Art 69](#), [Art 123](#), [T 0108/91](#), [T 0214/91](#)

### Catchwords:

The skilled person when considering a claim should rule out interpretations which are illogical or which do not make technical sense. He should try, with synthetical propensity i.e. building up rather than tearing down, to arrive at an interpretation of the claim which is technically sensible and takes into account the whole disclosure of the patent (Article 69 EPC). The patent must be construed by a mind willing to understand not a mind desirous of misunderstanding.

This decision was cited 129 times overall and 5.49 times per year. The underlying European patent application [84201705.5](#) is in the IPC class [C08G75/23](#). This decision was rendered on 1987-02-07 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 54](#), [Art 108](#), [Art 110](#), [Art 111](#)

**Headword:**

1. If an appellant desires that the allowability of alternative sets of claims should be considered in an appeal, such alternative claims should normally be filed with the statement of grounds of appeal or as soon as possible thereafter.
2. When deciding an appeal during oral proceedings, a Board of Appeal may refuse to consider alternative claims which have been filed at a late stage, e.g. during the oral proceedings, if such claims are not clearly allowable.
3. When assessing novelty, the disclosure of a prior document must be considered in isolation. It is only the actual content of a document (as understood by a skilled man) which destroys novelty.
4. A prior document may on its proper construction (i.e. when its meaning to the skilled man is determined) incorporate part or all of a second prior document into its disclosure, by specific reference to the second document.

## G 0002/88 (1970-01-01)

This decision was cited 221 times overall and 5.44 times per year. The underlying European patent application [88117857.8](#) is in the IPC class . This decision was rendered on 1970-01-01 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 54](#), [Art 64](#), [Art 69](#), [Art 112](#), [Art 123](#), [T 0208/84](#), [T 0231/85](#), [T 0012/81](#), [T 0124/87](#), [T 0303/88](#)

### Headword:

1. A change of category of granted claims in opposition proceedings is not open to objection under Article 123(3) EPC, if it does not result in extension of the protection conferred by the claims as a whole, when they are interpreted in accordance with Article 69 EPC and its Protocol. In this context, the national laws of the Contracting States relating to infringement should not be considered.
2. An amendment of granted claims directed to "a compound" and to "a composition including such compound", so that the amended claims are directed to "the use of that compound in a composition" for a particular purpose, is not open to objection under Article 123(3) EPC.
3. A claim to the use of a known compound for a particular purpose, which is based on a technical effect which is described in the patent, should be interpreted as including that technical effect as a functional technical feature, and is accordingly not open to objection under Article 54(1) EPC provided that such technical feature has not previously been made available to the public.

## G 0007/95 (1996-07-19)

This decision was cited 75 times overall and 5.34 times per year. The underlying European patent application [91101158.3](#) is in the IPC class [A61B17/08](#). This decision was rendered on 1996-07-19 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 99](#), [Art 100](#), [Art 100](#), [Art 100](#), [Art 114](#), [R 55](#), [R 56](#), [G 0010/91](#), [T 0796/90](#), [T 0018/93](#), [T 0646/91](#), [T 0550/88](#), [T 0220/83](#)

### Headword:

In a case where a patent has been opposed under Article 100(a) EPC on the ground that the claims lack an inventive step in view of documents cited in the notice of opposition, the ground of lack of novelty based upon Articles 52(1) and 54 EPC is a fresh ground for opposition and accordingly may not be introduced into the appeal proceedings without the agreement of the patentee. However, the allegation that the claims lack novelty in view of the closest prior art document may be considered in the context of deciding upon the ground of lack of inventive step.

## T 0435/91 (1994-03-14)

This decision was cited 83 times overall and 5.06 times per year. The underlying European patent application [91904092.3](#) is in the IPC class [C11D17/00](#). This decision was rendered on 1994-03-14 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 83](#), [Art 100](#), [Art 56](#), [Art 123](#), [T 0013/84](#), [T 0226/85](#), [T 0292/85](#), [T 0301/87](#), [T 0019/90](#), [T 0182/89](#), [T 0060/89](#), [T 0212/88](#), [T 0409/91](#)

### Headword:

The disclosure of an invention relating to a composition of matter, a component of which is defined by its function (in the present case an additive which forces a detergent composition into the hexagonal liquid crystal phase), is not sufficient if the patent discloses only isolated examples, but fails to disclose, taking into account, if necessary, the relevant common general knowledge, any technical concept fit for generalisation, which would enable the skilled person to achieve the envisaged result without undue difficulty within the whole ambit of the claim containing the "functional" definition (point 2.2.1 of the reasons).

## G 0001/95 (1996-04-15)

This decision was cited 70 times overall and 4.89 times per year. The underlying European patent application [91103333.0](#) is in the IPC class [B42D15/00](#). This decision was rendered on 1996-04-15 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 99](#), [Art 100](#), [Art 100](#), [Art 100](#), [Art 114](#), [R 55](#), [R 56](#), [G 0010/91](#), [T 0796/90](#), [T 0018/93](#), [T 0646/91](#), [T 0550/88](#), [T 0220/83](#)

### Headword:

In a case where a patent has been opposed on the grounds set out in Article 100(a) EPC, but the opposition has only been substantiated on the grounds of lack of novelty and lack of inventive step, the ground of unpatentable subject-matter based upon Articles 52(1) and (2) EPC is a fresh ground for opposition and accordingly may not be introduced into the appeal proceedings without the agreement of the patentee.

## T 1173/97 (1998-07-01)

This decision was cited 58 times overall and 4.8 times per year. The underlying European patent application [91107112.4](#) is in the IPC class [G06F11/14](#). This decision was rendered on 1998-07-01 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 23](#), [Art 52](#), [Art 52](#), [Art 52](#), [R 27](#), [R 29](#), [T 0006/83](#), [T 0208/84](#), [T 0022/85](#), [T 0115/85](#), [T 0163/85](#), [T 0026/86](#), [T 0110/90](#), [T 0164/92](#), [T 0769/92](#), [T 0204/93](#), [T 0410/96](#)

### Headword:

Un produit "programme d'ordinateur" n'est pas exclu de la brevetabilité en application de l'article 52(2) et (3) CBE si sa mise en oeuvre sur un ordinateur produit un effet technique supplémentaire, allant au-delà des interactions physiques "normales" entre programme (logiciel) et ordinateur (matériel).

## G 0003/03 (2005-01-28)

This decision was cited 26 times overall and 4.72 times per year. The underlying European patent application [96306765.7](#) is in the IPC class [D04B9/44](#). This decision was rendered on 2005-01-28 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 21](#), [Art 106](#), [Art 107](#), [Art 108](#), [Art 109](#), [Art 111](#), [Art 112](#), [R 67](#), [J 0032/95](#), [J 0012/01](#), [T 0041/82](#), [T 0790/98](#), [T 0647/99](#), [T 0697/01](#), [T 0700/01](#), [T 0768/01](#), [T 1183/02](#)

### Headword:

I. In the event of interlocutory revision under Article 109(1) EPC, the department of the first instance whose decision has been appealed is not competent to refuse a request of the appellant for reimbursement of the appeal fee.

II The board of appeal which would have been competent under Article 21 EPC to deal with the substantive issues of the appeal if no interlocutory revision had been granted is competent to decide on the request.

This decision was cited 143 times overall and 4.68 times per year. The underlying European patent application [84101039.0](#) is in the IPC class . This decision was rendered on 1980-01-08 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 54](#), [Art 56](#), [Art 83](#), [Art 84](#), [Art 87](#), [Art 88](#), [Art 89](#), [Art 102](#), [R 28](#)

**Headword:**

1. When amendments are made to a patent during an opposition, Article 102(3) EPC requires consideration as to whether the amendments introduce any contravention of any requirement of the Convention, including Article 84 EPC; Article 102(3) EPC does not allow objections to be based upon Article 84 EPC, if such objections do not arise out of the amendments made (further to T 227/88, dated 15 December 1988) (cf. Point 3.7 of the reasons)
2. Variations in the construction within a class of genetic precursors, such as recombinant DNA molecules, claimed by a combination of structural limitations and functional tests are immaterial to the sufficiency of the disclosure provided the skilled person could reliably obtain members of the class without necessarily knowing in advance which member would thereby be made available (further to T 281/86 dated 27 January 1988) (cf. Point 4.5 of the reasons).
3. If an entity itself is disclosed to the skilled person, this does not necessarily mean that a component part is also disclosed for the purpose of priority if this is not envisaged directly and unambiguously as such, and requires considerable investigation to reveal its identity (cf. Point 6.3 of the reasons).
4. When priority is claimed for a European patent application, the publication of the content of the priority application in the interval between the filing of that application and the filing of the (final) European patent application cannot be used as state of the art against any claim in the latter application. However, if such publication goes beyond the content of a previously filed application and includes subject-matters not covered by the disclosure of that application, such disclosure may in principle be cited against any claim in the (final) European patent application relying on a priority date subsequent to the publication date (cf. Point 7.8 of the reasons).

This decision was cited 45 times overall and 4.54 times per year. The underlying European patent application [88302239.4](#) is in the IPC class [G06F15/30](#). This decision was rendered on 2000-09-08 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 52](#), [Art 52](#), [Art 52](#), [Art 52](#), [Art 56](#), [Art 84](#), [T 0208/84](#), [T 0769/92](#), [T 1002/92](#), [T 1173/97](#), [T 0935/97](#)

**Catchwords:**

1. Having technical character is an implicit requirement of the EPC to be met by an invention in order to be an invention within the meaning of Article 52(1)EPC. (following decisions T 1173/97 and T 935/97)
2. Methods only involving economic concepts and practices of doing business are not inventions within the meaning of Article 52(1) EPC. A feature of a method which concerns the use of technical means for a purely non-technical purpose and/or for processing purely non-technical information does not necessarily confer a technical character to such a method.
3. An apparatus constituting a physical entity or concrete product, suitable for performing or supporting an economic activity, is an invention within the meaning of Article 52(1) EPC.
4. There is no basis in the EPC for distinguishing between "new features" of an invention and features of that invention which are known from the prior art when examining whether the invention concerned may be considered to be an invention within the meaning of Article 52(1) EPC. Thus there is no basis in the EPC for applying this so-called contribution approach for this purpose. (following decisions T 1173/97 and T 935/97)

This decision was cited 51 times overall and 4.42 times per year. The underlying European patent application [88112875.5](#) is in the IPC class [B29C47/10](#). This decision was rendered on 1999-01-21 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 99](#), [R 55](#), [G 0001/84](#), [G 0009/93](#), [T 0010/82](#), [T 0635/88](#), [T 0290/90](#), [T 0649/92](#), [T 0798/93](#), [T 0301/95](#)

**Headword:**

- 1(a): An opposition is not inadmissible purely because the person named as opponent according to Rule 55(a) EPC is acting on behalf of a third party.
- 1(b): Such an opposition is, however, inadmissible if the involvement of the opponent is to be regarded as circumventing the law by abuse of process.
- 1(c): Such a circumvention of the law arises, in particular, if:
- the opponent is acting on behalf of the patent proprietor;
  - the opponent is acting on behalf of a client in the context of activities which, taken as a whole, are typically associated with professional representatives, without possessing the relevant qualifications required by Article 134 EPC.
- 1(d): However, a circumvention of the law by abuse of process does not arise purely because:
- a professional representative is acting in his own name on behalf of a client;
  - an opponent with either a residence or principal place of business in one of the EPC contracting states is acting on behalf of a third party who does not meet this requirement.
- 2: In determining whether the law has been circumvented by abuse of process, the principle of the free evaluation of evidence is to be applied. The burden of proof is to be borne by the person alleging that the opposition is inadmissible. The deciding body has to be satisfied on the basis of clear and convincing evidence that the law has been circumvented by abuse of process.

This decision was cited 174 times overall and 4.41 times per year. The underlying European patent application [86307161.9](#) is in the IPC class [B62D65/00](#). This decision was rendered on 1971-02-28 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 101](#), [Art 107](#), [Art 111](#), [Art 114](#), [R 58](#), [R 64](#), [R 65](#), [R 66](#), [T 0123/85](#), [T 0576/89](#), [T 0060/91](#), [T 0369/91](#), [T 0096/92](#), [G 0002/91](#), [G 0007/91](#), [G 0008/91](#), [G 0009/91](#), [G 0010/91](#)

**Headword:**

1. If the patent proprietor is the sole appellant against an interlocutory decision maintaining a patent in amended form, neither the Board of Appeal nor the non-appealing opponent as a party to the proceedings as of right under Article 107, second sentence, EPC, may challenge the maintenance of the patent as amended in accordance with the interlocutory decision.
2. If the opponent is the sole appellant against an interlocutory decision maintaining a patent in amended form, the patent proprietor is primarily restricted during the appeal proceedings to defending the patent in the form in which it was maintained by the Opposition Division in its interlocutory decision. Amendments proposed by the patent proprietor as a party to the proceedings as of right under Article 107, second sentence, EPC, may be rejected as inadmissible by the Board of Appeal if they are neither appropriate nor necessary.

## T 0323/97 (2001-09-17)

This decision was cited 39 times overall and 4.39 times per year. The underlying European patent application [91309598.0](#) is in the IPC class [C11D17/00](#). This decision was rendered on 2001-09-17 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 123](#), [Art 56](#), [R 57](#), [T 0095/83](#), [T 0597/82](#), [T 0608/96](#), [T 0432/92](#), [T 0653/92](#), [T 0710/92](#), [T 0426/94](#), [T 0982/94](#), [T 0318/98](#), [T 0898/91](#), [T 0526/92](#), [T 0645/95](#), [T 0863/96](#), [G 0003/89](#), [T 0433/86](#), [T 0004/80](#), [T 0170/87](#), [G 0002/98](#), [G 0001/93](#)

### Headword:

I. An amendment to a patent by the introduction of a "negative" technical feature into a claim resulting in the exclusion of certain embodiments is, regardless of the name "disclaimer", none the less an amendment governed by Articles 123(2) and (3) EPC (point 2.2 of the Reasons for the Decision).

II. The practice of permitting disclaimers having no support in the application as filed to make a claimed subject-matter novel by delimiting it against an accidental anticipation cannot be maintained in the light of the Enlarged Board of Appeal's opinion G 0002/98 (point 2.3 and 2.4 of the Reasons for the Decision).

III. Any amendment of a claim not having support in the application as filed and aiming at distancing the claimed subject-matter further from the state of the art, in particular by way of a disclaimer, contravenes Article 123(2) EPC (point 2.5 of the Reasons for the Decision).

## T 1067/97 (2000-10-04)

This decision was cited 43 times overall and 4.37 times per year. The underlying European patent application [89306131.7](#) is in the IPC class [G03F7/30](#). This decision was rendered on 2000-10-04 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 56](#), [Art 84](#), [Art 114](#), [Art 123](#), [T 0063/86](#), [T 0633/97](#)

This decision was cited 102 times overall and 4.16 times per year. The underlying European patent application [95927728.6](#) is in the IPC class . This decision was rendered on 1986-01-21 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 112](#), [Art 114](#), [R 58](#), [R 66](#)

**Headword:**

1. If the parties to opposition proceedings make contrary assertions which they cannot substantiate and the European Patent Office is unable to establish the facts of its own motion, the patent proprietor is given the benefit of the doubt.
2. After oral appeal proceedings in connection with an opposition, the parties must be informed and invited to state their observations concerning the maintenance of the European patent in the amended form within a period of one month in accordance with Rule 58(4) EPC only, if they cannot reasonably be expected to do so definitively during the oral proceedings.

This decision was cited 35 times overall and 4.14 times per year. The underlying European patent application [83307553.4](#) is in the IPC class [C12N15/16](#). This decision was rendered on 2002-02-18 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 58](#), [Art 99](#), [Art 99](#), [Art 104](#), [Art 107](#), [Art 110](#), [Art 112](#), [Art 133](#), [Art 133](#), [Art 134](#), [R 1](#), [R 26](#), [R 36](#), [R 55](#), [R 55](#), [R 56](#), [R 60](#), [R 66](#), [R 100](#), [R 100](#), [G 0008/92](#), [G 0003/97](#), [G 0004/97](#), [T 0025/85](#), [T 0635/88](#), [T 0665/89](#), [T 0272/95](#), [T 0543/99](#)

**Headword:**

- I. An opposition filed in common by two or more persons, which otherwise meets the requirements of Article 99 EPC and Rules 1 and 55 EPC, is admissible on payment of only one opposition fee.
- II. If the opposing party consists of a plurality of persons, an appeal must be filed by the common representative under Rule 100 EPC. Where the appeal is filed by a non-entitled person, the Board of Appeal shall consider it not to be duly signed and consequently invite the common representative to sign it within a given time limit. The non-entitled person who filed the appeal shall be informed of this invitation. If the previous common representative is no longer participating in the proceedings, a new common representative shall be determined pursuant to Rule 100 EPC.
- III. In order to safeguard the rights of the patent proprietor and in the interests of procedural efficiency, it has to be clear throughout the procedure who belongs to the group of common opponents or common appellants. If either a common opponent or appellant (including the common representative) intends to withdraw from the proceedings, the EPO shall be notified accordingly by the common representative or by a new common representative determined under Rule 100(1) EPC in order for the withdrawal to take effect.

This decision was cited 91 times overall and 3.99 times per year. The underlying European patent application [84901861.9](#) is in the IPC class [C10M0007](#). This decision was rendered on 1987-10-07 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 112](#), [Art 112](#), [Art 154](#), [Art 17](#), [R 13](#), [R 33](#), [R 40](#), [W 0003/88](#), [W 0044/88](#)

**Headword:**

The agreement between the European Patent Organisation and WIPO dated 7 October 1987, including the obligation under its Article 2 for the EPO to be guided by the PCT guidelines for international search, is binding upon the EPO when acting as an ISA and upon the Boards of Appeal of the EPO when deciding on protests against the charging of additional search fees under the provisions of Article 17(3)(a) PCT. Consequently, as foreseen in these guidelines, an international application may, under Article 17(3)(a) PCT, be considered not to comply with the requirement of unity of invention, not only "a priori" but also "a posteriori", i.e. after taking prior art into consideration. However, such consideration has only the procedural effect of initiating the special procedure laid down in Article 17 and Rule 40 PCT and is, therefore, not a "substantive examination" in the normal sense of that term.

This decision was cited 159 times overall and 3.92 times per year. The underlying European patent application [86630175.7](#) is in the IPC class [G07C11/00](#). This decision was rendered on 1970-01-01 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 100](#), [Art 114](#), [Art 52](#), [Art 52](#), [Art 56](#), [R 55](#), [G 0009/91](#), [G 0010/91](#), [T 0038/86](#), [T 0022/85](#), [T 0854/90](#), [T 0222/85](#), [T 0550/88](#), [T 0002/89](#), [T 0156/84](#), [T 0951/91](#), [T 0534/89](#), [T 0017/91](#), [T 0328/87](#), [T 0093/89](#)

**Headword:**

1. In proceedings before the opposition divisions, late-filed facts, evidence and related arguments, which go beyond the "indication of the facts, evidence and arguments" presented in the notice of opposition pursuant to Rule 55(c) EPC in support of the grounds of opposition on which the opposition is based, should only exceptionally be admitted into the proceedings if prima facie, there are clear reasons to suspect that such late-filed material would prejudice the maintenance of the European patent.
2. In proceedings before the boards of appeal, new facts, evidence and related arguments, which go beyond the "indication of facts, evidence and arguments" presented in the notice of opposition pursuant to Rule 55(c) EPC in support of the grounds of opposition on which the opposition is based, should only very exceptionally be admitted into the proceedings in the appropriate exercise of the board's discretion, if such new material is prima facie highly relevant in the sense that it can reasonably be expected to change the eventual result and is thus highly likely to prejudice maintenance of the European patent; and having regard also to other relevant factors in the case, in particular whether the patentee objects to the admissibility of the new material and the reasons for any such objection, and the degree of procedural complication that its admission is likely to cause.

## G 0001/98 (1999-12-20)

This decision was cited 40 times overall and 3.77 times per year. The underlying European patent application [91810144.5](#) is in the IPC class [A01N63/00](#). This decision was rendered on 1999-12-20 and was published on the website of the EPO on 2005-11-20.

**References in this decisions:**, [Art 52](#), [Art 53](#), [Art 54](#), [Art 64](#), [R 23](#), [G 0005/83](#), [T 0049/83](#), [T 0292/85](#), [T 0320/87](#), [T 0361/87](#), [T 0019/90](#), [T 0356/93](#)

### Headword:

- I. A claim wherein specific plant varieties are not individually claimed is not excluded from patentability under Article 53(b) EPC even though it may embrace plant varieties.
- II. When a claim to a process for the production of a plant variety is examined, Article 64(2) EPC is not to be taken into consideration.
- III. The exception to patentability in Article 53(b), first half-sentence, EPC applies to plant varieties irrespective of the way in which they were produced. Therefore, plant varieties containing genes introduced into an ancestral plant by recombinant gene technology are excluded from patentability.

## G 0001/92 (1991-12-30)

This decision was cited 70 times overall and 3.76 times per year. The underlying European patent application [84300760.0](#) is in the IPC class . This decision was rendered on 1991-12-30 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 54](#), [Art 112](#)

### Headword:

1. The chemical composition of a product is state of the art when the product as such is available to the public and can be analysed and reproduced by the skilled person, irrespective of whether or not particular reasons can be identified for analysing the composition.
2. The same principle applies mutatis mutandis to any other product.

### W 0016/08 (2008-09-11)

This decision was cited 7 times overall and 3.71 times per year. The underlying European patent application [05852554.4](#) is in the IPC class [H01L33/00](#). This decision was rendered on 2008-09-11 and was published on the website of the EPO on 2009-05-20.

**References in this decisions:**, [Art 154](#), [Art 155](#), [Art 17](#), [R 13](#), [R 13](#), [R 40](#), [R 40](#), [R 40](#), [W 0025/89](#), [W 0003/93](#), [W 0018/06](#), [W 0020/06](#), [W 0022/06](#), [W 0024/06](#), [W 0001/07](#), [W 0002/07](#), [W 0006/07](#)

### G 0003/89 (1991-07-23)

This decision was cited 70 times overall and 3.68 times per year. The underlying European patent application [86630175.7](#) is in the IPC class . This decision was rendered on 1991-07-23 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 100](#), [Art 117](#), [Art 123](#), [Art 123](#), [Art 138](#), [R 86](#), [R 88](#)

#### Headword:

1. The parts of a European patent application or of a European patent relating to the disclosure (the description, claims and drawings) may be corrected under Rule 88, second sentence, EPC only within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of these documents as filed. Such a correction is of a strictly declaratory nature and thus does not infringe the prohibition of extension under Article 123(2) EPC.
2. Evidence of what was common general knowledge on the date of filing may be furnished in connection with an admissible request for correction in any suitable form.

### T 0507/99 (2002-08-28)

This decision was cited 29 times overall and 3.66 times per year. The underlying European patent application [92116446.3](#) is in the IPC class [C03C17/36](#). This decision was rendered on 2002-08-28 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 108](#), [Art 123](#), [Art 54](#), [Art 56](#), [T 0323/97](#), [G 0010/91](#)

## T 0201/83 (1984-03-10)

This decision was cited 94 times overall and 3.56 times per year. The underlying European patent application [91904092.3](#) is in the IPC class . This decision was rendered on 1984-03-10 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 123](#), [Art 83](#)

### Headword:

An amendment of a concentration range in a claim for a mixture, such as an alloy, is allowable on the basis of a particular value described in a specific example, provided the skilled man could have readily recognised this value as not so closely associated with the other features of the example as to determine the effect of that embodiment of the invention as a whole in a unique manner and to a significant degree.

## G 0008/91 (1991-11-29)

This decision was cited 66 times overall and 3.53 times per year. The underlying European patent application [85308677.5](#) is in the IPC class [B28B1/52](#). This decision was rendered on 1991-11-29 and was published on the website of the EPO on 2005-12-11.

**References in this decisions:**, [Art 113](#), [Art 114](#), [R 60](#), [R 66](#)

### Headword:

In so far as the substantive issues settled by the contested decision at first instance are concerned, appeal proceedings are terminated, in ex parte and inter partes proceedings alike, when the sole appellant withdraws the appeal.

## T 0633/97 (2000-07-19)

This decision was cited 35 times overall and 3.49 times per year. The underlying European patent application [90110854.8](#) is in the IPC class [C03C3/06](#). This decision was rendered on 2000-07-19 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 54](#), [Art 56](#), [Art 84](#), [Art 87](#), [Art 114](#), [Art 123](#), [G 0001/92](#), [G 0004/95](#), [G 0002/98](#), [T 0743/89](#), [T 0472/92](#), [T 1076/93](#)

### Catchwords:

1. Once oral proceedings have been arranged in appeal cases, the decision to admit new evidence or requests into the procedure should be governed primarily by a general interest in the appeal proceedings being conducted in an effective manner, i.e. in dealing with as many of the issues raised by the parties as possible, while still being brought to a close within a reasonable time.
2. In these circumstances, new submissions should normally be disregarded if the complexity of the technical or legal issues raised is such that neither the Board nor the other party can be clearly expected to deal with them without adjournment of the oral proceedings. Complex fresh subject matter filed at short notice before or during oral proceedings thus runs the risk of being not admitted to the proceedings without any consideration of its relevance or allowability. (See Reasons for the Decision, point 2)

## T 1366/04 (2008-04-16)

This decision was cited 8 times overall and 3.49 times per year. The underlying European patent application [91903267.2](#) is in the IPC class [C09K3/30](#). This decision was rendered on 2008-04-16 and was published on the website of the EPO on 2008-08-08.

**References in this decisions:**, [Art 100](#), [Art 107](#), [R 100](#), [T 0680/93](#)

### Catchwords:

Wenn die Beschwerdeschrift vor Inkrafttreten des revidierten Europäischen Übereinkommens eingereicht wurde, gelten für die Beurteilung der Zulässigkeit der Beschwerde die Rechtsvorschriften des EPÜ 1973, denn die Befugnis zu einer Verfahrenshandlung ist auf der Grundlage des zum Zeitpunkt dieser Handlung herrschenden Rechtes zu entscheiden. Dieses Prinzip entspringt dem Rechtsgrundsatz tempus regit actum.

### W 0020/06 (2007-04-03)

This decision was cited 11 times overall and 3.3 times per year. The underlying European patent application [98937141.4](#) is in the IPC class [A61K38/22](#). This decision was rendered on 2007-04-03 and was published on the website of the EPO on 2007-05-03.

**References in this decisions:**, [Art 150](#), [Art 154](#), [R 105](#), [Art 17](#), [R 13](#), [R 40](#), [R 40](#), [R 40](#), [G 0001/89](#), [W 0013/87](#), [W 0026/06](#)

### T 0351/98 (2002-01-15)

This decision was cited 28 times overall and 3.28 times per year. The underlying European patent application [85307860.8](#) is in the IPC class [C12N15/48](#). This decision was rendered on 2002-01-15 and was published on the website of the EPO on 2005-11-19.

**References in this decisions:**, [Art 123](#), [Art 123](#), [Art 87](#), [Art 54](#), [Art 56](#), [Art 83](#), [G 0002/98](#), [G 0001/93](#), [T 0576/91](#), [T 0939/92](#), [T 0982/94](#), [T 0824/94](#), [T 0996/92](#), [T 0323/91](#)

#### Catchwords:

Disclaimer based solely on Article 54(3) EPC prior art document held allowable (see point 45), contrary to view expressed in decision T 323/97.

This information is based on all decisions of the EPO boards of appeal available from the EPO-website since 30 April 1999 and most relevant older decisions that have been cited. "overall citations" stands for the overall number of other decisions citing this particular decision. "citations/year" stands for the number of times that this particular decision was cited per year in other decisions. The time in days since the decision date until today is used for calculation. This information may not be complete or correct. Please read the disclaimer on the website IP Newsflash (<http://www.ipnewsflash.com>).