



Enlarged Board of Appeal Decision G 1/25

The Enlarged Board of Appeal issued its decision in case G 1/25 on September 3, 2026.

Background

In short, the decision concerns whether, and on what legal basis, an adaptation of the description of a European patent or patent application becomes necessary, for example when the claims are amended during examination or opposition proceedings. The referral was prompted by a new line of case law that emerged in recent years. Against the long-standing practice of the EPO and its Boards of Appeal which required bringing the description into line with amended claims, a handful of Boards, beginning with T 1989/18 and most fully developed in T 56/21, took the view that the EPC provides no legal basis at all for requiring such an adaptation, and that an application may therefore not be refused on that ground. Referring decision T 697/22 identified this divergence and put the question to the Enlarged Board. The Enlarged Board has declined to follow that line.

Key Finding

The Enlarged Board of Appeal first clarifies that adaptations of the description must be based on a legal provision of the EPC. Such amendments are only required where they are genuinely necessary to satisfy one of those provisions – typically Art. 84 EPC (clarity and support of the claims by the description) or Art. 56 EPC (inventive step).

Practical Significance

In the prosecution of European patent applications, as well as in opposition proceedings against European patents, amended claims are often filed on the basis of which the patent is deemed grantable or maintainable. In our experience, filing of an amended description adapted to the amended claims were predominantly deemed necessary whenever statements in the description suggested a broader scope of protection than the amended claims actually covered, and/or contained examples that, following the claim amendment, no longer fell within the scope of the amended claims.

The Enlarged Board's decision confirms that this exact practice can in substance continue. The Enlarged Board first sets out that, in order to assess whether an amendment to the description is necessary at all, it must be determined whether there is an inconsistency between the amended claims and the (unamended) description. In a second step, it must be assessed whether this inconsistency leads to non-compliance with one of the provisions of the EPC – usually Art. 84 EPC would be the relevant provision here.

The Enlarged Board further emphasized that, as already established in decision G 1/24, claim interpretation requires application of a so-called holistic approach, meaning that

the claims and the description and/or drawings must always be considered together in order to interpret the meaning and scope of the claims.

In our view, this leads to the conclusion that where an inconsistency exists – for instance, due to statements in the description, or the designation of an example as being according to the invention, that suggest a broader scope of the invention than the amended claims actually prescribe – this inconsistency unavoidably results in a contravention of Art. 84 EPC, because the claims are no longer properly supported by the description and/or become unclear, which must therefore be adapted accordingly.

Example from Practice

A typical example: a claim relates to a chemical composition and has been amended so that, in addition to components A and B, it now also requires the presence of a component C. The description, however, contains a paragraph stating that the chemical composition of the invention comprises only components A and B, while component C is mentioned merely as a preferred embodiment.

In a case such as this, there is clearly an inconsistency between the wording of the claim and the text of the description. However, does this inconsistency also give rise to a lack of clarity within the meaning of Art. 84 EPC that would require an adaptation of the description?

Applying the Enlarged Board's holistic approach reveals a clear lack of clarity and/or support here. This might not be the case under a non-holistic approach, where the claims (defining the scope of protection) would take precedence over statements in the description. However, that argument does not hold under the holistic approach, so in such cases – which arise frequently in practice – an adaptation of the description is required.

Conclusion

In our opinion, G 1/25 is unlikely to bring major changes to the process in practice. The rule remains comparatively simple: where inconsistencies exist between the description and the amended claims that give rise to *differing interpretations of the scope of the invention* – and hence of the protective scope of the claims – these inconsistencies must be removed and the description amended accordingly. If, on the other hand, an amendment would be purely formal or cosmetic, it must not be made.

One further aspect remains worth noting. Since the Enlarged Board has held that the adaptation of the description may also be necessitated by non-compliance with Article 56 EPC this may in principle give rise to a situation in which a patent is successfully opposed on the ground of lack of inventive step precisely because its description was not adapted, whereas no such avenue exists under Article 84 EPC, which is not a ground of opposition. However, such an opposition can be expected to remain a rarity.

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**Datasheet for the decision
of 3 September 2026**

Case Number: G 0001/25

Appeal Number: T 0697/22-3.3.02

Application Number: 07704142.4

Publication Number: 2124521

IPC: A01G24/00, A01G24/18

Language of the proceedings: EN

Title of invention:
HYDROPONICS GROWING MEDIUM

Patent Proprietor:
Knauf Insulation

Opponent:
ROCKWOOL A/S

Headword:

Conditions under which a claim amendment requires the
description to be adapted.

Relevant legal provisions:

EPC Art. 52-57, 69, 76(1), 83, 84, 100, 123, 123(2), 123(3)
EPC R. 42(1)(c), 43
Protocol on the Interpretation of Article 69 EPC

Keyword:

"referred questions to be admissible" (yes)
"two lines of diverging case law" (yes)
"adaptation of the description"
"inconsistency between the claims and the description, and any
drawings"
"claim interpretation"

"the description and drawings shall always be consulted to interpret the claims"

"formal concordance"

"legal basis for any necessary adaptation"

Decisions cited:

G 0001/24, T 0454/89, T 1989/18, T 2194/19, T 1444/20,

T 0056/21, T 0439/22, T 0697/22

Headnote:

If the claims of a European patent, or patent application, are amended during proceedings before the departments of the EPO, or in appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description, including any drawings, of the patent, or application, and because of that inconsistency Articles 52 to 57, 76(1), 83, 84, 123(2) or 123(3) EPC are not complied with, it is necessary to adapt the description, including any drawings, to the amended claims so as to remove that inconsistency.



**Große Beschwerdekammer
Enlarged Board of Appeal
Grande Chambre de recours**

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Case Number: G 0001/25

D E C I S I O N
of the Enlarged Board of Appeal
of 3 September 2026

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Referring decision:

**Interlocutory decision T 0697/22 of the
Technical Board of Appeal 3.3.02 of the
European Patent Office of 29 July 2025**

Composition of the Board:

Chairman: C. Josefsson
Members: I. Beckedorf
D. Rogers
R. Arnold
E. Chatzikos
G. Pricolo
R. Bekkering

Summary of Facts and Submissions

- I. By interlocutory decision T 0697/22 of 29 July 2025 ("the Referral Decision"), Technical Board of Appeal 3.3.02 ("the Referring Board") referred the following questions of law to the Enlarged Board:

Question 1

If the claims of a European patent are amended during opposition proceedings or opposition-appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description of the patent, is it necessary, to comply with the requirements of the EPC, to adapt the description to the amended claims so as to remove the inconsistency?

Question 2

If the first question is answered in the affirmative, which requirement(s) of the EPC necessitate(s) such an adaptation?

Question 3

Would the answer to questions 1 and 2 be different if the claims of a European patent application are amended during examination proceedings or examination-appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description of the patent application?

Summary of the Appeal Proceedings / the Referring Decision

- II. The Referral Decision concerns an appeal against the opposition division's decision that the patent could be maintained upon the basis of the claims of auxiliary request 1E and an amended description, both of which were filed at the oral proceedings before the opposition division. Both the proprietor and the opponent appealed.
- III. The Referring Board found that the claims of auxiliary request 1E satisfied the requirements of the EPC. At the oral proceedings before the Referring Board, for the first time, the proprietor filed a new amended description that was to be considered with the claims of auxiliary request 1E (see para 9.1 of the Referral Decision). The difference between this new description and the old description filed before the opposition division was that paragraphs [0013] and [0016] were deleted from the new description filed before the Referring Board (see page 32, second and third paragraphs of the Referral Decision).
- IV. The Referring Board did not admit this new amended description - see para 9.4. The basic reason for this was that the description was late filed.
- V. The Referring Board then went on to consider the claims of auxiliary request 1E and the old, amended description, the description being the one that was filed before the opposition division - see para 10 of the Referral Decision. The Referring Board considered that this combination of claims and the old description would not comply with the requirements of Article 84 EPC - see para 10.4 of the Referral

Decision. In para 10.5, last paragraph, it identifies the problem as follows:

"Therefore, in view of this amendment of claim 1 of auxiliary request 1E, an inconsistency has been introduced between the binder as defined in this claim and the disclosure in paragraphs [0013] and [0016] of the amended description as filed during the oral proceedings before the opposition division."

VI. The Referring Board then developed this position in para 10.6 of the Referral Decision:

"If this inconsistency between the amendment of claim 1 in auxiliary request 1E and paragraphs [0013] and [0016] of the description as amended during the oral proceedings before the opposition division is considered to be in contravention of the requirement in Article 84 EPC that the claims must be supported by the description, or any other requirement of the EPC, the request based on the claims of auxiliary request 1E and the description as amended during the oral proceedings before the opposition division is not allowable."

The Referring Board considered that there are two lines of diverging case law as regards Question 1 (see para 13 of the Referral Decision).

VII. The first line of case law is that there is a legal basis in the EPC that requires the description to be consistent with the amended claims.

VIII. As regards the second line of case law, the Referral Decision only cites four cases (see para 15 of the

Referral Decision). This second line of case law, is characterised by the Referring Board as being that there is no legal basis for the refusal of a patent application if there is an inconsistency between any amended claims and the description, caused by the claim amendment (see para 15.1 of the Referral Decision). This case law emphasises that Article 84 EPC does not provide such a legal basis. The relevant sections from these four cases are set out below.

- IX. T 1989/18 - this is discussed in para 15.1.3 of the Referral Decision, in particular see 4th paragraph on page 52, where it is stated that in T 1989/18:

"The deciding board held that if claims were clear in themselves and supported by the description, their clarity was not affected if the description contained subject-matter which was not claimed. Article 84 EPC could not serve as a legal basis for a refusal in such instances (see point 7 of the Reasons)."

- X. The above is a summing up by the Referring Board of points 2 to 6 of T 1989/18. The approach taken to claim interpretation in T 1989/18 is set out in point 4 of this decision, which states:

"...Claims must be clear in themselves when being read with the normal skills including the knowledge about the prior art, but not including any knowledge derived from the description of the patent application or the amended patent."

XI. T 1444/20 - this is discussed on pages 54 and 55 of the Referral Decision. At point 2.1 of T 1444/20, it is stated:

"The claims of a patent define the matter for which protection is sought. Article 84 EPC requires this definition to be clear. This means that the claims must be clear in themselves for a person skilled in the art with common general knowledge of the technical field in question, without the need to refer to the description..."

XII. T 2194/19 - this is discussed on pages 55 and 56 of the Referral Decision. In the last paragraph of page 55 of the Referral Decision, it is stated:

"A second decision in which the deciding board concurred with T 1989/18 was T 2194/19. Both Article 84 EPC and Rule 42(1)(c) EPC were rejected as a basis for a mandatory adaptation of the description. The board held that deciding otherwise would go against the scope of application of either Article 84 EPC or Rule 42(1)(c) EPC."

XIII. T 56/21 - this is discussed on pages 57 to 58 of the Referral Decision. At point 47 of T 56/21 it is stated that:

"47. As regards the assessment of clarity under Article 84 EPC (if applicable), numerous decisions endorsed T 454/89 and confirmed that claims must be clear per se to a person skilled in the art with general knowledge of the technical field in question, without the need to refer to the description of the patent in suit."

- XIV. The second line of case law in the Referral Decision takes the approach that Article 84 EPC is a "one-way" street, that is the obligation for the claims to be supported by the description runs from the description to the claims. Thus Article 84 EPC cannot be the basis for requiring an amendment of the description.
- XV. The second line of case law takes the approach that Article 84 EPC requires the claims to be clear in themselves, without the need to refer to the description (see Referral Decision point 15.1.3, page 55, first full paragraph, citing T 1444/20).
- XVI. The second line of case law has been most fully developed in T 56/21. This case, which involved claim-like clauses in the description, arrived at the conclusion that the requirement of support of the description in Article 84 EPC only meant that the subject-matter of a claim must be taken from the description, that it is not admissible to claim subject matter which is not described, and an inconsistency between an amended claim and the description was no impediment to the grant of a patent (see Referral Decision point 15.1.3, page 58, second full paragraph, and point 15.2).
- XVII. T 56/21 adopts a particular interpretation of Article 84 EPC which is found at para 53, and 64:

"D. Article 84 EPC - Interpretation of the requirement of support by the description

I. Title and wording

53. It follows from the title and wording of Article 84 EPC that this article states a requirement in respect of the claims and not of the description. This is confirmed by the phrase that the claims must be supported by the description. Indeed, it is the definition in the claims of the matter for which protection is sought that needs support. This means that the subject-matter of a claim must be taken from the description, and that it is not admissible to claim subject-matter which is not described. Thus, the ordinary meaning of the words does not support a requirement to bring the description into agreement with claims intended for grant by deleting or disclaiming subject-matter in the description which is not claimed.

...

E. Article 84 EPC - Interpretation of the requirement of clarity

I. Title and wording

64. According to the title and wording of Article 84 EPC, the requirements of clarity and conciseness are stated in respect of the claims and not of the description (see point 16. above regarding clarity and completeness of the description). Thus, claims must be clear per se, which means that the terms used to define the matter for which protection is sought must be intelligible and free of contradiction."

Ordinary meaning of Article 84 EPC

XVIII. In T 56/21 this reading of Article 84 EPC was said to be supported by an ordinary reading of Article 84 EPC, "it is not admissible to claim subject-matter which is not described. Thus, the ordinary meaning ... does not support a requirement to bring the description into agreement with claims" (see T 56/21, point 53 to 55). Hence, Article 84 EPC does not contain a requirement that all disclosed embodiments must be claimed, or that the description must be "cleaned up" to match amended claims.

Legislative history of Article 84 EPC

XIX. The Board in T 56/21 also looked at the legislative history of Article 84 EPC (T 56/21, point 54 to 58). Its conclusion was that "Overall, while the legislative history does not shed light on the requirement of support of the claims by the description, it does not contradict the literal interpretation either".

Policy considerations and Article 84 EPC

XX. T 56/21 also uses policy considerations to support its view of Article 84 EPC. It sees a clear separation between Article 69 EPC and the Protocol, (they apply to post grant proceedings before national courts and the UPC), and Article 84 EPC, which is concerned with grant proceedings before the EPO, (see T 56/21, points 75 and 76). Article 84 EPC cannot, therefore, be seen as subordinate to Article 69 EPC. T 56/21 also rejects the policy consideration of "legal certainty" that was used in some cases of the first line of case law as a

justification for amending the description (see T 56/21 point 77).

- XXI. The Board in T 56/21 thus concludes that "Article 84 [and Rule 43] EPC set forth requirements for the claims. They do not provide a legal basis for a mandatory adaptation of the description to claims of more limited subject-matter" (see T 56/21, point 99(c)).
- XXII. In T 56/21, the Board also further rejects the approach that the description can be used to interpret the claims (see T 56/21, point 37).

Reasons for the Decision

Admissibility of the Referral

1. The Enlarged Board considers the referred questions to be admissible.

Drafting note

2. In this decision the word "claims" is used where the Enlarged Board states general propositions concerning claim interpretation and the legal relevance of an inconsistency, and "amended claims" is used where the Enlarged Board addresses the particular procedural situation that forms the subject of the referral, namely where an amendment introduces an inconsistency between the claims and the description, including any drawings.
3. References to Articles 52-57 EPC, Article 83 EPC, Article 76(1) EPC and Article 123 EPC also include

references to the respective grounds of opposition under Article 100 EPC, and respective provisions of the PCT, where the context so requires.

The relevance of decision G 1/24 to the present referral

4. In G 1/24 the Enlarged Board considered the role of the description and any drawings when interpreting claims for the purpose of assessing the patentability of an invention under Articles 52 to 57 EPC.
5. The Enlarged Board held that the description and drawings shall always be consulted to interpret the claims, and not only if the person skilled in the art finds a claim to be unclear or ambiguous when read in isolation.
6. The Enlarged Board also observed that the finding that the language of a claim is clear and unambiguous is itself an act of interpretation, not a preliminary stage to such an interpretative act.
7. The Enlarged Board concurs with the finding in the final decision T 439/22 of 11 December 2025, point 2.4 of the Reason, implementing decision G 1/24, that claim interpretation is the result of reading the claims, the description and drawings as a unitary process ("holistic approach").
8. Thus the description and drawings are consulted to determine the meaning which the skilled person gives to the claim wording in the context of the application or patent as a whole. Accordingly, G 1/24 is not to be understood as establishing a sequential method under which the claim wording is first

construed in isolation and the description and drawings are consulted only at a later stage if uncertainty remains.

9. When G 1/24 and the present decision refer to the claims being interpreted "in the light of", "by consulting", "by referring to", "using", or "taking account of" the description and drawings, these expressions are not intended to designate different legal tests or different stages of interpretation. Unless the context indicates otherwise, they refer to the same interpretative operation: determining the meaning of the claim wording from the perspective of the skilled person based on the claims, the description and any drawings taken together.
10. The description and drawings may affect the meaning which the skilled person attributes to the claim wording, but they cannot be used to impose on the claim a limitation or expansion for which the claim wording provides no basis. In line with this approach, a person skilled in the art reading the claim in the context of the description and drawings will try to take a definition found in the description at face value. As long as the definition is technically reasonable and complies with the overall teaching of the claims, description and drawings, the skilled person will read terms in the claim in the sense of the definition, taking into account both the broadening and limiting aspects (see T 439/22 of 11 December 2025, points 3.4 and 6 of the Reasons).
11. G 1/24 was concerned with claim interpretation when assessing patentability under Articles 52 to 57 EPC.

Its reasoning nevertheless identifies general principles of claim interpretation applied by the Boards of Appeal.

12. The answers given in this decision are based on the above understanding of G 1/24.

Question 3

13. The referral Questions 1 and 2 are concerned with opposition division proceedings, whilst Question 3 refers to examining division proceedings. It is useful to answer Question 3 first, as this enables the issues of Questions 1 and 2 to be dealt with in a way that avoids repetition.
14. The interpretative role of the description and any drawings in assessing the requirements of the EPC is not dependent on the procedural stage. The Enlarged Board can thus see no reason, in the context of this referral, to treat the proceedings before the examining and opposition divisions differently, and none have been suggested in the submissions.
15. Therefore, the answer to Question 3 is "No".

The meaning of "inconsistency"

16. A key issue is what is meant by an "inconsistency" in the Referral Decision.
17. Neither the Referral Decision, nor the EPC, provide a definition of "inconsistency". There is thus a need for a definition suitable for the referred questions.

18. An inconsistency between the claims and the description, and any drawings, exists where one or more statements in the description, including the drawings, suggest an understanding of a claim which is incompatible with the apparent meaning of the claim, and that incompatibility cannot readily be resolved by applying the principles set out in G 1/24.
19. In many cases, what may appear at first to be such an incompatibility can be resolved without difficulty by applying the principles for claim interpretation set out in G 1/24. If the person skilled in the art reading the claim in the light of the description and any drawings would be left in real doubt as to the meaning of the claim, however, there is an inconsistency.
20. An inconsistency is not established merely because the description, including any drawings, contains a technical teaching, examples, or embodiments that do not fall within the claimed subject-matter. If, on the other hand, due to such an incompatibility, it is unclear whether a technical teaching, examples, or embodiments do, or do not fall within the claimed subject matter, an inconsistency exists.
21. Where the description, including any drawings, contains statements that are inconsistent with the claims in the sense defined above, and that inconsistency leads to non-compliance with one or more requirements of the EPC, the patent (or application) can comply with the EPC only if that inconsistency is removed (or neutralised), either by

amending the claims, amending the description and/or the drawings, or both.

22. Conversely, where an inconsistency between the claims and the description, including any drawings, is not such as to be relevant for the assessment under the EPC, such an inconsistency need not be removed (or neutralised). The EPC does not require an adaptation of the description, including any drawings, merely for the sake of formal concordance.

Summary of position on "inconsistency"

23. An inconsistency between the claims and the description, including any drawings, is relevant for the purposes of the EPC if, in the circumstances of the case, it leads to a non-compliance with one or more requirements of the EPC.

Amended and unamended claims

24. The Enlarged Board notes that, although the present referral arises in the context of amendments to the claims, the interpretative approach and the definition of inconsistency set out above are not contingent on the existence of such amendments, but reflect general principles governing the determination of the meaning of the claims under the EPC.
25. The same considerations may arise where the claims are not amended, for example when a patent as granted is examined in opposition proceedings, or when a patent application is examined in an unamended form.

26. However, the present decision is concerned only with the consequences, under the EPC, of inconsistencies introduced by claim amendments, and the answers given below are to be understood in that procedural context.

Interpretation of Article 84 EPC

27. The first provision of the EPC that will be considered is Article 84 EPC. The first step is to establish an interpretation of Article 84 EPC, as this was considered in the Referral Decision as giving rise to divergent case law.
28. The four diverging cases referred to in the Referral Decision as the second line of case law take a view of Article 84 EPC which the Enlarged Board does not follow as, amongst other issues, they adopt certain premises that can no longer be maintained after G 1/24.
29. These decisions proceed on the basis that Article 84 EPC concerns only the claims and that clarity must be assessed without reference to the description. To the extent that this premise excludes the interpretative role of the description, including any drawings, recognised in G 1/24, it cannot be followed.
30. The approach taken to Article 84 EPC in this second line of case law is to adopt a view of Article 84 EPC which makes any inconsistency between the claims and the description, including any drawings, irrelevant for the consideration of whether the requirements of Article 84 EPC have been fulfilled. Put briefly,

these cases consider that the requirements of Article 84 EPC are assessed without reference to the description, including any drawings.

31. T 56/21 contains the most fully developed statement of the approach to Article 84 EPC. The key argument made in T 56/21 is that a natural reading of Article 84 EPC is that it is a "one-way street", it places a requirement on the claims, not on the description, including any drawings.
32. It is useful to look at the actual wording of Article 84 EPC:

"The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description."

The Enlarged Board is of the view that a natural reading of Article 84 EPC, in particular the sentence, "They [the claims] shall be clear and concise and be supported by the description" cannot be said to impose a unilateral directionality that renders the description, including any drawings, irrelevant when inconsistencies compromise the understanding of the claims. For these reasons, the Enlarged Board cannot endorse the interpretation of Article 84 EPC adopted in the second line of case law identified in the Referral Decision.

Inconsistency and Article 84 EPC

33. The principles on claim interpretation set out in G 1/24 apply where the assessment under

Article 84 EPC requires the meaning of the claims to be determined.

34. Article 84 EPC does not require a purely formal concordance between the description, including any drawings, and the wording of the claims, nor does it impose a general obligation to remove from the description, including any drawings, all matter not reflected in the claims.
35. However, applying the above-defined concept of inconsistency, such inconsistency may affect compliance with Article 84 EPC. If it is unclear whether information, examples, subject-matter or embodiments are or are not within the scope of the claim, then it cannot be said that the claim is supported by the description, including any drawings.

Inconsistency and Articles 52 to 57 EPC

36. The principles on claim interpretation set out in G 1/24 apply where the assessment under Articles 52 to 57 EPC requires the meaning of the claims to be determined.
37. Having regard to the definition of inconsistency set out above, such inconsistency may affect compliance with Articles 52 to 57 EPC. This would be the case when one or more statements in the description, including any drawings, suggest an understanding of a claim which is incompatible with the apparent meaning of the claim, and this incompatibility is relevant for the fulfilment of any of the requirements in Articles 52 - 57 EPC.

38. If, for example, a claim has successfully been amended to meet the requirement of non-obviousness in Article 56 EPC, but a statement in the description, including any drawings, expresses a technical teaching reflecting the claim before this amendment, and this statement thus conflicts with the fulfilment of the requirement of non-obviousness, this inconsistency in the description, including in the drawings, has to be removed.
39. This is because the requirements of Article 52 to 57 EPC are to be assessed on the basis of the claims as so interpreted. Where the inconsistency materially affects that interpretative exercise, the claim may fail to meet those requirements.

Further Articles of the EPC and inconsistencies

40. The Enlarged Board notes that the question of whether an inconsistency of the sort considered in this decision can give rise to issues under Articles 83, 76(1) and 123 EPC is more theoretical than practical. The Referral Decision does not address such situations. The Enlarged Board cannot, however, exclude that an inconsistency between the claims and the description, including any drawings, may in a particular case become relevant to compliance with those provisions.
41. The Enlarged Board thus expects that such issues will rarely, if ever, arise in the future.
42. Nevertheless, for the sake of completeness, and given the broadness of Questions 1 and 2, the Enlarged Board considers that if ever such a case were to

arise, the principles set out above would apply mutatis mutandis.

Conclusions on adaptation of the description

43. It follows that the necessity to adapt the description or any drawings is not a consequence of the existence of an inconsistency as such, but arises only where, and to the extent that, the inconsistency has legal significance because it leads to non-compliance with a requirement of the EPC.
44. An inconsistency having no such legal effect does not require adaptation of the description, including of any drawings.

Obiter remarks: when to amend the description

45. From a procedural law perspective it is not possible to distinguish between on the one side, amending the claims, and on the other, adapting the description or any drawings to such amended claims in order to remove any inconsistency introduced by the claim amendment. These actions are part of the same procedural step, even if there is a lapse of time between the amendment of the claims and that of the description and drawings.
46. The above understanding leads in practice to the fact that, in appeal proceedings, the description, including any drawings, is almost always finalised in the oral proceedings before the Board. Nothing in this decision calls for a change to this practice.

47. Adapting the description, including any drawings, whilst the appeal proceedings are still pending is generally the most efficient course of action in the interests of bringing the legal dispute to a swift conclusion, and is preferable to remitting the case to the administrative instance for the description, including any drawings, to be adapted, which could also result in a further appeal.

Answers to the Questions

48. The referred questions concern situations in which inconsistencies arise as a result of amendments to the claims. The answers given below reflect that procedural context, while the underlying principles set out in this decision apply more generally to inconsistencies between the claims and the description, including any drawings.
49. In the light of the above the questions should be answered as follows:

Question 1). If the claims of a European patent are amended during opposition proceedings or opposition-appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description, including any drawings, of the patent, is it necessary, to comply with the requirements of the EPC, to adapt the description, including any drawings, to the amended claims so as to remove the inconsistency?

If the inconsistency is such as to cause a non-compliance with the EPC, Question 1 is to be answered "Yes".

Question 2). If the first question is answered in the affirmative, which requirement(s) of the EPC necessitate(s) such an adaptation?

The answer to Question 2 does not lie in a single provision of the EPC which, in all circumstances, mandates an adaptation of the description, including any drawings, whenever the claims are amended.

Whether such an adaptation is required depends on whether, in the circumstances of the case, the inconsistency is such as to result in non-compliance with a requirement of the EPC.

Question 2 is therefore to be answered to the effect that the legal basis for any necessary adaptation is the provision of the EPC with which compliance is lacking by reason of the inconsistency in question.

Question 3). Would the answer to questions 1 and 2 be different if the claims of a European patent application are amended during examination proceedings or examination-appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description, including any drawings, of the patent application?

Question 3 has been addressed in paragraphs 13 to 15 above and is thus to be answered with a "No".

50. In the light of the above, the Enlarged Board finds itself in a position to answer the referred Questions 1 to 3 as set out in the Order below.

Order

If the claims of a European patent, or patent application, are amended during proceedings before the departments of the EPO, or in appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description, including any drawings, of the patent, or application, and because of that inconsistency Articles 52 to 57, 76(1), 83, 84, 123(2) or 123(3) EPC are not complied with, it is necessary to adapt the description, including any drawings, to the amended claims so as to remove that inconsistency.

The Registrar:

The Chairman:



N. Michaleczek

C. Josefsson

Decision electronically authenticated