

European Patent Office Clarifies Claim Interpretation

June 26, 2025

The Enlarged Board of Appeal of the European Patent Office (EPO) has issued a new decision – [G 1/24](#) – addressing the diverging approaches to claim interpretation when assessing patentability. Following this decision, the description and drawings of a patent shall always be consulted to interpret the claims when assessing the patentability of an invention. This decision appears to be aimed at unifying EPO practice with that of the Unified Patent Court (UPC) and the courts of the EPO's member states, and unifies the EPO approach where previously case law diverged.

Background

Case law from the Boards of Appeal has led to a divergence in approaches taken to claim interpretation. As a result, it remained uncertain whether the claims should always be interpreted with reference to the description and drawings or only when the claims were considered unclear or ambiguous.

The outcome of the appeal in question – T 439/22 – hinged on the interpretation of the term 'gathered sheet' and its meaning in the tobacco industry. The patentee sought to rely on the term's narrower, allegedly industry-accepted definition to establish novelty over the cited prior art, while the opponent advocated for the explicit and broader definition provided in the description. The latter definition allegedly encompassed tobacco materials disclosed in two prior art documents. Patentability therefore depended on the claim interpretation approach chosen.

Referred questions and (some) answers

Recognising these conflicting approaches, the following questions were referred to the Enlarged Board of Appeal:

1. Is Article 69(1), second sentence, EPC and Article 1 of the Protocol on the Interpretation of Article 69 EPC to be applied to the interpretation of patent claims when assessing the patentability of an invention under Articles 52 to 57 EPC?
2. May the description and figures be consulted when interpreting the claims to assess patentability, and, if so, may this be done generally or only if the person skilled in the art finds a claim to be unclear or ambiguous when read in isolation?
3. May a definition or similar information on a term used in the claims which is explicitly given in the description be disregarded when interpreting the claims to assess patentability, and, if so, under what conditions?

In short, the answer to question 1 is no. The Board found that Article 69 EPC and the Protocol were not 'entirely satisfactory as a basis for claim interpretation when assessing patentability' since these are 'arguably only concerned with infringement actions before national courts and the UPC'. It was additionally concluded that Article 84 EPC 'provides no guidance on how to interpret claims', and that the EPC provides no clear legal basis for claim interpretation when assessing patentability.

Notwithstanding the absence of clear legal basis in the EPC, the Board distilled two claim interpretation principles from existing Boards of Appeal case law:

- The claims are the starting point and the basis for assessing the patentability of an invention under Articles 52 to 57 EPC.
- The description and any drawings are always referred to when interpreting the claims, and not just in the case of unclarity or ambiguity.

These principles provide a clear answer to referred question 2.

The first principle was considered by the Enlarged Board as undisputed.

The second principle, however, rejects the position of any prior decisions which required claims to be unclear or ambiguous before reference to the description and drawings was permissible. The Enlarged Board emphasised that any evaluation of a claim's clarity inherently involves interpreting the claim's language and, therefore, cannot be a prerequisite to interpretation. It was concluded that such practices are contrary to Article 69 EPC and conflict with the claim interpretation approaches adopted by the UPC and the national courts of contracting states.

Referred question 3 was deemed to be inadmissible because it was considered that an answer would not assist the matter at hand. The Board also considered question 3 to be encompassed by question 2. Accordingly, some ambiguity remains around the extent to which the description should be used in claim interpretation.

Conclusion

The Enlarged Board appears to have handed down a pragmatic decision that should ensure consistency in claim interpretation during pre- and post-grant proceedings under the EPC. Whether this will impact practitioner advice, particularly with respect to 'boilerplate' language, remains to be seen.

It is also worth noting that this decision specifically cited a recent UPC decision, and the Board opined that 'it is a most unattractive proposition that the EPO deliberately adopt a contrary practice to that of the tribunals that are downstream of its patents'. This suggests that the EPO may, in the future, seek to align further with the UPC and the national practices of member states.

Lastly, it will be interesting to see whether examiners cite G 1/24 as the basis for demanding that the description be brought into conformity with the agreed-upon claims now that the description is always to be used as an interpretive aid. This is, itself, a divisive issue at the EPO.

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