

Understanding the Impact of the EPO Enlarged Board Decision G 1/24 on European Patent Law

The Enlarged Board of Appeal (EBA) issued its much-awaited decision on case [G1/24](#) yesterday (18 June 2025). The EBA is the highest judicial authority within the European Patent Office (EPO) and is responsible for ensuring the uniform application of the European Patent Convention (EPC). The EBA addressed two questions referred by a Board of Appeal, both concerning claim interpretation for the assessment of patentability. In particular, the question relate to the extent to which the description and drawings must be used when construing claims.

Diverging approaches that triggered the referral

Two diverging lines of case law had emerged.

In one approach, the description and drawings were only used to interpret ambiguous terms (sometimes referred to as “primacy of the claims”). In another approach, claims were generally interpreted in light of the description and drawings.

This inconsistency was highlighted in opposition appeal T439/22, in which the opponent and proprietor advocated for differing approaches. Unable to determine which approach should be applied under the EPC, the Board referred three questions to the EBA.

EBA's Decision

In short, the EBA held that claims should always be interpreted taking the description and drawings into account when assessing patentability (not only to interpret unclear claim terms).

The EBA's order reads as follows:

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 drawings shall always be consulted to interpret the claims when assessing the patentability of an invention under Articles 52 to 57 EPC, and not only if the person skilled in the art finds a claim to be unclear or ambiguous when read in isolation.

Regarding the question of legal basis, the EBA acknowledged that the EPC does not explicitly mandate this approach but found support in established case law for analogous application of the relevant provisions.

Possible Repercussions

The decision provides welcome clarity on how the EPO will interpret claims in post-grant proceedings, bringing its approach more closely in line with the courts of many EPC members. Its impact on examination practice, however, remains less certain. On one hand, applicants may seek to rely more on the description to support claim interpretation and potentially avoid incorporating “essential parameters” directly into the claims when objections are raised. On the other hand, Examining Divisions may feel encouraged to adopt a stricter approach to description amendments, particularly where discrepancies could influence claim interpretation. The result may be a shift toward more rigorous scrutiny of internal consistency during prosecution.

Reasons for the Decision

In its decision, the EBA emphasised the objective of harmonisation. The EBA considered that the EPO should carry out claim interpretation consistently pre- and post-grant. Further, it is desirable for the EPO's approach to be aligned with that of the national courts of the EPC member states and the Unified Patent Court, confirming that its decision was consistent with the current case law of the UPC (referring in particular to [Nanostring Technologies v 10x Genomics](#)).

The EBA considered the notion that the EPO deliberately adopt a contrary practice to that of the tribunals downstream of its patents (national courts, the UPC) to represent "most unattractive proposition".

Drafting strategies in light of G1/24

- **Define potentially ambiguous terms:** Continue to include definitions in the description for any claim terms that might be considered ambiguous: the EBA's decision highlights the "importance of the examining division carrying out a high-quality examination of whether a claim fulfils the clarity requirements of Article 84 EPC" and emphasises that "the correct response to any unclarity in a claim is amendment".
- **Flag intended special meanings:** Include definitions in the description for any claim terms that are intended to have a meaning that might differ from the "normal meaning" of that term in the relevant art.
- **Draft "claim-ready" definitions:** Ensure definitions included in the description are clear and consistent – and in a form suitable for being introduced into the claim (bearing in mind the EPO's strict requirement for the amendment to be "directly and unambiguously derivable from the application as filed").
- **Carefully check boiler-plate text:** Ensure routine or AI-generated wording does not contain definitions that unduly narrow or broaden your intended claim scope.

Background: EPO's Assessment of Clarity: Pre- and Post-Grant

The EPC's requirement for clarity is set out in Article 84 EPC. Claims are considered to lack clarity if the exact distinctions which delimit the scope of protection cannot be learnt from them.

According to 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 EPO's Guidelines for Examination set out that Examining Divisions should read the claims in isolation giving the words of the claim the meaning they usually have in the relevant art, unless the description gives the words a "special meaning" by explicit definition or otherwise. Where a special meaning applies, the Examining Division should raise a clarity objection asking the applicant to amend the claim to make the definition clear from the wording of the claim alone. Of course, any clarifying amendment must meet the EPO's strict requirement that the amended claim defines subject-matter "directly and unambiguously derivable" from the application as filed).

The situation after a patent has been granted is different. Patent claims including "unclear" claim terms (that were present in the granted claims) cannot be opposed on the grounds that the claim lacks clarity. However, it is common for opponents to argue that unclear claim terms should be interpreted very broadly when attacking patentability. While it is possible to amend claims post-grant to clarify the scope, it is preferable to avoid the need to do so (especially bearing in mind the EPO's relatively strict approach to assessing whether amendments result in added subject-matter).

Article 69 EPC, and the Protocol on the Interpretation of Article 69 EPC, set out how claims should be interpreted when determining the extent of protection of European patent claims.

According to Article 69(1) EPC, "The extent of the protection conferred by a European patent or a European patent application shall be determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims."

The Protocol on the Interpretation of Article 69 EPC sets out that Article 69 EPC defines a position between one extreme, in which the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims and another extreme, in which the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patent proprietor has contemplated.

Referring Decision: T439/22

The patent underlying the referral was directed to an article for a vaping device which contained an aerosol forming material (tobacco). At issue in the appeal was whether the subject-matter of claim 1 was novel. Central to this question was how the term "gathered sheet" should be interpreted. The patent proprietor-respondent argued that the term should be given its normal meaning in the relevant art. On that basis, claim 1 was novel. The opponent-appellant argued that the description included a broader definition. On this broader definition, claim 1 encompassed an arrangement disclosed in the prior art and therefore lacked novelty.

The Board of Appeal considered the question as to whether the definition in the description should be applied when interpreting the claim decisive for the assessment of novelty, and referred three questions to the Enlarged Board of appeal.

Referred Questions

Question 1:

Is Article 69(1), second sentence EPC and Article 1 of the Protocol on the Interpretation of Article 69 EPC to be applied on the interpretation of patent claims when assessing the patentability of an invention under Articles 52 to 57 EPC?

Answer 1:

No single EPC provision provides the legal basis but established case law applying Articles 84 & 69 EPC and the Protocol does.

Question 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

Answer 2:

Yes, always.

Question 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?

Answer 3:

Inadmissible. This was answered by the EBA's the answer to Question 2.

For more detailed advice in relation to any of the issues discussed above, or for advice relating to other matters regarding European practice, please do not hesitate to get in contact with your usual E+F advisor or email us at elkfife@elkfife.com.



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