

Plasma Torch / Agilent, European Patent Office (EPO Board of Appeal), 25 February 2013

Kluwer Patent Blog
July 14, 2013

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Please refer to this post as: Ferry van Looijengoed, 'Plasma Torch / Agilent, European Patent Office (EPO Board of Appeal), 25 February 2013', Kluwer Patent Blog, July 14 2013, <http://patentblog.kluweriplaw.com/2013/07/14/plasma-torch-agilent-european-patent-office-epo-board-of-appeal-25-february-2013/>

An amendment of independent patent claim 1 during prosecution introduced a new feature. According to the Examining Division this led to the combinations of features of dependent claims 2-4 to extend beyond the disclosure of the application as filed (Art. 123(2) EPC). The Board of Appeal held that the focus of the Examining Division was disproportionately directed to the structure of the claims as filed and did not uphold the ED's decision, because the disclosure directly and unambiguously referred to a variation of but not an alternative to the embodiment disclosed in the application as filed.
Click [here](#) for the full text of this case.

A summary of this case will be posted on <http://www.kluweriplaw.com>