
Kluwer Patent Blog

Combination from two lists/Nestlé, European Patent Office (EPO Board of Appeal), 31 July 2009

Bart van Weezenbeek · Friday, July 31st, 2009 · Landmark European Patent Cases

The selection of explicitly disclosed borderline values defining several (sub)ranges, in order to form a new (narrower) subrange, is not contestable under Article 123 (2) EPC when the ranges belong to the same list. However, the combination of an individual range from this list with another individual range from a second list that relates to a different feature, is not considered to be disclosed in the application as filed, unless there is a clear pointer to such a combination. Identifying the ranges in the two lists as ‘especially preferred’ is a clear indication for the intended parallel convergence of the ranges of the two lists, and such a combination does satisfy the requirements of Article 123 (2) EPC.

The [full summary](#) of this case has been published on [Kluwer IP Law](#).

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This entry was posted on Friday, July 31st, 2009 at 2:33 am and is filed under [Art. 123\(2\) of the European Patent Convention \(EPC\)](#), a European patent (application) may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. Adding subject-matter which is not disclosed would give an applicant an unwarranted advantage and could be damaging to the legal security of third parties. ([G 1/93](#), OJ 1994, 541) *The ‘gold standard’ of the European Patent Office’s Board of Appeal is that “any amendment can only be made 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 the documents as filed” (G 3/89, OJ 1993,117; G 11/91, OJ 1993, 125).*“>Added matter, [G 1/93](#), OJ 1994, 541) *The ‘gold standard’ of the European Patent Office’s Board of Appeal is that any amendment can only be made 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 the documents as filed (G 3/89, OJ 1993,117; G 11/91, OJ 1993, 125).*“>Amendments, [Case Law](#), [EPC](#), [Novelty](#)

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