

To: The Registry of the Enlarged Board of Appeal  
Mr. Nicolas Michaleczek (EBAamicuscuriae@epo.org).

From: P.H van Deursen  
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Rozendaal (NL), November 7, 2024

**Re: Amicus curiae brief concerning G1/24**

A. The questions

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?
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?

B. My answers

Re question 1: Yes.

Re question 2: Yes, also when the claim is clear when read in isolation.

Re question 3: No, except when it concerns a limitation of that term.

C. Explanatory notes

I believe that it is reasonable that the scope of a patent claim which can be expected to be relied upon by a patent proprietor for infringement purposes, and the scope of that same claim when assessed for patentability, are ideally the same. Since in general it can be expected that a patent proprietor when trying to enforce a patent claim for infringement purposes will rely upon the widest possible interpretation of the claimed invention, it follows that when assessing the patentability of that claimed invention, also the widest possible interpretation of that claim should be used. This reasoning leads me to my answers given above.

The purpose of excluding limitations in my answer to question 3 is to prevent the undesirable Angora cat phenomenon described in the second paragraph of Reason 6.2.4 of the referring decision.

It is understood that in the first paragraph I also have the prevention of the Angora cat phenomenon in mind.

Sincerely yours,  
Peter H. van Deursen