

**AMICUS BRIEF FILED ON BEHALF OF AIPPI IN CASE G 1/24 PENDING
BEFORE THE ENLARGED BOARD OF APPEAL OF THE EUROPEAN PATENT
OFFICE**

**WRITTEN STATEMENT IN ACCORDANCE WITH ARTICLE 10 OF THE RULES OF
PROCEDURE OF THE ENLARGED BOARD OF APPEAL**

I. INTRODUCTION

The European Patent Office (hereafter EPO) has called for Amicus Briefs in case G 1/24, pending before the Enlarged Board of Appeal. The deadline for filing a brief is November 15, 2024.

The *Association Internationale pour la Protection de la Propriété Intellectuelle* (AIPPI), through its Standing Amicus Brief Committee (hereafter ABC), thanks the Enlarged Board of Appeal for the opportunity of submitting comments on behalf of its over 8,000 members including lawyers, patent agents, academics, and IP owners, across more than 110 countries.

AIPPI's primary objective is to enhance and promote the protection of intellectual property on both international and national levels through the development and improvement of treaties, agreements, and national laws related to IP. AIPPI seeks to reduce legal uncertainties and enhance innovation by ensuring that innovators receive consistent protection across different jurisdictions.

To fulfill these objectives, the organization conducts in-depth studies of existing laws and proposes harmonization measures to ensure effective IP protection for stakeholders worldwide. Groups of members from various countries worldwide work together to address IP issues and contribute to the organization's resolutions and policy recommendations.

AIPPI policies are therefore the result of collaborative contributions from a diverse group of IP professionals who bring a wealth of knowledge and expertise in patent practice worldwide.

In particular, AIPPI has an extensive presence in Europe with more than 20 European national groups. The strong participation of European national groups ensures that the continent remains a central player in the development of international IP standards

In line with these principles, AIPPI submits this Amicus Brief to the Enlarged Board of Appeal of the European Patent Office, offering its perspective on the issues under consideration. This Amicus Brief is submitted following AIPPI public protocols on the work of the ABC and strict recusal policy, which is available at AIPPI's website¹.

2. SUMMARY OF ISSUES IN CASE G1/24

The invention concerns (according to Claim 1 of the patent):

"(a) A heated aerosol-generating article for use with an electrically-operated aerosol generating device comprising a heating element,

(b) the aerosol-generating article comprising an aerosol-forming substrate

¹ https://www.aippi.org/content/uploads/2022/11/Protocol_AmicusBriefCommittee_August2020.pdf

(c) in which the aerosol-forming substrate comprises a gathered sheet of aerosol-forming material circumscribed by a wrapper

(d) radially encircled by a sheet of thermally-conductive material, the wrapper being the sheet of thermally-conductive material which acts as a thermally conducting flame barrier for spreading heat and mitigating against the risk of a user igniting the aerosol-forming substrate by applying a flame to the aerosol generating article."

According to the Board of Appeal's decision (T 0439/22):

*"In the **novelty** assessment by the Opposition Division, the **only question at issue** was whether an aerosol-forming substrate comprising a "gathered sheet" according to feature (c) of claim 1 as granted was directly and unambiguously derivable from documents D1 and D2 which indisputably disclosed the remaining features of the independent claim. Decisive for the finding that the subject-matter as granted was novel over the disclosure of these prior-art documents was the **view of the Opposition Division that the term "gathered sheet" had a clear and agreed meaning widely adopted in the tobacco industry. This term did thus not require interpretation in light of the description** which - as pointed out by the opponent - provided in paragraph [0035] an explicit and broader definition of the term "gathered sheet" in the technical context of the patent, allegedly encompassing a rolled/wound tobacco sheet and a cylindrical plug of homogenised tobacco material as disclosed in D1 and D2 respectively." (emphases added).*

The main issue as framed by the Board of Appeal: *"the outcome of the case appeared to hinge on whether the description was to be taken into account even when interpreting a claim that contained an allegedly clear term."*

3. QUESTIONS PUT TO THE ENLARGED BOARD OF APPEAL OF THE EPO

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.2.01 has referred the following points of law to the Enlarged Board of Appeal by interlocutory decision of 24 June 2024 in case T 0439/22:

The questions put to the Enlarged Board of Appeal are as follows:

- 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?*

As is clear from Question 1 above, the essential issue here is whether claim interpretation methods should be the same for both patentability and infringement. Question 2 and 3 both concern the role to be played by the description and figures (also referred to as "drawings" in the present brief) in claim interpretation.

4. PRIOR POSITIONS OF AIPPI:

Under the supervision of the Reporter General and the Chairman of the Programme Committee, AIPPI conducts its substantive work, namely, the study of issues of topical concern in the IP world.

Once the annual work programme is established, Study Committees are formed to study each pending Study Question (SQ). The Reporter General team prepares Guidelines which the National and Regional Groups follow in preparing their individual Reports. The Reports are then synthesized by the Reporter General team into a Summary Report. These Reports and the Summary Report are the basis for the Study Committees in the preparation of Draft Resolutions which are then discussed at Congresses. When a consensus is achieved, a final Resolution (Plenary Approved SQ Resolution) is prepared for adoption by the Executive Committee. Over 700 Resolutions have been passed by AIPPI, and they represent the position of AIPPI membership on the studied issue.

4.a RELEVANT RESOLUTIONS:

Q60: Interpretation of patent claims (Toronto, 1979)

According to Q60 Resolution n°1, the description and drawings serve to interpret the claims. Resolution n° 2 provides that the interpretation of claims comprises understanding the invention, understanding the wording of the claims and, if necessary, defining the technical meaning of the terms used and clarifying any ambiguities, and understanding the claims which, if necessary, shall be interpreted in the light of the general knowledge of the man skilled in the art at the date to which the claims are entitled and of the examination file of the patent, if necessary. Resolution n°3 further indicates that the claims (as interpreted according to Resolution n°2) “*shall serve as the basis for consideration equally concerning infringement and validity*”.

Q175: The role of equivalents and prosecution history in defining the scope of patent protection (Lucerne, 2003)

According to Q175 Resolution n°2: “*Protection should not be limited to the strict literal meaning of words used in the claims, nor should the claims serve only as a guideline.*”

The prior position of AIPPI is thus documented in at least the above indicated resolutions.

4.b CASE LAW IN VARIOUS COUNTRIES/JURISDICTIONS

AUSTRALIA

The claim should be construed in the context of the specification as a whole even if there is no apparent ambiguity in the claim; even the ordinary meaning of words may vary depending on the context, which the specification may provide. Ordinary words should be given their ordinary meaning unless a person skilled in the art would give them a technical meaning or the specification ascribes a special meaning.

(*Sandvik Intellectual Property AB v Quarry Mining & Construction Equipment Pty Ltd* [2017] FCAFC 138; (2017) 348 ALR 156 at [36]-[37], *Esco Corporation v Ronneby Road Pty Ltd* [2018] FCAFC 46; 358 ALR 431 at [144]). Claims are not construed with an eye to infringement: that is, they are construed the same way for the purpose of infringement and validity: *Fresenius Medical Care Australia Pty Ltd v Gambro Pty Ltd* (2005) 67 IPR 230 at [95].

BRAZIL

Brazilian IP Law establishes that the claims will be interpreted according to the patent’s descriptive report and drawings: *Article 41. The extent of patent protection will be determined by the content of the claims, interpreted on the basis of the description and the drawings.* (our translation).



In addition, article 25 of the Brazilian IP Law determines that “the claims must be substantiated in the description, characterizing the particularities of the application and defining, in a clear and precise manner, the subject matter of protection.” (our translation).

In view of the above, Brazilian PTO’s established practice (Patent Examination Guidelines) and Brazilian Courts rely on the description and drawings when interpreting claims regarding assessment of patentability. In particular, Brazilian PTO’s Examination Guidelines state that: “the scope of the claims must not be broader than the content of the description and drawing, if any, and on the basis of the contribution to the state of the art” (paragraph 3.89, our translation).

FRANCE

Article L613-2 of the French Intellectual Property Code (IPC) states that: “The scope of protection conferred by a patent is determined by the claims. However, the description and drawings serve to interpret the claims”.

Article L613-2 IPC is cited in the INPI (French National Institute of Industrial Property)'s patent guidelines for the granting of patents and utility certificates, which state that :

p.48: “when drawings are attached to the file, their role is to illustrate the description in such a way as to facilitate the understanding and interpretation of the invention. The description and drawings serve to interpret the claims”, and

p. 52: “since the content of the claims determines the scope of protection conferred, it is of the utmost importance that they be clear. However, claims are not assessed in isolation and must not be interpreted in a strictly literal sense. The description and drawings serve to interpret them”.

In addition, INPI regularly applies Article L613-2 in its decisions on opposition, and in particular :

in a decision dated 25/07/2024, pp. 19 and 20²

in a decision dated 26/05/2023, pp. 13 and 14³


in a decision dated 24/10/2022, pp. 8 and 9⁴


GERMANY


The legal basis for claim construction and the interpretation of the claim is Sec. 14 Patent Act. It is worded after Art. 69 para 1 EPC and has the identical wording. Since its introduction into the German Patent Act in 1981 it serves as the fundamental basis for determining the subject matter and the scope of protection of a granted patent.

According to Sec. 14 Patent Act the scope of protection is determined by the claims of the patent. The description and the drawings shall be taken into consideration when interpreting the claim.

The case law is shaped by the Federal Court of Justice (Bundesgerichtshof; BGH) which serves as the highest court in invalidation proceedings (Court of Appeal for the decisions of the Federal Patent Court (Bundespatentgericht; BPatG) in the first instance and as the final instance for questions of law in civil cases decided by the District Courts and the Courts of Appeal in first and second instance. Over the

² (see decision (1) attached) ;  Decision (1) (1).pdf

³ (see decision (2) attached);  Décision (2).pdf

⁴ (see decision (3) attached).  Décision (3).pdf

past decades the FCJ has developed a comprehensive set of guidelines for the claim interpretation which are generally accepted also in the jurisprudence and which are now the established standard.

As a first point it should be mentioned that the interpretation of the claim shall be the same in all situations, i.e. for the assessment of infringement in the same way as for invalidity or patentability considerations. (cf. BGH judgment of 24 September 2003, X ZR 7/00, GRUR 2004, 47 – *Blasenfreie Gummibahn*; judgment of 22 December 2009, X ZR 56/08, GRUR 2010, 314 – *Kettenradanordnung II*). Consequently, the scope of protection of a patent will be the same following the claim interpretation regardless of whether this is done in the context of assessing invalidity (opposition or nullity proceedings) or where one has to assess whether a specific embodiment is covered by the patent and whether it makes use of the patented teaching and infringes the patent either literally or by way of equivalent means.

The interpretation of the claim is a fundamental requirement in every case and not just in situations where there may be issues of unclarity or uncertainty. It is a legal issue and must therefore be done by the judge. This cannot be left to a technical expert (cf. BGH judgment of 02 February 2021, X ZR 170/18, GRUR 2021, 942 – *Anhängerkupplung II*).

According to the FCJ the claim interpretation starts with the meaning of the claim and shall generally be done independently from invalidity considerations. The interpretation must be done through the perspective of the skilled person without looking at whether the result may or may not be patentable. Nevertheless, any prior art which has been cited in the description of the respective patent may be taken into consideration as well. This is in particular the case where the patent tries to delimitate the invention from that specific prior art. In this case, it must be sufficiently clear from the patent which should be the delimiting feature of the claim and from what embodiment in the prior art it delimits the invention (cf. BGH judgment of 27 November 2018, X ZR 16/17, GRUR 2019, 491 – *Scheinwerferbelüftungssystem*; judgment of 07 May 2024, X ZR 51/22; GRUR 2024, 1093 – *Festhalteanordnung*).

As a matter of principle, the FCJ also held that the interpretation shall be done independently from patentability considerations, such as novelty, non-obviousness or added matter (cf. BGH judgment of 17 July 2012, X ZR 117/11, GRUR 2012, 1124 – *Polymerschäum*;

The interpretation of the claimed features, i.e. the assessment of the meaning of the features, shall be done with regard to the function which the respective features fulfill according to the invention. This already goes beyond the pure literal meaning of a feature and may deviate from the general view outside the patent. In this context it is also established case law of the FCJ that a patent must be seen as “its own dictionary” (cf. BGH judgment of 02 March 1999, X ZR 85/96, GRUR 1999, 909 – *Spannschraube*; judgment of 05 October 2016, X ZR 21/15, GRUR 2017, 152 – *Zungenbett*). This requires taking the description into consideration from the outset and not only in cases of uncertainty.

Moreover, the interpretation of a claimed feature must look at the technical function of the respective feature for the claimed invention (cf. BGH judgment of 12 March 2024, X ZR 12/22 – *Variationsnut*; judgment of 09 July 2024, X ZR 72/22, GRUR 2024, 1523 – *Waage*; judgment of 23 July 2024, X ZR 88/22, GRUR 2024, 1515 – *Stereofotogrammetrie*) The function is also determined by the wording of the independent and the dependent claims, the description and the drawings through the perspective of the skilled person. For this exercise both are equal means. However, it is also established case law that the drawings themselves cannot limit a broader wording of the claim. The same holds for preferred or suitable embodiments which are described in the specification. The literal meaning of the wording is always the limit for the narrowest interpretation. In other words: The claim construction may not lead to an interpretation which would be narrower than the literal meaning of the claim [cf. BGH judgment of 07 September 2004, X ZR 255/01, GRUR 2004, 1023 – *Bodenseitige Vereinzelungseinrichtung*; judgment of 17 April 2007, X ZR 72/05, GRUR 2007, 778 – *Ziehmaschinenzeuginheit*].

On the other hand, the functional interpretation may not leave out of sight the structural elements of the claim when assessing infringement. The scope of protection only covers an embodiment if that



specific embodiment realizes the structural elements. It would not be sufficient to reduce the embodiment to its functional elements (cf. BGH judgment of 14 June 2016, X ZR 29/15, GRUR 2016, 921 – *Pemetrexed*).

In summary, the description and the drawings are always taken into consideration when interpreting the claim in the context mentioned in the points above.

ITALY

Art. 52.2 of the Italian Intellectual Property Code states that patent claims define the scope of protection, but drawings and descriptions help interpret their extent. This rule applies to both the validity assessment during prosecution and post-grant proceedings, as well as infringement cases, ensuring fair protection and legal certainty on a case-by-case approach (e.g., Trib. Bologna 20.05.2004; Giov. Guglielmetti in *Riv. Dir. Ind.* 00).

Additionally, Art. 52.3bis extends protection to claim equivalents if immediately evident to an expert based on a factual, case-by-case analysis, consistent with the so-called *element-by-element rule* (e.g., Cass. ord. 120/2022; Cass. ord. 2977/2020; Cass. sent. n. 9548/2012).

NETHERLANDS

The Dutch courts take the view that the claims of a patent have to be interpreted in the same way for assessing infringement as for assessing validity. Quite often, their judgments include a section on claim construction before the questions of infringement and validity are discussed separately. In the discussion of both infringement and validity, the courts frequently refer back to their analysis included in the section on claim construction. As a result, the sections that discuss validity only rarely mention Art. 69 EPC or the Protocol explicitly. This reference is to be found in the section on claim construction.

UNITED PATENT COURT (UPC)

The UPC Court of Appeal proceeds according to the following principles in accordance with Art. 69 of the Convention on the Grant of European Patents (EPC) and the Protocol on its Interpretation.

The patent claim is not only the starting point, but the decisive basis for determining the protective scope of the European patent.

The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather, the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim.

However, this does not mean that the patent claim serves only as a guideline and that its subject-matter may extend to what, from a consideration of the description and drawings, the patent proprietor has contemplated.

The patent claim is to be interpreted from the point of view of a person skilled in the art.

In applying these principles, the aim is to combine adequate protection for the patent proprietor with sufficient legal certainty for third parties.

These principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent. This follows from the function of the patent claims, which under the European Patent Convention serve to define the scope of protection of the patent

under Art. 69 EPC and thus the rights of the patent proprietor in the designated Contracting States under Art. 64 EPC, taking into account the conditions for patentability under Art. 52 to 57 EPC.

A number of UPC decision have applied these principles, including: [Nanostring v. 10X Genomics](#) (UPC Court of Appeal Decision dated 26 February 2024), [Vusion Group v. Hanshow](#) (UPC Court of Appeal Decision dated 13 May 2024), [Dexcom v. Abbott](#) (Decision of the Local Division of Paris dated 4 July 2024), [Regeneron v. Amgen](#) (Decision of the Central Division of Munich dated 16 July 2024).

UNITED STATES OF AMERICA

The claims of a patent “define the precise scope of a claimed invention.” *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed Cir. 2006). In the United States, claims are construed – interpreted – by courts as a matter of law. *Markman v. Westview Instrs., Inc.*, 517 U.S. 370, 372 (1996). This requires an “inquiry into how a person of ordinary skill in the art understands a claim term” in the context of the entire patent document at the time of the invention, *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) (*en banc*).

Claim construction should not do “violence” to the description of the invention. *See, e.g., AstraZeneca AB v. Dr. Reddy’s Labs., Ltd.*, 2010 WL 1375176 (S.D.N.Y. 2010) (quoting plaintiff). What matters is how the *person of ordinary skill in the art* would understand the claim term. *Phillips*, 415 F.3d at 1313.

Claim construction begins with the claim language, the specification including the drawings, and the prosecution history are all examples of so-called “intrinsic” evidence as to the claim terms’ meanings. *Vitronics Corp. v. Conceptoronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996); *see Old Town Canoe Co. v. Confluence Holdings Corp.*, 448 F.3d 1309, 1315 (Fed. Cir. 2006). The full specification is the “single best guide to the meaning of a disputed [claim] term,” *Phillips*, 415 F.3d at 1315 (internal quotation marks & citations omitted), although the sequence in which the court considers those sources—the claims, written specification, drawings, and prosecution history—does not matter “as long as those sources are not used to contradict claim meaning that is unambiguous in light of the intrinsic evidence.” *Id.* at 1334-35.

“When the specification explains and defines a term used in the claims, without ambiguity or incompleteness, there is no need to search further for the meaning of the term.” *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1478 (Fed. Cir. 1998); *accord Sinorgchem Co., Shandong v. Int’l Trade Comm’n*, 511 F.3d 1132, 1138 (Fed. Cir. 2007). It is black-letter law that where the patent document expressly defines a claim term, that definition governs. *Phillips*, 415 F.3d at 1316. “In such cases, the inventor’s lexicography governs.” *Phillips*, 415 F.3d at 1316. Accordingly, “[a]bsent implied or explicit lexicography or disavowal, ... the specification plays a more limited role where claim language has so ‘plain a meaning on an issue’ that it ‘leav[es] no genuine uncertainties on interpretive questions relevant to the case.” *Trustees of Columbia Univ. v. Symantec Corp.*, 811 F.3d 1359, 1364 n.6 (Fed. Cir. 2016), Nonetheless, the specification may not be relied upon to expand the scope of the claims beyond their meaning. *United States v. Adams*, 383 U.S. 39, 48-49 (1966); *see*

When a patentee acts as a lexicographer, “the specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess.” *Phillips*, 415 F.3d at 1316. “In such cases, the inventor’s lexicography governs.” *Id.*; *see, e.g., Abbott Lab’s v. Andrx Pharms., Inc.*, 473 F.3d 1196, 1210 (Fed. Cir. 2007) (specification “unambiguously provide[d] [a] definition[]”).

On the other hand, examples, or language that otherwise is “not definitional,” are not necessarily controlling for claim construction. *See Eli Lilly & Co. v. Eagle Pharms., Inc.*, 2019 WL 1299212, at *5 (D. Del. 2019), citing *Dealertrack, Inc. v. Huber*, 674 F.3d 1315, 1326 (Fed. Cir. 2012).

If, after considering all of the intrinsic evidence, claim terms remain ambiguous, a court may consider the extrinsic evidence to construe the claims; but “[i]f the meaning of a claim term is clear from the intrinsic evidence, there is no reason to resort to extrinsic evidence.” *Seabed Geosolutions (US) Inc. v. Magseis FF LLC*, 8 F.4th 1285, 1287 (Fed. Cir. 2021).

The extrinsic evidence, “can help educate the court regarding the field of the invention and can help the court determine what a person of ordinary skill in the art would understand claim terms to mean,” although doing so is discretionary with the court because of “the flaws inherent in each type of evidence and [it must] assess that evidence accordingly.” *Phillips*, 415 F.3d at 1331. Nonetheless,

“extrinsic evidence [can be relied upon] to construe claims only if it is consistent with the intrinsic evidence.” *Seabed Geosolutions*, 8 F.4th at 1287.

There are limits for extrinsic evidence. For instance, a Court may not rely on dictionary or treatise to “contradict any definition found in or ascertained by a reading of the patent documents.” *Phillips*, 415 F.3d at 1322-23, quoting *Vitronics*, 90 F.3d at 1584 n. 6. Moreover, expert testimony cannot contradict the clear intrinsic evidence in the specification. *Phillips*, 415 F.3d at 1318; see *Aristocrat Techs. Austl. PTY Ltd. v. Int’l Game Tech.*, 709 F.3d 1348, 1361 (Fed. Cir. 2013) (discounting an expert declaration concerning claim construction that simply asserted “how” a POSA would understand a claim term, but not “why” a POSA “would understand a term in a particular manner”); *Munchkin, Inc. v. Tomy Int’l, Inc.*, 2021 WL 3047151, at *13 (N.D. Ill. July 20, 2021) (refusing to consider an expert declaration because “the intrinsic evidence gives clear”). Indeed, of all the categories of extrinsic evidence, expert testimony is the least reliable, because it “is generated at the time of and for the purpose of litigation.” *Phillips*, 415 F.3d at 1318.

In deciding whether or not a patent application’s disclosure supports patent claims, the U.S. Patent Office has made clear that an examiner must consider the drawings. See Manual of Patent Examining Procedures (MPEP) §608.04 (a); see *id.* §2163 (“The Specification must still be examined to assess whether an originally-filed claim has adequate support in the written description **and/or the drawings**.” (emphasis added)). A patent applicant, for instance, may show that the inventor was in possession of an invention based upon drawings or structural chemical formulas that are sufficiently detailed to show that the inventor was in possession of the claimed invention as a whole. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1565 (Fed. Cir. 1991) (“drawings alone may provide a ‘written description’ of an invention as required by Sec. 112”); *In re Wolfensperger*, 302 F.2d 950 (CCPA 1962) (the drawings of applicant’s specification provided sufficient written descriptive support for the claim limitation at issue); *Autogiro Co. of Am. v. United States*, 384 F.2d 391, 398 (Ct. Cl. 1967) (“In those instances where a visual representation can flesh out words, drawings may be used in the same manner and with the same limitations as the specification.”). In fact, under United States law drawings are not mandatory *unless* they are “necessary for the understanding of the subject matter sought to be patented.” 37 CFR §1.81.

5. AIPPI’s POSITION ON CASE G1/24

Essentially the position of AIPPI in the present circumstances is that interpretation of the claims should take into consideration the content of the description and the figures, and the method of interpreting claims should be the same, whether considering patentability of a patent application or infringement/validity of a granted patent.

Thus, repeating the Questions put to the Enlarged Board of Appeal for ease of reference:

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?*

AIPPI’s answer to Question 1 is: Yes, according to AIPPI’s prior positions, interpretation of claims should be the same for infringement and validity.

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?*

AIPPI’s answer to Question 2 is: Yes. AIPPI’s prior resolutions indicate that the description and figures should generally be used to interpret the claims, not only if the claim is found to be unclear.

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?*



AIPPI's answer to Question 3 would be: No. As a general rule, the definition or information may be disregarded only in exceptional cases where it is contrary to the claim language.

AIPPI respectfully submits that the recommendations outlined in this amicus brief will advance a harmonized approach to intellectual property protection in Europe and worldwide. By ensuring a consistent interpretation of patent claims that considers both the claims and the description, the proposed approach will reduce legal uncertainties and foster innovation across jurisdictions within Europe.

Increased certainty in legal standards will also provide clear guidance for applicants and third parties, reducing the burden on patent offices and courts by minimizing multiple review requests at appellate and later stages. This enhanced legal clarity will also benefit international stakeholders, encouraging their engagement with the European patent system.

The methodology recommended in this amicus brief will further support the development of harmonized IP standards, ensuring that European stakeholders receive uniform protection. This, in turn, will encourage sustained investment in innovation across Europe and foster cross-border collaboration through the involvement of international stakeholders.

The adoption of these recommendations will help maintain the integrity of the European patent system as a model for the development of international IP standards, and will promote international cooperation in technological advancements for all stakeholders.

AIPPI respectfully requests that the Enlarged Board of Appeal consider this perspective when evaluating the case. A decision favoring consistent interpretation—considering both claims and description—will enhance harmonization, predictability, and legal certainty. This outcome will not only resolve legal issues within the European system, but also foster robust cross-border investment and innovation.

Respectfully submitted on behalf of AIPPI

Amicus Brief Committee of AIPPI