

EIP

When “better” isn’t good enough under Art. 84 EPC

In the recent Decision T 2387/22, the Board’s key message was: if you define an invention by a “relative improvement” of a known technical effect, the improvement must be expressed in “objectively verifiable” terms. Vague language like “stronger” or “fewer”, unsurprisingly, won’t cut it.

In this case, claim 1 of ARs 9 to 11 defined the use of a particular pigment in a flexographic ink formulation for providing: “fewer print defects, higher hiding and stronger colour and allowing a lower volume anilox”.

The Board found these terms unclear because they lacked measurable parameters. Applying the above principle, it held that such wording fails Art. 84 EPC, especially when the prior art is close.

One noteworthy quote for opponents challenging ARs: “Where, as in the present case, the prior art is technically close to the claimed subject-matter, the clarity of the distinguishing features becomes all the more critical, since such proximity makes it readily apparent how vague or diffuse definitions may give rise to legal uncertainty in the assessment of patentability.”

The Main Request fell for lack of inventive step, but the clarity issues around ARs 9 to 11 earned this decision a “C” distribution.