

The board in T.1287/15 decided that the "incremental adsorption capacity" parameter was a newly formulated and hence unfamiliar parameter. This case was similar to T.172/99, but was not comparable with T.231/01, in which the relevant parameters had been sufficiently described by reference to their measuring methods. In T.1287/15 the principal issue was the understanding of the notion and not so much the availability of a measuring method, but considerations in the catchword of T.172/99 were nevertheless relevant. The patent proprietor (appellant) was under a particular obligation to disclose all information necessary to reliably define the new parameter it had chosen to introduce although an established parameter was available. That particular obligation, identified in T.172/99, had not been met.

In T.1414/08 the board observed that sufficiency of disclosure might be questionable if specific values of an unusual parameter are formulated in a patent as essential to the invention but no method of measuring that parameter is either known in the art or disclosed in the patent. But in the case at hand the parameter (tensile strength) was not unusual. Depending on the method of measurement, there exists an uncertainty as to the actual end values of the range for the tensile strength mentioned in the independent claims (issue of Art. 84 EPC rather than of Art. 83 EPC).

In T.1553/16 the board held that the issue at stake was not related to an alleged ambiguity in the determination of a parameter, which in some cases could indeed be a matter of clarity, but rather to a lack of essential information needed to run a specific procedure (namely the APTF-2 procedure), which had not been shown to be usual in the art but was necessary to determine an unusual feature (F time) mentioned in the operative claims. In other words, the lack of information did not result in the claim being unduly broad or unclearly delimited, but derived from the presence of a parameter which was in itself very specific, but whose method of measurement had been **kept secret**.

See also T.1452/16 (unusual parameters – alleged prior use – public availability of a product): addressing the fact that it had been possible for the patent proprietor to obtain and test samples, the board found that, when samples manufactured after the priority date were tested, it was legitimate to ask whether the results obtained were representative of the ratios present in the prior-art samples. However, where a patent proprietor used a parameter not used in the prior art, it bore the burden of proving that the prior art did not fall within the terms of the claim.

Other decisions: T.1764/06 (no benefit of the doubt – see catchword); T.288/06 (unusual method of measuring parameter); T.815/07; T.1920/09 (unusual parameter and presumption); T.484/05; T.1995/15 (implicit feature – where an unusual parameter is used, onus is on the applicant to establish novelty over prior art if there no reason to doubt that the prior art implicitly meets the parameter); T.615/19 (decisions establishing insufficient disclosure owing to unclear or inadequate information on the method of determining an unusual parameter held inapplicable to case in hand because the skilled person would not have encountered any difficulty).