The board in **T 830/08** was concerned with the clarity of a claim directed to a second medical use. Such claims are considered clear only if the disease to be treated are clearly defined in it (e.g. **T 1048/98**). In the case in hand the disease to be treated was defined in functional terms as "the preferential induction of apoptosis in a first population of cells compared to a second population of cells wherein the cells of the first population are tumour cells". The question was whether the skilled person could clearly attribute a disease or group of diseases to this functional definition. In the board's view, this was not the case. The skilled person reading this definition in claim 3 would be struck, on the one hand, by the explicit mention and the specific definition of the first population of cells and by the explicit mention, but absence of specific definition of the second population of cells, on the other hand.

In **T 1074/00** the board considered that the term "capable of hybridising under stringent conditions" was sufficiently clear for the purposes of Art. 84 EPC 1973, having regard to the particular nature of the subject-matter (see also **T 29/05**). The board found that, although different experimental protocols might be applied for assessing hybridization under stringent conditions, this did not mean that these protocols would lead to different results as far as the detected nucleotide sequence was concerned. Moreover, it had to be taken into account that the present claim defined its subject-matter also by a further functional feature relating to the biological activity.

In **T 151/01** the product claim at issue was intended to be restricted vis-à-vis the prior art embodiments by a functional feature, namely that the amount of the ingredient present in the composition must be a "therapeutic amount". The board had no doubt that the skilled person was perfectly able in most cases to decide whether a certain amount of a given non-steroidal anti-inflammatory agent had a therapeutic effect or not. However, it pointed out that, in order to establish the lower limit of the therapeutic amount for a given non-steroidal anti-inflammatory agent, in other words, in order to clearly establish the scope of protection of the claims, a standard test was required, since the result would strongly depend on the experimental method used. As there was no such test in the description or known to the skilled person, the board concluded that the claim did not fulfil the requirement of Art. 84 EPC 1973.

In **T 143/06** the density of the product which was "close to the theoretical maximum" was identified by the board as a functional feature of the product inextricably linked to the process conditions for obtaining the product. There was thus no objection of lack of clarity under Art. 84 EPC.

### 3.5. Characterisation of an invention by a parameter

In decision **T 94/82** (OJ 1984, 75) the board ruled that the requirement of clarity could be fulfilled in a claim to a product if the characteristics of the product were specified by parameters related to the physical structure of the product, provided that those parameters could be clearly and reliably determined by objective procedures which were usual in the art (see also **T 452/91**, **T 541/97**, **T 437/98**, **T 193/01**). It is not mandatory to give instructions in the claim itself as to how the product is to be obtained (**T 94/82**).