

### 1.2.2 Cosmetic and beauty salons

In T 144/83 (OJ 1986, 301) the board stated that under Art. 57 EPC 1973 an invention was to be considered as susceptible of industrial application if it could be made or used in any kind of industry. Enterprises in the cosmetic field - such as cosmetic salons and beauty parlours - were part of industry within the meaning of Art. 57 EPC 1973, since the notion of "industry" implied that an activity was carried out continuously, independently and for financial gain. One board had already decided in T 36/83 (OJ 1986, 295) that the professional use of such inventions in a cosmetic salon was an industrial application within the meaning of Art. 57 EPC 1973.

## 2. Reproducibility and sufficiency of disclosure

Another requirement for an invention to be considered susceptible of industrial application within the meaning of Art. 57 EPC is that the technical teaching disclosed in the application under Art. 83 EPC is reproducible.

In T 718/96 the board held that reproducibility was to be assessed in the first instance with reference to Art. 83 and 100(b) EPC 1973, which lay down that the invention must be disclosed in such a way that it can be carried out by a skilled person. Art. 57 EPC 1973 could also serve as a basis for objecting to a lack of reproducibility, because an invention that could not be carried out was also not susceptible of industrial application, but such an objection was always to be based on the most specific applicable provision. Nevertheless, given the link between the two notions, any findings as to reproducibility would apply in equal measure to industrial application under Art. 57 EPC.

In T 1450/07 the board noted that the information in the application as filed should make plausible the identity of the claimed compound. Thus, the compound could be attributed to a known family of molecules on the basis of a comparison between its primary structure and that of molecules known in the art. Then, its putative functions could be disclosed. Experimental evidence was not necessarily needed. A number of reasonable assumptions could be made by taking into account the known functions of other family members as well as, for example and not exclusively, by taking into account the distribution of the claimed compound in the body. The treatments therein mentioned were in relation to the function plausibly attributed to the molecule. Post published evidence backing up these assumptions was always welcome and the quality of the information was also fundamental. The board pointed out that each case had to be evaluated on its own merits. The board decided in the case at issue that the requirement of industrial applicability was fulfilled.

In T 18/09 the board noted that the close inter-relationship between Art. 83 and 57 EPC was already addressed in previous decisions (see inter alia T 898/05). In respect of Art. 83 EPC, established case law of the boards of appeal stated that a patent could only be objected to for lack of sufficiency of disclosure if there were serious doubts, substantiated by verifiable facts (see T 19/90, OJ 1990, 476). For the board, it would not be justified and unfair to set a different standard of proof in respect of Art. 57 EPC.