

conservation), T.1485/17 (low frequency signal inherent to only biological systems)). The more a new invention contradicts previously accepted technical wisdom, the greater the amount of technical information and explanation is required in the application to enable the invention to be carried out by the average skilled person to whom only that conventional knowledge is available (T.1785/06).

In ex parte case T.2340/12, the application related to a space energy implosion unit. The board observed that it did not understand how the torsion field or space energy was to be measured. The appellant (applicant) claimed that over 40,000 Internet citations could be found concerning "Space Energy". But no specific Internet citation was cited which could serve to explain the concepts of torsion field or space energy. The applicant only referred to "indirect" measurements carried out but did not elaborate on the nature of these experiments or on their relevance for the claimed invention despite having been invited to do so in the provisional opinion issued by the board. The examining division raised criticisms regarding the experiments. The appellant emphasised that the EPC does not contain any requirements for such experimental evidence to be provided. The appellant further questioned the competence of the examining division to require such evidence. The board stated that in the case of inventions in **fields of technology without any accepted theoretical or practical basis**, the case law of the boards of appeal has established that the application should contain all the details of the invention required for the effect to be achieved (cf. T.541/96, point 6.2 of the Reasons). This was the direct consequence of the fact that the skilled person will be unable to rely on common and accepted general knowledge when dealing with inventions in such fields. The board stated that there is no provision in the EPC according to which the grant of a patent depends on the filing by the applicant of evidence that the claimed invention performs satisfactorily in the form of results of experimentation. The filing of such results is **not** to be seen as **an obligation** imposed on the applicant **but**, in contrast, as a right, providing the applicant with the **opportunity to convince** the examining division (or the board) that it erred in its initial findings. The decision includes findings on the burden of proof in **ex parte** cases (see for example, the summary of the rules established by the case law for inter partes cases given in T.967/09, point 6 of the Reasons).

In T.518/10, the board looked at the rules concerning the burden of proof of insufficiency, which was, as a general rule, on the opponents. In the case at issue, the appellant (patent proprietor) had asserted that, against the prevailing technical opinion, by using the extraction method described in the patent in suit the skilled person was able to obtain from marine and aquatic animal material an extract comprising compound (II). The respondents denied this and provided evidence that compound (II) could not be obtained when working according to the general method described in the patent. Under these circumstances the burden of proof was on the appellant to show that the method in the patent worked as alleged. The mere assumption that compound (II) could theoretically be present in an extract due to the krill's diet on algae was not evidence that could disprove the respondents' experimental reports or discharge the burden of proof resting on the appellant. The board also did not share the appellant's opinion that it was for the respondents, after having failed to obtain the claimed extract by following the teaching of the patent, to embark on a **research programme** in an attempt to find a compound which, according to the prevailing technical opinion, was not expected to be found in the first