

patent application does not contain detailed information of how to put the invention into practice, this requires less substantial arguments and evidence. Serious doubts whether the skilled person can carry out the invention as claimed, e.g. in the form of comprehensible and **plausible** arguments, are sufficient (see also T. 347/15; T. 1845/17 (ambiguous parameter); T. 2218/16 (Gene therapy of motor neuron disorders – scAAV9 vector), which summarises the case law on the burden of proving an alleged lack of sufficient disclosure).

The board in T. 59/18 stated, in relation to the burden of proof when a weak presumption exists that the invention is sufficiently disclosed (reference made to T. 63/06), that since the respondents (opponents) had convincingly argued that the term "relaxation ratio" having the meaning intended by the appellant was not to be found in textbooks and did not represent common general knowledge, the burden of proof for establishing sufficiency was clearly on the appellant/patent proprietor.

In T. 2119/14 (unusual parameter) the board, referring to T. 63/06 (concepts of strong presumption and weak presumption in relation to the burden of proof), held that the existence of an undue burden resulted from the almost infinite number of coating compositions that fell under the structural definition given in claim 1, and the established absence of a teaching in the patent in suit as to how select in an appropriate and straightforward manner the components of the coating composition so as to meet the unusual parametric requirement of claim 1. As a consequence, the onus of proving that the preparation of the coating compositions over the whole scope for which protection was sought did not necessitate an undue amount of work for the skilled person rested with the patent proprietor (here: appellant).

9.2. Objection of insufficient disclosure rejected – examples

The established case law of the boards of appeal is that a finding of lack of sufficient disclosure should be based on serious doubts, substantiated by verifiable facts. The facts put forward by the examining division in ex parte case T. 1020/11 to justify a finding of lack of sufficient disclosure were based on a potential problem which might occur between different antigens in combination. There were however no verifiable facts on file that demonstrated that interference was a problem in the present, specific case. In the absence of such verifiable facts relevant to the specific case, the board could not find the objection of lack of sufficient disclosure persuasive (see also inter partes case T. 872/13 concerning a pharmaceutical composition) – the opponent described a number of possible difficulties that the skilled person might encounter, but did not raise any serious doubts substantiated by verifiable facts – in this case the skilled person was in a position to modify the method of Example 8 in order to obtain the desired result – routine modifications).

T. 1437/07 (Botulinum toxin for treating smooth muscle spasm) dealt with the objection that it was not credible that the therapeutic effect could be achieved because the treatment disclosed in Example 9 had not actually been carried out. The board referred inter alia to R. 42(1)(e) EPC, according to which not even the presence of an example was mandatory. Therefore, just because a patent disclosed an effect which had not in reality been achieved, there was no reason – in the absence of convincing evidence that the effect