decisions: **T 1466/05**, **T 601/05**, **T 1389/13**. For examples of cases in which sufficient disclosure was established, see **T 2045/09** and **T 845/19** (antibody defined, after limitation, by structural and functional features).

For another decision concerning antibodies, see **T 32/17** (definition of an antibody by reference to a deposited hybridoma – R. 31 EPC).

Whether opponents can cite post-published documents

In **T 1872/16** (claim 1 was drafted in the form of a purpose-limited product claim pursuant to Art. 54(5) EPC) the suitability of an IL-13 antibody as defined in the claim for the treatment of specific forms of asthma had to be assessed. The application did not contain any experiments testing the suitability of the antibodies and did not disclose a link between IL-13 and the specific forms of asthma recited in the claim. The appellant (patent proprietor) disputed that the respondents-opponents could use post-published documents (i.e. D23, post-published clinical trial) to refute the suitability of a claimed compound for a claimed therapeutic application, submitting that only documents available at the effective date of the patent could be taken into account. The board explained that the standard established in the case law was that serious doubts had to be substantiated by verifiable facts. The opponents were free to use whatever evidence they chose to substantiate those serious doubts. This also applied to the date on which the evidence was generated. There might be cases where the serious doubts could only be properly substantiated by facts which were obtained after the effective date of the patent (see **T 219/01** in relation to a medical use claim and lack of sufficient disclosure on the basis of post-published clinical trial). The respondents could therefore base their arguments on document D23. In the board's view, with the patent not containing any examples of antibodies which had been shown to be suitable for treating severe asthma, it was sufficient for the respondents to show one embodiment which was not suitable. On the basis of D23 the skilled person would have had serious doubts as to the suitability of the antibody for treating severe asthma. The requirements of Art. 83 EPC were not met.

7.4. Factors contributing to a finding of undue burden

In **T 187/93** there were experimental uncertainties in the patent application. The board found that the skilled person, when trying to obtain the same technical effect with a different glycoprotein would have experienced lack of predictability, which amounted to an undue burden.

In **T 2006/08**, although no experimental details were provided for factor IX in the patent-in-suit, the board considered that no undue experimentation would be required to carry out the method steps. It was plausible that the claimed process achieved an improvement of the in vivo function of factor IX. The requirements of Art. 83 EPC were fulfilled.

Similarly, in **T 727/95**, the board found that the invention relied too much on chance. The claimed subject-matter included a "microorganism designated Acetobacter and having the ability of microorganisms [...]". The board observed that by including the phrase "having the ability of", the claim covered not only Acetobacter microorganisms derived from the