

was to review the decision under appeal on the basis of the submissions and requests of the parties. This clearly encompassed the review of the opposition division's reasoning, in particular the assessment of the respondent's objections considered in the decision. If the reasoning as such was found to be wrong, there could not be any shift of the burden of proof on the substance. As regards the latter, it was established jurisprudence that a successful objection of lack of sufficiency presupposed that there were serious doubts substantiated by verifiable facts (T 967/09). It was primarily the respondent's duty to provide such facts in support of its objections.

T 30/15 (inter partes) contains extensive reasoning on the issue of burden of proof and on the submission of evidence in respect of Art. 83 EPC in conjunction with procedural aspects (RPBA 2007) especially at the appeal stage after a first instance decision revoking the patent for insufficiency of disclosure. The board found that, once the patent was revoked, it was up to the proprietor, as the appellant, to present a detailed line of argument in its statement of grounds of appeal, even if the grounds for the contested revocation seemed no longer to apply to a new set of claims. Thus, contrary to what was claimed by the proprietor, the respondents and former opponents were under no obligation to carry on proving the insufficiency of the disclosure of the invention if that was the reason for the patent's revocation. (Compare with T 1329/11, point 3.9 of the Reasons, where the appellant was the opponent but in a case where the application as filed did not provide a single example or other technical information from which it was plausible that the claimed invention could be carried out).

In T 1886/12, which also contains reasoning on the issue of burden of proof concerning alleged insufficiency of disclosure, the appellant (opponent) raised several objections but did not discharge the burden of proof.

In T 275/16 the board recalled that the burden of proof of insufficiency of disclosure is, as a general rule, on the **opponent**. However, in the case of an invention which goes against the prevailing technical opinion, it is the patent proprietor who needs to prove that the invention is sufficiently disclosed (T 792/00, points 3 to 5 of the Reasons; T 1842/06, point 3.4 of the Reasons; T 518/10, point 7.10.1 of the Reasons; cf. T 419/12, point 1.1.4(6) of the Reasons). In the case at issue, it was the prevailing technical opinion that no processes existed which would allow the production of titanium dioxide particles in a gas phase reaction, the particles all having the same particle diameter, i.e. having a monodisperse particle size distribution. Moreover, the patent did not contain data for the contentious D_{top}/D₅₀ value of 1. It was the patent proprietor (appellant) who had to show that it was possible to arrive at a D_{top} (maximum particle diameter) / D₅₀ (median particle diameter) ratio of 1, a value explicitly claimed, when using the process disclosed in the patent in suit. The board considered the requirements of sufficiency of disclosure not met, even with a skilled person construing the patent with a mind willing to understand (cf. T 190/99).

In T 298/17 the appellant (patent proprietor) argued that the respondents (opponents) bore the burden of proving that the claimed emulsions could not be obtained but had not filed any evidence in this respect. It further argued that, as per G 9/91 and T 1003/96, it – as the patent proprietor – should be given the benefit of doubt on the issue of sufficiency of