

In T 1994/12 (rubber composition), as to the argument that the requirement for sufficiency of disclosure was not met because the skilled person in view of the ambiguity in respect of the nature of the asphalt would not be able to reproduce the examples of the patent, the board stated that sufficiency of disclosure was not concerned with the invention **the applicant might have had in mind** when drafting the application, but rather with the invention defined by the claims in terms of the technical features of the invention (see R. 43(1) EPC), as is done for assessing other criteria for patentability such as novelty and inventive step.

In T 116/18 (OJ 2022, A76) synergism was not a feature of the claims of the patent in suit. Consequently, whether this effect was achieved over the entire breadth of the claims was not to be assessed under Art. 100(b) EPC but Art. 56 EPC (G 1/03 (OJ 2004, 413), point 2.5.2 of the Reasons). Case T 116/18 is a referral pending under G 2/21.

In T 623/16 (OLEDs) the description proposed varying a **plurality of parameters** to achieve a white emitting device. There was no indication in the claims that several parameters, such as concentration and thickness on the one hand and the addition of a blocking layer (or other parameters) on the other, should be varied at the same time. If the skilled person were to make a first experiment and obtain a device which did not emit white, they would find no explicit guidance in the patent for deciding on what to start with to yield white emission. Thus, guidance had to be given in the claims as to which features were essential for carrying out the invention over the whole range in order to achieve a device emitting white light. Once the skilled person was aware that these features were crucial for carrying out the invention, changing only concentration and thicknesses was no longer an undue burden. The description provided enough details on carrying out the invention. Claim 1 of the main request did not comprise features that were essential to the invention and crucial to carry it out over the whole range claimed. Omitting these features led to a device that did not emit white light (Art. 83 EPC not complied with). With amendments introducing the essential features, it was no longer an undue burden for the skilled person (new first auxiliary request satisfied Art. 83 EPC).

In T 2773/18 (mechanics) the patent concerned a wind turbine with a cooling device using outside air, in particular for marine environments. In support of an alleged lack of sufficient disclosure concerning the expression "upper part of the tower", the appellant (opponent) argued that not only was the claim was not limited to an offshore wind turbine but the dimension of the lower and upper parts was also not limited to a minimum size or height. The scope of claim 1 thus covered embodiments where the inlet was located quite low above sea level and therefore unable to achieve the technical effect of drawing outside air with a low water and salt content. This argument failed to convince the board, not least because it misapplied **case law developed in the field of chemistry** – for where a claimed invention was in a compositional range or other range of values but the associated effect was perhaps not proven or plausible for large parts of that range – to an invention claimed in the field of mechanics, even though it claimed no ranges. By its very nature, a claim in the field of mechanics, which – often in functional or other generic terms – attempted to capture the essence of some specific machine or mechanical structure (or its operation), was schematic and allowed for some breadth of interpretation. It might be that, on clever construction, subject-matter could be found to be covered by that breadth that