

As already stated, these decisions are not the first ones that represent the currently applied approach. Examples of decisions prior T 1811/13 that also follow the current majority approach: T 1948/10, T 608/12, T 2331/11, T 1507/10, T 943/00, T 960/98, T 619/00, T 396/02, T 1033/02, T 452/04, T 466/05, T 1586/05, T 1015/06, T 1250/08, T 593/09, T 1507/10, T 2331/11, T 2290/12, T 647/15, T 548/13, T 466/05, T 2290/12, T 1886/06, T 1608/13, T 608/07.

The decision in T 608/07 (hidden objection) is very often cited (especially its point 2.5.2 of the Reasons) in the case law, including even in recent decisions, e.g. in T 786/15 (Tg parameter – ambiguity at the edges of the values); T 1627/17; T 1768/15; T 1960/14 (melting points of palm oil fraction); T 1608/13 (definition of a sieving coefficient); T 1285/15 (example of a hidden clarity objection); T 593/09 (also referring to T 815/07 and *Kirin-Amgen Inc v. Hoechst Marion Roussel Ltd* [2004] UKHL 46 of the United Kingdom's House of Lords). In T 593/09 (ill-defined parameter) the board held (see catchword and point 4.1.4 of the Reasons) that what is decisive for establishing insufficiency within the meaning of Art. 83 EPC is whether the parameter, in the specific case, is so ill defined that the skilled person is not able, on the basis of the disclosure as a whole and using common general knowledge, to identify (without undue burden) the technical measures (e.g. selection of suitable compounds) necessary to solve the problem underlying the patent at issue. The decision in T 593/09 (essential parameter for preparation of a product) is in turn frequently cited still in recent case law, e.g. T 1305/15 (Zeta potential of hollow fibre membrane – severe lack of information concerning the ZP measurement method – ill-defined parameter not reliably measurable – Art. 83 EPC not satisfied); T 1526/09 (vague definition of parameter affected clarity but did not prevent reproduction of the claimed product); T 2403/11; T 786/15.

Examples of decisions since T 1811/13 endorsing the predominant view: T 1900/17; T 2319/14; T 417/13; T 548/13.

In T 646/13 the board considered a request for a referral to the Enlarged Board filed in view of a divergence between T 1811/13 and T 464/05 but refused it on the ground that this alleged divergence instead illustrated a development in the case law.

T 626/14, which endorsed T 464/05, likewise analysed the decisions in T 1811/13 and T 464/05. The board in T 250/15 held that T 626/14 did not call the case law confirmed in T 1811/13 into question and declined to make a referral to the Enlarged Board, considering that T 626/14 and T 464/05 concerned a particular constellation in a certain technical field.

The board in T 1845/14 took issue with the approach taken in some decisions to defining the term "invention" for the purposes of Art. 83 EPC. Addressing the rationale of T 593/09, T 815/07, T 172/99 and T 608/07, it found that, although the expression "promise of the invention" in light of *Zipher Ltd v. Markem Systems Ltd* referred to in T 608/07 could be understood to correspond to the indication in the description of the patent of the technical benefits provided by the claimed subject-matter, this decision from the High Court (UK) makes clear that not fulfilling the "promise of the invention" is rather an issue of inventive step. The board in T 409/17 considered T 1845/14 and T 593/09.