

However, in the board's view, this argument could not succeed since the technical effects invoked by the respondent were not **plausible** over the whole scope of claim 1 of the main request.

In case T.655/13 the examining division did not precisely identify the passage of document D1 (technical journal in Japanese as a prior art publication) which disclosed the feature in dispute and at the same time did not provide a translation of at least the referenced longer section of said Japanese document. The board recalled that in examination proceedings, as far as issues relating to patentability requirements are concerned, the burden of proof – and consequently the onus of presentation of the relevant facts – lies initially with the examining division, which must provide evidence and facts to support its objection (see T.578/06). As a rule, the applicant can dispute in a general way a general statement made by the examining division, which then in turn is obliged to raise a more detailed objection. In order to give an applicant a fair chance to challenge the findings of the examining division, the latter should, as a rule, at least once identify where in the closest prior-art document each of the features of the claim in suit is disclosed (see e.g. the obiter dictum in T.70/02).

See chapter I.D. "Inventive step".

c) Sufficiency of disclosure

According to established case law of the boards of appeal, a successful objection of insufficient disclosure presupposes that there are serious doubts, substantiated by verifiable facts. In inter partes proceedings, the burden of proof initially lies with the opponent, who must establish, on the balance of probabilities, that a skilled person reading the patent, using common general knowledge, would be unable to carry out the invention. This is because it is generally to be presumed that a patent relates to an invention which is sufficiently disclosed. If the opponent has discharged its burden of proof and so conclusively established the facts, the patent proprietor then bears the burden of proving the counter-arguments it puts forward to refute those facts.

The burden of proof is determined by the legal cases which the respective parties are trying to make. Whether it is discharged or not is assessed by the board based on all the relevant evidence put before it. The burden of proof of insufficiency is as a general rule on the **opponents**, who should prove that despite making all reasonable efforts they were unable to put the invention into practice. If the patentee is claiming a result, which the prevailing technical opinion suggests is not achievable, and if the opponents are not able to repeat the method in the patent, they **cannot be expected to do more than the patentee**. Then, the burden of proof is on the patentee to show that the extraction method in the patent works as stated so that at least one way of putting the invention into practice has been given to the skilled person (approach set out e.g. in T.518/10, which in turn cited T.792/00 and T.1842/06).

In T.1608/13, referring to T.585/92, the respondent (opponent) argued that in appeal, after the opposition division had revoked the patent, the burden of proof shifted to the appellant to prove that the decision was wrong. However, the primary aim of appeal proceedings