

might not solve the problem or achieve the desired effect. However, this was normally not an issue of lack of disclosure, but rather of claim construction. Whether the claims, description and figures provided the skilled person with sufficient information to carry out an invention was a purely technical question that was separate from that of what reasonably fell within the ambit of the claim wording. In the board's view, if the skilled person, upon consideration of the entire disclosure and possibly using common general knowledge, could **infer what would and what would not work**, a claimed invention was sufficiently disclosed, even if a broad construction might also encompass what did not work. In the case in hand, the skilled person would be able to directly recognise and exclude embodiments which obviously would not achieve the effect sought. In particular, the skilled person would disregard an upper part placed much lower than 30 metres above sea level. The board thus confirmed the opposition division's positive assessment of sufficiency (Art. 100(b) EPC).

In T 1583/17 the invention concerned the use of coated films. The board stated that it was important to note that there was a difference between whether or not a product met a **pre-set quality requirement** (here: the absence of glossy spots) and whether or not it met the requirements set out in a claim. That the quality of the coatings obtained did not satisfy the intended quality standard did not mean that those coatings did not satisfy the requirements of claim 1, which was the only relevant point when discussing sufficiency of disclosure. The alleged lack of enablement over the entire range had not been shown.

See also in this chapter II.C.7.1.2.

Objection of insufficient disclosure based on the subject-matter of a dependent claim

In T 2007/16 the opposition division had referred to what it called the "main rule" for Art. 83 EPC, according to which only one way to perform the invention needed to be clear to the skilled person. It had argued that a patent could not conflict with Art. 83 EPC if those skilled in the art could perform the subject-matter of an independent claim, irrespective of whether they could perform the subject-matter of a dependent claim. The board could not endorse this approach; the "main rule" asserted by the opposition division had no basis in the EPC or in the case law of the boards of appeal. A dependent claim directed at a particular embodiment could give rise to an objection under Art. 83 EPC if the skilled person did not know how to obtain this embodiment. Also, a dependent claim directed at subject-matter that the skilled person would not know how to obtain indicated that the invention defined in the corresponding independent claim was not sufficiently disclosed over the whole scope encompassed by the claim.

## 5.5. Parameters

If an essential feature of the invention is expressed by a parametric definition, the question is whether the parameter is so defined that the person of the art, on the basis of the disclosure of the patent as a whole and using his common general knowledge, could identify, without undue burden, the technical measures leading to the claimed subject-matter (T 61/14).