

out the invention claimed" and "examples" referred to in R. 27(1)(e) EPC 1973. According to this jurisprudence, the detailed description of one way of carrying out the invention claimed had to be interpreted in the light of Art. 83 EPC. It constituted a condition to be met by the description as a whole and was clearly mandatory. In contrast, the presence of examples would only be indispensable if the description would otherwise not be sufficient to meet this requirement. Hence, the purpose of the "examples" evoked in R. 27(1)(e) EPC 1973 appeared primarily to be to complete an otherwise incomplete teaching. See also T. 1918/07 and T. 1169/08.

In T. 226/85 (OJ 1988, 336), T. 409/91 (OJ 1994, 653) and T. 694/92 (OJ 1997, 408) the patent or the patent application disclosed only one or very few ways of carrying out the invention. In each of these decisions the boards had held that the disclosure of the specific examples was not sufficient to enable the invention to be carried out as claimed. However, according to T. 617/07, no principle could be deduced from these decisions that sufficiency of disclosure is always to be denied if there is only example of carrying out an invention. Rather all three decisions emphasised that an objection of lack of sufficiency of disclosure (i) presupposes that there are serious doubts, substantiated by verifiable facts, and (ii) depends on the evidence available in each case whether or not a claimed invention can be considered as enabled on the basis of the disclosure of one worked example.

In T. 721/16 the patent was revoked by the opposition division. The objection of lack of sufficiency of disclosure related to the measurement of parameters defining the polyvinylpyrrolidone powder compositions. While it was not disputed that the parameters defined in claims 1, 2 and 3 were generally known to the skilled person and that they were also defined in the patent in suit, the respondent (opponent) argued that the patent in suit did not disclose all the necessary conditions to perform reproducible measurements of these parameters. The arguments of the respondent in T. 721/16 concerned in fact the repetition of the examples of the patent in suit, i.e. the preparation of polyvinylpyrrolidone powder compositions having specific K values, K value lowering ratios and content of insoluble substances. However, the board stated that the difficulty in providing an exact repetition of the examples of the patent in suit was in the case in hand not decisive for concluding a lack of sufficiency of disclosure of the claimed invention and could be left unanswered. Firstly, it is the sufficiency of disclosure of the combination of technical features of the invention, i.e. as defined by the terms of the claims (see R. 43(1) EPC), which has to be assessed and not that of the specific exemplified embodiments, which were not in the case in hand the subject-matter of a claim. Secondly, according to R. 42(1)(e) EPC the description shall describe in detail at least one way of carrying out the invention claimed, using examples where appropriate, meaning that the presence of examples is not a mandatory requirement for meeting the requirement of sufficiency of disclosure. (On this last point, see also T. 1437/07, point 38 ff of the Reasons.)

In T. 2242/16 the appellant (patent proprietor) took the view, based on T. 665/90, that proving the alleged lack of enablement would have required reproducing an example of the patent in exactly the same way. The board decided that there could be no such requirement in the case in hand, finding that, at least according to the patent's teaching, the precise approach taken in the example was not crucial. The board referred to a number