

1. Introduction

Art. 83 EPC stipulates that the application "shall" (previously "must") disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. The related ground for opposition is in Art. 100(b) EPC.

The subject-matter of an application must be sufficiently disclosed at the date of the application (see in this chapter II.C.2.), based on the application as a whole (II.C.3.1.), including examples (II.C.5.3.), and taking into account the common general knowledge of the skilled person (II.C.4.). At least one way of enabling the person skilled in the art to carry out the invention must be disclosed (II.C.5.2.), but this is sufficient only if it allows the invention to be performed in the whole range claimed (II.C.5.4.). Parameters must be sufficiently defined (II.C.5.5.). The disclosure must also be reproducible without undue burden (II.C.6.); evidence from post-published documents is allowable under certain circumstances (II.C.6.8.).

The distinction between the requirements for sufficiency of disclosure under Art. 83 EPC and clarity of the claims under Art. 84 EPC (II.C.8) is important, as examination in respect of the requirements of Art. 83 EPC is still permitted during opposition proceedings, whereas in respect of Art. 84 EPC it is limited to cases where there has been an amendment (see also G 3/14 in chapter II.A.1.4.).

The burden of proof generally lies with the opponent to establish that an invention is insufficiently disclosed (II.C.9.).

Sufficiency of disclosure as applied in biotechnology is considered in this chapter II.C.7., including the issue of broad claims (II.C.7.1.4.).

A number of decisions have looked at the monopoly conferred by a patent, how this is linked to the notion of a "technical contribution" and what this means for assessing sufficiency of disclosure; see, for example, the following decisions reported elsewhere in this chapter: T 409/91 (OJ 1994, 653), T 435/91 (OJ 1995, 188), T 1164/11, T 1845/14, T 2015/20, T 797/14 and T 2119/14; compare also with T 416/14 (as regards a proprietor's argument that there were no potential effects on the competition). The issue of where the line is to be drawn between Art. 56 EPC and Art. 83 EPC was recently addressed in e.g. T 409/17 (point 3.3.3 of the Reasons), referring to G 1/03 and T 1845/14; on this point, see also the following decisions: T 380/05, T 1311/15, T 1079/08, T 862/11, T 2001/12, T 898/05, T 967/09, T 116/18 (OJ 2022, A76).

2. Date of compliance

Sufficiency of disclosure under Art. 83 EPC requires inter alia that the subject-matter claimed in a European patent application be clearly identified. This requirement must be complied with as from the date of filing because a deficiency in a European patent application as filed, consisting in an insufficient identification of the subject-matter claimed, cannot subsequently be cured without offending against Art. 123(2) EPC which provides