

b) Case law before the now established approach.

The case law prior to the two aforementioned decisions affirming that there was a predominant opinion among the boards (T 1811/13 and T 647/15) already included a number of decisions favouring the same approach. For details of these decisions and the rest of this earlier case law, readers are referred to the 9th edition of this Case Law Book (dated 2019).

c) Recent debate around the majority and minority lines of case law and alleged divergence in the case law

This section reports on decisions since T 1811/13 which have addressed the case law on the relationship between Art. 83 EPC and Art. 84 EPC and on (refused) requests for referrals of questions about this to the Enlarged Board.

The board in T 626/14 (thickness of fibrous composite – variability in measurement) considered it important to mention that T 1811/13 and T 647/15 – with essentially identical reasoning as regards Art. 83 EPC – sought to question the way in which Art. 83 EPC objections were reasoned in decisions such as T 464/05. Yet, T 1811/13 and T 647/15 themselves concentrated only on an individual aspect in T 464/05, namely "the area covered by the claim", without addressing the actual findings in that decision regarding Art. 83 EPC. T 1811/13 and T 647/15 did not cause the board in T 626/14 to see anything which would undermine the reasoning in T 464/05 concerning Art. 83 EPC. More recently in T 250/15 the board held that T 626/14 did not challenge the case law. T 250/15 declined to make a referral to the Enlarged Board and considered that T 626/14 and T 464/05 concerned a **particular constellation** in a certain technical field.

In T 646/13 the opponent's request for a referral hinged on an alleged contradiction between decisions T 1811/13 and T 464/05 on the issues of clarity of the claims and sufficiency of disclosure. The board concluded that these cases concurred in that an unclear definition of the boundaries of the claim pertained to Art. 84 EPC 1973. Application of the principles set out in decisions T 464/05 and T 1811/13 would not lead in the circumstances of T 646/13 to different results. Finally and more importantly, as explained in decision T 1811/13, decision T 464/05 forms part of a line of jurisprudence established between 2004 and 2007, not generally followed since then. There is now a clearly predominant opinion among the boards that the definition of the "forbidden area" of a claim should not be considered as a matter related to Art. 83 and 100(b) EPC 1973, the alleged contradiction between decisions T 464/05 and T 1811/13 does not exist. Rather than being in conflict, these decisions illustrate a **development of the case law** on a particular question over an extended period of time.

9. Evidence

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