

reconstruction – doubts about availability of a method of manufacturing a blank with the claimed properties).

In ex parte case T 2249/16 the board applied the principle that doubts need not be proven by way of experiments but must at least be substantiated in a technically plausible manner. It observed that the contested decision did not set out any reasons or arguments as to why the skilled person would be unable to carry out the invention.

9.5. Burden of proof wrongly allocated at first instance

T 55/18 is an example of a case where the board found that the opposition division had been wrong to put the burden of proof on the patent proprietor. On this shifting of the burden of proof, the board held, in particular, that the fact that the appellant (patent proprietor) had filed two pixelated and fuzzy photos (obtained by optical microscopy – means not appropriate for investigating the presence of nanometer particles in suspension) could not as such relieve the respondent (opponent) of the burden of proof. Ultimately, the objection was found not to be substantiated by verifiable facts. Since the respondent had not shown that a skilled person could not carry out the invention, or at least not convincingly put the ability to do so in **doubt**, a lack of sufficient disclosure could not be established. One of the respondent's arguments was that every step of the claimed method had to be sufficiently disclosed, but the patent did not disclose how to carry out step (d) because there was no specific indication of the dimension or the method for measuring it. But, observing that claim 1 did not comprise a step of measuring the dimension of the suspension elements, the board held that the absence of this specific indication did not affect the reproducibility.

In T 2571/12 the board disagreed with the conclusions of the opposition division that because no evidence had been provided by the opponent to show that any neuropsychiatric disorder could not effectively be treated using a glutathione precursor the patent in suit was considered as disclosing the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. It is the patent that has to demonstrate the suitability of the claimed treatment for the claimed therapeutic indication. As explained, for example, in decision T 609/02, a simple verbal statement that compound X may be used to treat disease Y was not enough to ensure sufficiency of disclosure: rather, it is required that the patent provides some information in the form of, for example, experimental tests, to the avail that the claimed compound has a direct effect on a metabolic mechanism specifically involved in the disease, this mechanism being either known from the prior art or demonstrated in the patent per se.

9.6. Consequence of an invention going against generally accepted scientific principles

It was held in T 541/96 that if an invention seems to offend against the generally accepted laws of physics and established theories, the disclosure should be detailed enough to prove to a skilled person conversant with mainstream science and technology that the invention is indeed feasible, the onus being on the applicant (see also T 1023/00, T 1329/07, T 1796/07, T 1603/13 (violation of laws of physics – thermodynamics – energy