

one at issue, where the technical teaching as disclosed in the application was credible. In T.1205/07, the post-published documents were considered, as the evidence they provided was not aimed at "curing" any alleged insufficiency of disclosure, but rather at confirming the teachings of the application. See also T.1547/08.

Even though sufficiency of disclosure must, in principle, be established at the priority date, post-published documents can be used as evidence that the claimed concept can be put in practice. Accordingly, the board decided to consider documents in spite of their late filing (T.1164/11).

The fact that experimental data were not published until after the filing date of the application is not prejudicial to their nature as evidence of physical phenomena, which occur independently of any publication date (T.416/14).

If a disclosure is seriously insufficient in that it provides no guidance for performing a particular aspect of the invention, a reference to later documents showing how such performance was accomplished at a later date is manifestly incapable of curing the insufficiency (T.222/00). Sufficiency of disclosure must, in principle, be shown to exist at the effective date of a patent. If the description of the patent specification provides no more than a vague indication of a possible medical use for a chemical compound yet to be identified, later more detailed evidence cannot be used to remedy the fundamental insufficiency of disclosure of such subject-matter (T.609/02). The disclosure in post-published documents can only be taken into account for the question of sufficiency of disclosure if it was used to back up the positive findings in relation to the disclosure in a patent application (T.1273/09 citing T.609/02). Post-published evidence may be taken into account, but only to back-up the findings in the application in relation to the use of the compound(s) as a pharmaceutical (T.609/02, T.950/13, see in this chapter II.C.7.2.2c)).

In case T.1329/11 the respondents (patent proprietors) referred to post-published documents, in particular to document D8 published more than five years after the priority date, in order to show that the claimed method worked. The contents of documents which were not available to the skilled person at the priority date could not help to overcome the major problem of sufficiency of disclosure of the claimed invention at the priority date.

In T.2070/13 the board observed that D16 – a patent specification – failed to provide any guidance as to how anti-adherence might be determined; the document was post-published with respect to the patent in suit and its disclosure was thus of no relevance to the sufficiency of disclosure thereof.

In T.1255/11 the board was satisfied that the application as filed provided a complete theoretical explanation, backed up by scientific literature, for the treatment of Alzheimer's disease by MCT. Since the presence of the claimed effect was made plausible by the theoretical background explanations provided in the application as filed, the appellant (patent proprietor) might provide post-published evidence.

T.59/18 addressed the issue of series of patent specifications as a means of establishing common general knowledge. The board ultimately decided that any possible definition of