In **T 617/07** the claim at issue concerned monoclonal antibodies and synthetic and biotechnological derivatives thereof defined by structural and functional features. The board found that, given his common general knowledge, the skilled person would be able, in a possibly time-consuming but straightforward manner, to provide antibody variants having the functional requirements indicated in the claim. There was no doubt that the structural definition in the claim included antibodies that did not have the desired function but, when attempting to rework the invention the skilled person would on the basis of his knowledge be able to avoid non-functional variants. Therefore, because the skilled person knew how to achieve antibodies with the desired function on the basis of a particular known antibody, he was not in the situation of having to sort out non-functional variants in a burdensome manner.

In **T 386/08** the patent concerned humanised antibodies with framework sequences. It disclosed not only one, but many examples. The board pointed out that the concept of sufficiency of disclosure over the whole scope of the claim did not mean that, for a disclosure to be considered as sufficient, it had to be demonstrated that each and every conceivable embodiment of a claim could be obtained; see **G 1/03** (OJ 2004, 413). There may be situations where the specification contains sufficient information on the relevant criteria for finding appropriate alternatives ("variants") over the claimed range with reasonable effort. Under these circumstances the non-availability of certain variants encompassed by the claim at the priority date is considered immaterial for the sufficiency of disclosure. For an example where this was not so, see **T 601/05**. The current situation however was different in that the patent described quite a number of appropriate alternatives and in that the allegedly non-obtainable variants were "hypothetical" variants. The requirements of Art. 83 EPC were fulfilled.

Art. 83 EPC was not complied with in **T 941/16** (anti-PSMA antibody). The board decided that, in the absence of any examples of a claimed antibody/fragment, the general information in the patent application and the common general knowledge, taken together, could not be considered to provide the information necessary to allow the skilled person to reliably obtain substantially all of the claimed antibodies/fragments fulfilling the functional requirements of the claim. For particular combinations of complementarity-determining regions (CDRs) it was not credible that a humanised antibody/fragment with the properties defined in claim 1 would be obtained. Readily performing the invention across the entire scope of the claim placed an undue burden on the skilled person. Lastly, the board, with reference to **G 1/03** (OJ 2004, 413, point 2.5.2 of the Reasons), dealt with the argument made by the appellant (applicant) that patent applications in the field of biochemistry should not be treated worse than those in the other fields of classical chemistry (presence of **non-working embodiments** in a generic chemical formula).

The March 2022 version of the Guidelines includes a new section on antibodies since 2021 (see G-II, 5.6). As regards claims directed to antibodies defined by **functional features** (i.e. by their ability to perform a certain function), they state in G-II, 5.6.1.3: "If an antibody is defined exclusively by functional properties, it has to be carefully assessed whether the application provides an enabling disclosure across the whole scope claimed". As to the related case law, the boards held Art. 83 EPC not to be met in the following