

to T.575/05 and argued that in a similar situation a board had decided that although standards were available, the patent did not provide sufficient guidance as to which one should be used (invention insufficiently disclosed). However according to the board in T.1960/14, unlike in T.575/05, where many commonly used but not clearly defined methods of determining a parameter were available and thus led to a high degree of uncertainty for the skilled person trying to carry out the invention, at the priority date of the patent in suit there were only three clearly defined standard methods of determining the melting point of palm oil fractions, which produced very similar results with a fairly minor degree of ambiguity/uncertainty only at the margins of the claimed range. The issue of Art. 84 EPC was also addressed (T.256/87 and T.815/07 not followed).

In T.786/15 numerous methods of measuring the parameter Tg existed and the skilled person was aware of three ways, but the patent did not indicate any method for its measurement. To determine whether the Tg parameter was "so ill defined", it had to be investigated which methods would be considered by the skilled person. Referring to T.608/07 (point 2.5.2 of the Reasons), the board concluded that the alleged ambiguity arose at the edges of the values recited in claim, but this in itself could not lead to a finding of insufficiency of disclosure.

See also in this chapter: T.492/92 (two methods suggested by applicant) and T.1414/08 (parameter tensile strength – paper - not considered unusual – but no specific method of measuring disclosed – several standardised test methods in the art – consequences – end values ambiguous – scope – issue of Art. 84 EPC).

c) No or incomplete information on method of determining parameter

Where the calibration of (undisclosed) test conditions may be achieved although the methods of determination of the parameter are incompletely described, the invention may be sufficiently disclosed. See for example T.1062/98. On calibration, see also chapter II.C.6.6.8.

The fact that no direct independent method of specifically determining the parameter has been described is not in itself prejudicial to the sufficiency of the description where the claims do not relate to a method of determining the parameter (T.256/87, a case concerning Art. 84 and 83 EPC, with respect to an amended claim).

In T.83/01 (essential parameter –diameter of water droplets in a plastic fat-continuous spread – particularly difficult to measure) the board held that where the skilled person had no reason to doubt the definition of the parameter given, but there was no indication in the patent how to measure this parameter, the patent failed to fulfil the requirements of Art. 83 EPC 1973.

The board in T.2403/11 (see catchword) acknowledged that an ambiguity of a parameter in the claim was not enough in itself to deny sufficiency of disclosure. Whether such an ambiguity led to insufficiency of disclosure was to be decided on a case-by-case basis (see T.593/09 and T.472/14). The case at issue was different from T.882/03, which also concerned viscosity and where the variations resulting from the ambiguity were only minor,