filed and taking into account what was known in the prior art, it was credible that the modified adenovirus specified in the claim would have been effective for the treatment of Ras-mediated cell proliferative disorder. Post-published evidence could therefore be taken into account to back up this evidence (following **T 609/02**).

In **T 1846/10** the invention under consideration related to the preparation of a live vaccine against L. intracellularis which relied on the use of attenuated L. intracellularis bacteria. L. intracellularis is the causative agent of proliferative enteropathy in pigs, also known as porcine proliferative enteropathy (PPE). To be suitable as a live vaccine strain, the attenuated bacteria must fulfil the following three criteria: (i) apathogenicity, which means that they do not cause the disease; (ii) be suitable and retain immunogenicity, which means that they induce protective immunity in the animal host, and (iii) genetic stability, which means that they do not revert to being pathogenic or conversely become too attenuated. This was undisputed among the parties.

The skilled person, wanting to carry out the claimed invention, could not rely on his common general knowledge or the prior art to obtain suitable attenuated L. intracellularis bacteria. The patent had to provide the necessary guidance for the successful implementation of the claimed invention. The board concluded that the guidance provided by the patent did **not** allow the skilled person to obtain an attenuated L. intracellularis strain **without undue burden** or inventive step.

The skilled person was taught by the patent that he had to test the passaged strain, but only to confirm attenuation. The L. intracellularis strain suitable to carry out the invention not only had to be less virulent than the corresponding wild type strain, but also had to fulfil the additional two criteria of appropriate immunogenicity and genetic stability. Relying on the guidance provided by the patent and not knowing why the strain used in example 5 did not protect the vaccinated animals he would have had no reason to assume that the number of passages had to be increased. The person skilled in the art would not be inclined to consider the intervals disclosed in the description of the patent as mere lower limits but would have understood these indications as concrete ranges. The board concluded that example 5 of the patent represented evidence that the skilled person, by following the guidance of the patent, would fail to obtain an attenuated strain of L. intracellularis suitable for the preparation of a live vaccine.

In **T 1376/11** the board concluded that the only way disclosed in the application to arrive at the paprika plants of the invention started from parental Capsicum annuum NM varieties, such as Capsicum annuum NM 1441. The public availability of these parental plants at the priority date of the application was therefore a mandatory requirement for the skilled person to reproduce the invention. In the absence of evidence that Capsicum annuum NM 1441 was publicly available, the board concluded that the application did not disclose the subject-matter of claim 1 in a manner sufficiently clear and complete for it to be carried out by the skilled person.