

could not be achieved – for the board to doubt that the effect could be achieved. The board rejected the objection.

As proof that an invention has been insufficiently disclosed, the boards require that the attempt to repeat it must fail despite following the conditions given in the examples. This requirement is not fulfilled where the opponent repeats the patented process under conditions covered by claim 1 but differing in many respects from those applying in the contested patent's examples (T 665/90).

An invention should be reproduced using the examples given. Insufficiency cannot be proven on the basis of laboratory trials when the only embodiment exemplified in the patent is an industrial fermentation process (T 740/90). The disclosure was also considered sufficient where the opponent had only used equivalents of the surfactants given in the patent, as he had not discharged his burden of proof (T 406/91).

In T 1712/09, the board held that the opponent had failed to prove that the method of measuring the parameters was unworkable. The tests referred to in its experimental reports had been carried out using measuring apparatus different from that described in the patent, and so not as instructed there. The board found that no attempt had been made to reproduce the invention (no attempt at calibration), which was the first condition for an objection under Art. 100(b) and 83 EPC. It cited T 815/07 (need for consistent values) and T 1062/98 and T 485/00 (possibility of calibrating methods of determining the relevant parameters). The board in T 548/13 held that the case law on parameters (which included T 815/07) did not apply since the case before it did not concern a quantitative parameter.

In T 45/09 too, the opponent's test conditions were called into question since the tests had been carried out using a commercially available product. Observing that two products of the same brand but available on the market at different times would not necessarily have the same properties, the board found that it had not been established that the properties had been the same in this specific case. The board also considered the issue of calibrating the method of measuring the parameter. The board concluded that the opponent had failed to show that the method of measuring the parameter could not be reproduced and thus to prove insufficient disclosure. It was, indeed, for the opponent to do so, and it could have discharged its burden of proof by attempting to reproduce the method using at least one of the claimed silica.

In T 378/11 (particle size), the values disclosed in claim 1 referred to the average particle size. **No proof** had been submitted by the appellants/opponents that the lack of any indication as to the precise kind of average particle size hindered the skilled person from carrying out the invention at issue. The board found that the skilled person could select those kinds of mean values falling within the range 10-500 mym in order to prepare a composition according to the invention at issue. Whether or not the use of two kinds of mean values would lead to different results was a matter of clarity, rather than sufficiency of disclosure.

In T 1089/15 the board, recalling the established case law on a successful objection (e.g. T 19/90 OJ 1990, 476, point 3.3 of the Reasons), found that the appellant (opponent)