

public at the latest on the **publication date** and not on the **filing date** of the European patent application, in order to be taken into account for the purposes of Art. 83 EPC 1973.

The enabling disclosure of the invention in T 521/10 relied on the content of (US) patent applications incorporated by reference which did not fulfil the requirements set out in T 737/90. In order to be validly incorporated, each document must: (i) be available to the Office on or before the date of filing of the application; and (ii) be available to the public no later than on the date of publication of the application under Art. 93 EPC. As neither of the two documents was made available to the public and the only publication originating from the two documents was a continuation-in-part application which was published on a date later than the publication date of the European application at issue, the two documents were not validly incorporated by reference.

In T 341/04, the question was whether a referenced document, which could be unambiguously identified at the date of filing of the document containing the reference by its document number, but which document itself was "missing" in the sense that it was not available at said date of filing, could be "taken into account" for the purpose of Art. 83 EPC 1973 by relying on information present in a family member of the referenced document. The board answered in the affirmative.

5. Clarity and completeness of disclosure

5.1. General principles

It must be possible to reproduce a claimed step using the original application documents without any inventive effort over and above the ordinary skills of a practitioner (T 10/86). Where an applicant did not furnish details of the production process in the description in order to prevent the invention from being copied easily and the missing information could not be supplied from the general knowledge of a person skilled in the art, the invention was held to be insufficiently disclosed (T 219/85, OJ 1986, 376).

In T 1164/11 the board was not aware of a known physical mechanism according to which light was able to push molecules of a medicament, contained in the matrix of a solidified medicamentous solution, into the skin. The board had serious doubts regarding the claimed interaction of the (laser light) energy emitter with the molecules and the claimed result of penetration of the molecules into the skin. The appellant (applicant) admitted that there might be a **lack of scientific explanation**, but stated that nevertheless a "surprising effect" was achievable with the claimed device "without knowing the real phenomena occurring in the skin". The board accepted that it might not be possible to provide a scientifically sound explanation and that the invention might still be sufficiently disclosed if such an unexpected effect was convincingly demonstrated. However, the original application was devoid of any test results or experimental evidence that could give an indication of light-induced enhancement of penetration of medicament molecules into the skin.