

are kept within reasonable bounds and do not require an inventive step (T.931/91). The skilled person is used to occasional failures when testing a technical teaching (T.14/83, cited in T.1133/08).

In ex parte case T.1111/14 (human hepatocytes), the board, disagreeing with the department of first instance's finding on Art. 83 EPC (infringed), cited the above finding from T.931/91 and added that, as a matter of fact, occasional failure was the rule rather than the exception in the technical field at issue.

A claim is an attempt to define a device in terms of ideal conditions, i.e. those required for its theoretically optimal or nominal operation. However, when considering a claim, the skilled person will readily understand that the conditions of actual operation will not be the ideal ones defined there. In T.383/14 (sorting table for grape harvest), the board found that, on reading the claim at issue, the skilled person would immediately grasp how the table would operate **in practice** after a harvest and so understand its terms in a sense compatible with the actual operation of all mechanical devices, whose reliability or success rate was always less than 100% and even lower in the specific case of sorting or grading.

The board in T.38/11 summarised the case law for making a case of insufficiency of disclosure (identifying gaps in information), and in the case at issue stated that the appellant (patentee) itself argued that a synergistic effect of a composition depended on a range of parameters and was rather an exceptional situation. As such parameters were not disclosed, it followed that the patent did not suffer from an occasional failure, but from a lack of a concept fit for generalisation. The situation may be aptly denoted as an invitation to carry out a research programme, based on trial and error, with limited chances of success (see T.435/91 (OJ 1995, 188) and T.809/07). In accordance sufficiency of disclosure could not be acknowledged.

### 6.6.2 Routine selection

Reproducibility is not impaired if the selection of the values for various parameters is a matter of routine and/or if further information is supplied by examples in the description (T.107/91).

The board in T.764/14 concluded that the skilled person was able, based on common general knowledge and corresponding routine variation of experimental conditions, to complement the information contained in paragraph [0031] of the patent in suit and, thus, to determine (possibly with some slight uncertainty but) without undue burden the surface Na baseline value for a given carrier.

See also chapter II.C.6.6.8 "Calibration and identifiable measurement method".

### 6.6.3 Wrong citations

Wrongly citing a method of measuring an essential product parameter may constitute insufficient disclosure (T.1250/01, applied in T.484/05 (unusual parameter)). In T.1250/01 the consequence of an error in the description was that no method for measuring an