

be clear from the claim itself when being read by the person skilled in the art exactly how the parameters should be determined. This would, as a rule, imply that the method of determination and the conditions of measurement which might have an influence on the value of the parameter should be indicated in the claim, either expressly or, if appropriate, by way of reference to the description according to R. 29(6) EPC 1973. Such indication would only become superfluous provided it could be shown that the skilled person would know from the outset which method and conditions to employ. See also T 1156/01.

In T 1819/07 the board held that the parameter "average particle size" rendered the claim unclear as neither the type of average (volume, surface, number) nor a method for determining it was indicated in the claims. See also T 967/08 and T 45/10.

In T 992/02 the board took the view that whilst noting the general principle that the claims must be clear per se, the non-inclusion in the claim of the method whereby one of the parameters characterising the composition claimed (level of formation of volatiles) could be measured was justified by the requirement that the claims be concise. It considered that such a conclusion could be reached in the case in hand because the method was clearly identified in the description and did not give rise to any ambiguity.

In T 2086/11 the parameter "mean aspect ratio" represented the mean of the individual aspect ratios, defined as the ratio of the major axis to thickness, of 50 aluminium flake particles having major axes of not more than 10 µm. The board held that this parameter did not enable to distinguish which subject-matter is covered by the claims and which is not. According to the method of measuring explained in the description, the investigated sample contained thousands of particles having a major axis of not more than 10 µm and the method described in the application did not give any precise indication of how to select such 50 particles. One operator, by selecting at random one group of 50 particles, could measure a mean aspect ratio within the claim whilst another operator, by selecting a different group of 50 particles, could find a value of mean aspect ratio outside the claim. The parameter "mean aspect ratio" was thus by itself insufficient to characterise the claimed product in a reliable way and did not comply with Art. 84 EPC 1973.

3.6. Unspecified features and relative qualities

Unspecified features are permitted as follows:

- (a) To avoid an undue limitation of the scope of the claim where the person skilled in the art can verify the result by tests involving nothing more than trial and error (T 88/87).
- (b) To render the meaning of the feature intelligible from the actual claim.

Thus, the objection in T 487/89 was based on the fact that the claim had indicated both tenacity and toughness with a lower but no upper limit. The opposition division took the view that such "open-ended" parameters were always objectionable if they related to an inherently desirable characteristic. The board, however, held that whether the absence of an upper or lower limit was acceptable in a claim in any individual case depended on all the surrounding circumstances. Where, as in the case in question, the claim sought to