

6.3. Variants

If the only embodiment disclosed with concrete details in a patent is not disclosed in a manner sufficiently complete for the claimed invention to be carried out by a person skilled in the art on the date of priority with respect to the fundamental scope of said invention, it is of no significance with regard to the question of sufficient disclosure whether on the relevant date of filing a variant could have been carried out if the variant, although it is covered by the wording of the patent claim, does not fall within the fundamental scope of the claimed invention with regard to the teaching of the patent due to a lack of comparable technical success (T.1173/00, OJ 2004, 16).

The board went on to state that if an invention is insufficiently disclosed, it is of no relevance whether it was objectively impossible to provide the **missing information** on the date of priority. The decisive issue is whether the invention is disclosed in a manner sufficiently complete for it to be carried out by an average person skilled in the art on the date of priority, with knowledge of the patent and on the basis of that person's common general knowledge.

6.4. Use to which invention is put

Where a disadvantage of an invention (in this case the risk of injury to users) could prevent its use, this is not an obstacle to reproducibility provided that the otherwise desired result is achieved by the technical teaching disclosed in the patent in suit (T.881/95, see also T.468/09). An Art. 83 EPC objection concerning the absence of any detailed indication of the **use** envisaged for the products cannot succeed, as Art. 83 EPC merely requires the invention to be sufficiently disclosed (see e.g. T.866/00).

6.5. Reach-through claims

In T.1063/06 (OJ 2009, 516) the board held that a formulation of a claim whereby functionally defined chemical compounds were to be found by means of a new kind of research tool using a screening method set out in the description constituted a reach-through claim which was also directed to future inventions based on the one now being disclosed. The applicant was entitled to claim patent protection only for his actual contribution to the art and not to reserve an unexplored field of research.

6.6. Reproducibility without undue burden

The disclosure must be reproducible without undue burden.

6.6.1 Occasional failure

It suffices for the disclosure of an invention that the means intended to carry out the invention are clearly disclosed in technical terms which render them implementable and that the intended result is achieved at least in some, equally realistic, cases (T.487/91). The occasional failure of a process as claimed does not impair its reproducibility if only a few attempts are required to transform failure into success, provided that these attempts