the term "relaxation ratio" found in post-published documents could not be regarded as an indirect indication of common general knowledge in the absence of a specific indication that the meaning of this term already belonged to older prior art. Only one of the patent documents submitted by the appellant contained a definition of a relaxation ratio. It could not be found on that basis that there were a series of patent specifications providing a consistent picture within the meaning of <u>T 412/09</u>.

In T 116/18 (OJ 2022, A76) the issue of post-published evidence led to a referral to the Enlarged Board (G 2/21). In essence, this referral was concerned with inventive step (Art. 56 EPC) - the patent proprietor had cited a piece of post-published evidence to demonstrate that the problem was solved and that the alleged technical effect was achieved. The referral contains a definition by the board of the term "post-published evidence". The board identified three main lines of case law: T 1329/04. T 609/02. T 488/16, T 415/11, T 1791/11 and T 895/13 of 21 May 2015 ("ab initio plausibility" plausibility was ultimately not established in these decisions); T 919/15, T 578/06, T 2015/20, T 536/07, T 1437/07, T 266/10, T 863/12, T 184/16 ("ab initio implausibility" plausibility was ultimately established in these decisions); T 31/18, T 2371/13 ("no plausibility" line of case law). It also stated that the issue whether post-published evidence could be taken into account arose under the heading of sufficiency of disclosure too, where the effect was expressed in the claim at issue. Whether an effect was part of the problem to be solved or was expressed in the claim at issue dictated which provision of the EPC was applicable (G 1/03, OJ 2004, 413, point 2.5.2 of the Reasons) but, in the board's view, did not have an impact on the considerations applying to the issue. The guestion whether post-published evidence could be taken into account on substantive grounds, depending on the plausibility of the technical effect based on the evidence submitted as proof, was extensively discussed in T 116/18. This discussion touched on aspects relating to monopoly, the notion of technical contribution and the weight to be attached to speculations.

See also in this chapter <u>II.C.7.2</u>. "Level of disclosure required for medical use – plausibility".

## 7. The requirement of sufficiency of disclosure in the biotechnology field

## 7.1. Clarity and completeness of disclosure

## 7.1.1 General

The principles elucidated under chapter II.C.4. and 5. above are also applicable to biological inventions. In particular, reference should be made to the case law laid down by the boards in T 281/86 (OJ 1989, 202), T 299/86 of 17. August 1989 and T 409/91 (OJ 1994, 653). Issues related to completeness of disclosure are also discussed by the boards in context with inventive step (see e.g. T 1329/04, T 604/04, T 898/05) and industrial applicability (see e.g. T 870/04, T 641/05, T 1452/06, above chapter I.E.). Whether the application discloses sufficient information making it plausible that the claimed polynucleotides or polypeptides have the alleged technical effect was considered a matter of inventive step (T 743/97; T 1329/04) or industrial applicability (T 1165/06,