

examples of the patent in suit (T.143/02). However, where there are different measuring methods which do not always lead to the same result, this can amount to an undue burden, as in T.225/93. In T.930/99, the board considered T.225/93 inapplicable, as there was only one measurement method before them. The respondent's argument that there would be legal uncertainty, since third parties would not know whether they were working within or outside the range specified, was clearly an argument based on lack of clarity, which was not a ground of opposition and so could not be considered (see also in this chapter II.C.8.2.).

See also chapter II.C.5.5.1 "Ambiguous parameters", where the issue of methods of determining parameters is likewise addressed.

6.6.10 Chemical compounds

According to T.954/05, the structural definition of a chemical compound may not be replaced in a claim by the mere juxtaposition of a feature purportedly representing a complete chemical structure and of a functional feature if on the one hand the first feature comprises an indefinite number of compounds and there is no systematic selection rule based on the feature in question enabling the skilled person to identify the claimed compounds, and on the other hand the second, functional feature is not identifiable in the indefinite list of compounds potentially suitable for such a function because there is no indication of a typical standardised test for determining its presence or absence.

In T.544/12 the board confirmed that a definition of a group of compounds in a claim by both structural and functional features is generally acceptable under Art. 83 EPC as long as the skilled person is able to identify, without undue burden, those compounds out of the host of compounds defined by the structural feature(s) in the claim which also fulfil the claimed functional requirements (following T.435/91, OJ 1995, 188, and T.1063/06). In T.544/12 it was up to the skilled person to identify within the almost infinite host of alternatives covered by the structural definition of claim 1 those compounds that were phosphorescent. Claim 1 extended to classes (of iridium complexes) that were entirely different from the concept as argued by the proprietor (non-compliance with Art. 83 EPC). The board did not share the view taken by the German Federal Court of Justice (Bundesgerichtshof) in its decision of 11 September 2013 (X ZB 8/12).

See also T.959/08 (requirement that a functional feature be implemented also highly relevant for Art. 83 EPC – no concept fit for generalisation – undue burden) and chapter II.A.3.4 "Functional features".

The very detailed decision T.842/14 concerned a chemical composition of a product designated by a **trademark** (see also T.270/11 and T.623/91). According to T.667/94, T.325/13, and T.1383/10, when the products designated by trademarks are essential for carrying out the invention, the requirements of Art. 83 EPC are fulfilled if these products are available to the skilled person not only at the priority and filing dates of the patent but also during its **whole lifetime** (in T.842/14 no certainty that the composition would remain unchanged). In this respect T.842/14 contains extensive reasoning on the distinction