

and from T 492/92, where the skilled person knew which method to choose. In T 2403/11 the method and the measurement parameters to be chosen were not known to the skilled person. The board in T 466/05 (also relating to viscosity) likewise drew a contrast with T 492/92 on the basis that the skilled person in the case before it did not even know which parameter (i.e. which measure of the molecular weight) of the claimed polysaccharide should be determined. For other decisions relating to viscosity, see e.g. T 805/93, T 808/09 and T 482/09.

According to T 492/92 (no need to specify one of the several available analytical methods): where it is obvious that a skilled person would select a particular analytical measuring method, (none being disclosed in the patent), balancing its simplicity and convenience against the required accuracy, the requirements of Art. 83 EPC are met. In T 492/92 it was considered that the fact that two methods suggested by the appellant did not necessarily lead to identical results when measuring a specific parameter was not sufficient evidence that a skilled person could not determine this parameter of the claimed compositions with the required accuracy.

In T 2096/12 the skilled person could not know, from the disclosure in the patent, which measurement method should be employed to establish the claimed thickness parameter. The board agreed with the statements in T 593/09 and emphasised that the absence of a test method for a parameter which was a claimed feature did not lead by itself to the issue of insufficient disclosure. In a case where, for example, ranges for length or width of a clearly structured article were concerned, the parameters could be established unambiguously and without doubt. However, in each case it had to be evaluated on a case by case basis whether this was possible. When the extent of the protection conferred by the patent is not defined and cannot be reliably determined – such as in the case at issue where neither the claims nor the description provided a clue for how to interpret the parametrical feature of the claim, it can only be concluded that the requirement of Art. 100(b) EPC was not met.

In T 1583/17 the invention concerned the use of coated films. As regards determining the thickness of the coating, it was undisputed that neither claim 1 nor the description indicated a method to be used for this and it was also undisputed that different methods were available to the skilled person and that these methods might produce different results. The mere fact that a claim was unclear or its scope ambiguous did not automatically mean that the invention it defined was not sufficiently disclosed. The board recalled the case law and observed that, in the majority of cases, the absence of an indication of a method for measuring a parameter had been regarded as a problem under Art. 84 EPC only. The board stated that the absence of an indication of a method for measuring the thickness did not prevent the skilled person from practising the claimed invention and was therefore not objectionable under Art. 100(b) EPC. As the claimed invention was not restricted to thicknesses measured by a particular method, the skilled person was free to use any suitable method. The selection of a suitable method did not involve an undue burden since measuring the thickness of a coating or of a layer in general was an absolute standard procedure for which many commonly known methods were available. The board observed that the invention would possibly **not be sufficiently disclosed** if it could only be carried out with coatings having a thickness **measurable only with a specific, yet undisclosed**