

T. 2399/10 concerned a case where a starting material could not be provided, not only because no method was described, but also because it was characterised by an undefined parameter and therefore could not be identified. The patent thus did not disclose how to produce the alumina particles needed to obtain the claimed composition. This situation differed from cases where the features of the end product described in the patent were not clearly defined, which frequently resulted in a lack of clarity. Instead, it was a starting material which had not been here defined clearly enough. Since there was therefore inadequate information to select the **starting material**, the claimed composition could not be produced. This typically meant there was insufficient disclosure. (On disclosure of a starting material, see also **T. 1596/16**).

See also **T. 1305/05** and **T. 1553/16** (unusual parameter – method of measurement kept secret) in this chapter II.C.5.3.

d) Effect of ambiguous parameter on claim interpretation

Where inventions are defined by claims containing unclear features, e.g. **ambiguous parameters**, which cannot be clarified in the light of the description, the effect sought may be the only means of understanding such inventions. This effect must then be taken into consideration and assessed under **Art. 83 EPC** with a view to establishing whether the invention can be reproduced (see **T. 862/11**).

According to **T. 1845/14** (two contradictory definitions of a parameter): The ambiguous definition of a parameter in a claim may result in the scope of the claim to be broader than the patentee might have intended. In such a case the question arises whether the teaching of the patent in suit, which was directed to the claimed subject-matter having regard to a specific meaning of that parameter (which, however, was omitted), would nevertheless have enabled the skilled person to carry out the invention outside of the scope intended by the patentee, using common general knowledge and a reasonable amount of experimentation.

In **T. 1845/14** the board stated that the invention for which sufficiency of disclosure had to be assessed is defined by the terms of the claims, whose meaning had to be construed in view of the ambiguous definition of the parameter (CDBI). Following the normal rule of claim construction, terms used in a claim, such as parametric definitions, should be given their broadest technical sensible meaning in the context in which they appear and having regard to the common general knowledge. Concerning the CDBI, there was no evidence that it had a recognised meaning in the art at the priority or filing date of the patent in suit and the contradiction between the two definitions of it provided in the specification could not be resolved. Thus, this wording must be broadly construed to cover both definitions provided in the specification. Then the ambiguous definition of a parameter in a claim may result in the scope of the claim to be broader than the patentee might have intended. It was undisputed that the whole teaching provided in the specification related to only one definition of CDBI provided in the specification. Even accepting that the teaching was sufficient for one of the two definitions, the patent proprietor did not indicate how the skilled person, based on their common general knowledge, would have been in a position to complement the teaching contained in the patent in suit to prepare with reasonable effort