

disclosure. The board stated that it was generally accepted that opponents should bear the burden of proof on the issue of sufficiency of disclosure. However, the appellant had acknowledged the fact concerned and the respondents did not need to prove facts that the appellant did not question (**undisputed facts**).

In T.2119/14 the appellant (patent proprietor) argued that it was down to the opponents to demonstrate the undue burden for the skilled person. The board addressed the burden of proof in detail and held that, in the context of the ground for opposition of insufficient disclosure, the weight of the submissions required to rebut the legal presumption that the patent met the EPC requirement depended on the strength of that presumption (see T.63/06). A **strong presumption** required more substantial submissions than a **weak presumption**. In the case in hand, the undue burden resulted from the almost infinite number of coating compositions that fell under the structural definition given in claim 1, and from the absence of any teaching in the patent on how to meet the unusual parametric requirement. As a consequence, the onus to prove that this did not necessitate an undue amount of work rested with the patent proprietor (appellant).

In T.2218/16 (gene therapy) the board considered that, far from being a mere statement, the overall technical teaching provided in the patent amounted to a **strong presumption** of suitability, so the appellant (opponent) bore the burden of proof. Moreover, since the appellant's submissions on insufficiency were not supported by evidence, i.e. verifiable facts, the burden of proof had not been shifted to the respondent (patent proprietor). Decision T.2218/16 summarises the principles applicable to the burden of proof as regards an allegation of insufficient disclosure of the invention.

In T.2340/12, concerning the burden of proof, it was not contested that it is for the organ raising the objection of lack of sufficiency to justify its view. In **ex-parte** proceedings it is therefore up to the examining division or the board of appeal to substantiate the objection raised. Such objection should rely on concrete and verifiable knowledge or facts that question the reality of the effects provided for by the claimed invention. The lack of credibility could result, for example, from a conflict with established laws of physics. It was then for the applicant (appellant) to provide the arguments or evidence. The board remarked that the filing of experiments was **not** to be seen as **an obligation** imposed on the applicant **but**, in contrast, as a right, providing the applicant with the **opportunity to convince** that the examining division (or the board) had erred in its initial findings. In the case at issue, the invention related to fields of technology without any accepted theoretical or practical basis.

In T.2571/12 the board disagreed with the conclusions of the opposition division that, because no evidence had been provided by the opponent to show that any neuropsychiatric disorder could not effectively be treated using a glutathione precursor, the patent in suit was considered to disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. It was the patent that has to demonstrate the suitability of the claimed treatment for the claimed therapeutic indication.