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**From:** Fredrik Carlsson  
**Sent:** 10 December 2021 12:34  
**To:** EBA - Amicus curiae  
**Subject:** Statement regarding G2/21, attention Mr Nicolas Michaleczek

Dear Mr. Michaleczek,

I would like to make a short statement regarding G2/21 as a European patent attorney.

I believe that it is very important to stress that this question should only apply to cases where proof of the effect rests **exclusively** on the post-published evidence. I.e. where no proof of the effect whatsoever was present in the application as filed, i.e. a purely speculative patent application.

As you know it is not uncommon that researchers have a theory and perform some initial and sometimes crude experiments, which nevertheless show some advantages of an invention. Often a patent application is filed based on such initial experimental data. Later and sometimes up to several years later additional data can be available which in a more exact and clearer way shows the effects of the invention. I am of the opinion that it should be very clear that such additional data should still be possible to submit to strengthen the initial crude data.

Possibly it may be suitable to comment in a decision that post-published experimental data can still strengthen initially filed experimental data in a patent application for cases where the proof of an effect does not rest exclusively on post-published evidence. Otherwise there is a risk that this can be used as an argument against all post-published evidence in litigation of granted European patents in national courts.

Best regards,

## Ström & Gulliksson

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