

In the problem-solution approach, there are three main stages:

- (i) determining the "closest prior art",
- (ii) establishing the "objective technical problem" to be solved, and
- (iii) considering whether or not the claimed invention, starting from the closest prior art and the objective technical problem, would have been obvious to the skilled person.

The EPO applies option A13.08.1 of the Appendix to Chapter 13 of the ISPE Guidelines.

5.1 Determination of the closest prior art

GL/ISPE 13.10,
GL/ISPE A13.08.2

Generally, the principles laid down in section G-VII, 5.1, in the Guidelines for Examination in the EPO apply *mutatis mutandis*. The closest prior art is that which in one single reference discloses the combination of features which constitutes the most promising starting point for a development leading to the invention. In selecting the closest prior art, the first consideration is that it should be directed to a similar purpose or effect as the invention or at least belong to the same or a closely related technical field as the claimed invention. In practice, the closest prior art is generally that which corresponds to a similar use and requires the minimum of structural and functional modifications to arrive at the claimed invention.

5.2 Formulation of the objective technical problem

GL/ISPE A13.08.3-
GL/ISPE A13.08.7

In the second stage, the examiner establishes in an objective way the **technical problem** to be solved. The method to do so is to study the application (or the patent), the closest prior art and the difference (also called "the **distinguishing feature(s)**" of the claimed invention) in terms of features (either structural or functional) between the claimed invention and the closest prior art, identify the technical effect resulting from the distinguishing features, and then formulate the technical problem.

The objective technical problem derived in this way may not be what the applicant presented as "the problem" in the application. The latter may require reformulation, since the objective technical problem is based on objectively established facts, in particular appearing in the prior art revealed in the course of the proceedings, which may be different from the prior art of which the applicant was actually aware at the time the application was filed. In particular, the prior art cited in the search report may put the invention in an entirely different perspective from that apparent from reading the application only. Reformulation might lead to the objective technical problem being less ambitious than originally envisaged by the application.

Section G-VII, 5.2, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

5.3 Could-would approach

GL/ISPE A13.08.8,
GL/ISPE A13.08.9

In the third stage the question to be answered is whether there is any teaching in the prior art as a whole that **would** (not simply could, but would)