

documents had the same classification was no reason for saying the combination of the teachings was obvious (T. 745/92). Likewise the mere fact that the technologies had been given different IPC classes did not necessarily mean that they could not be combined.

In T. 454/13 the invention concerned a sample block apparatus and a method for maintaining a microcard containing a plurality of samples of biological material on a sample block. The problem to be solved consisted in improving temperature uniformity between the plurality of samples on a single microcard. According to appellant 2 (opponent), the solution was obvious in view of a combination of document D1 with any of documents D6 to D8. The board found that as the issue of biological samples was not normally encountered in the field of semiconductor manufacturing, the skilled person would have no incentive to look for a solution in that field. The board concluded that the skilled person would therefore have been dissuaded from consulting documents D6 to D8.

In T. 552/89 the board confirmed that, when assessing inventive step, it was not permissible to combine the teachings of different documents within the state of the art in order to establish the obviousness of a claimed invention, unless it would have been obvious for the skilled person to do so at the time of filing. When a problem defined by reference to the closest prior art as disclosed in a primary document consisted of individual problems, the case law of the boards of appeal stated that the skilled person could be expected to take account of solutions to the individual problems proposed in different secondary documents in the same or neighbouring technical fields. Thus, the teachings of secondary documents might be combined with the disclosure of the closest prior art if such secondary documents provided solutions to specific individual problems forming part of the objective problem in progressing from the closest prior art, in particular when such individual solutions were merely aggregated together in the claimed invention (see also T. 302/02, T. 881/09).

In T. 302/02 the board added that, if an invention consisted of a new combination of features taken from different technical areas, a discussion whether or not it was obvious would normally involve at least as many documents as technical areas combined in it. The board adopted the approach taken in T. 552/89, according to which a technical problem might be formed of "individual problems". The number of individual problems obviously depended on the degree of detail of the claim under consideration and the cited decision did not suggest that beyond a certain number the presence of an inventive step might be taken for granted. On the contrary, it was said to be obvious to try to solve the individual problems as long as the corresponding solutions were "merely aggregated together" in the claim.

In T. 881/09 the board stated that since the teachings of both documents stood in heavy discrepancy to each other, in view of their incompatibilities a combination of these documents was not obvious (T. 552/89) but rather artificial and could only be the result of an ex post facto analysis.