

related to HPV infection" as an explicit feature), and concluded accordingly that it too lacked inventive step. See also T.237/15.

In T.237/15 the invention aimed to provide suitable dosages and dosing schedules of histone deacetylase inhibitors, especially suberoylanilide hydroxamic acid (SAHA), and to develop preferably oral formulations. The technical problem was the provision of a treatment regimen for human patients based on oral administration of SAHA. The board found the skilled person, in the knowledge (disclosed in D2) that SAHA was bioavailable when given orally in animal studies and having been given the information that SAHA achieved effective treatment in humans when introduced directly into the blood stream, would expect an effective treatment also for oral administration in human patients. The determination of the optimum dosage regimen required to achieve the therapeutic effect in the (human) patient was a matter of routine experimentation for the skilled person. The board held such routine tests did not require inventive skill and could consequently not establish an inventive step. See also in this Chapter I.D.9.21.7 "Enhanced effect".

10. Secondary indicia in the assessment of inventive step

10.1. General issues

According to established case law of the boards of appeal, a mere investigation for indications of the presence of inventive step is no substitute for the technically skilled assessment of the invention vis-à-vis the state of the art pursuant to Art. 56 EPC. Where such indications are present, the overall picture of the state of the art and consideration of all significant factors may show that inventive step is involved but this need not necessarily always be the case (see T.24/81, OJ 1983, 133 and T.55/86). Secondary indicia of this kind are only of importance in cases of doubt, i.e. when objective evaluation of the prior art teachings has yet to provide a clear picture (T.645/94, T.284/96, T.71/98, T.323/99, T.877/99). Indicia are merely **auxiliary considerations** in the assessment of inventive step (T.1072/92, T.351/93, T.179/18).

In T.754/89 – "EPILADY" the board detailed its reasons for ruling that an inventive step was involved. Although factors such as commercial success, the overcoming of prejudice, the age of the documents cited, the cost of advertising and the creation of a new market segment, the satisfaction of a long-standing need, the existence of imitations and forms of infringement had received considerable attention, particularly in the parties' written submissions, the technical facts of the case were such that secondary indications of inventive step had lost any relevance.

In T.915/00 the board held that commercial implementation, licensing and the recognition of the inventor's merits by the scientific community constituted further convincing secondary indicia for the presence of inventive step.

In T.1892/12 the board observed that the boards had in some cases taken account of "secondary indicia" that an inventive step was involved but had not so far done so for the purposes of establishing that it was lacking. According to Art. 56 EPC, an invention shall be considered as involving an inventive step if, having regard to the state of the art, it is