

In T 110/92 the board did not dispute that the heating assembly according to claim 1 might have been a commercial success. However, such a commercial success alone, with the technically relevant examination of the claimed subject-matter leading to a negative result, could not be regarded as forming the basis for an indication of inventive step even if the board were convinced that the success derived from technical features of the heating assembly and not from other causes such as those of a commercial nature (see also T 5/91, T 219/90, T 373/94, T 109/15).

In T 478/91 too, commercial success was not regarded as indicative of inventive step. The board pointed out that it was well known that the commercial success of a product could just as easily be due to factors other than its properties, in particular more streamlined manufacture, a market monopoly, advertising campaigns or efficient selling technique (see T 270/84, T 257/91, T 712/92).

In T 1212/01 the patent related to pyrazolopyrimidinones for the treatment of impotence (Viagra). The board stated that in order to establish commercial success as an indicia of inventive step, two evidentiary steps were required. Firstly, commercial success must be demonstrated and, secondly, it had to be shown that such success resulted from the claimed invention and not from one or more other causes. Viagra had been the subject of various awards and praise in various journals. The board stated that the prizes would have been significant if awarded by persons who understood patent law. If however the prizes were awarded for the product's life-enhancing nature, or for the appellants' high standard of research, or for a high level of sales, then, for all that any of those reasons might well be prize-worthy, the prizes could have no significance in the context of inventive step. The board arrived at the conclusion that the evidence did not establish that the "prizes and praises" had resulted from the claimed inventive step.

In T 677/91 the board took the commercial success of the claimed invention into consideration and stated that it would have been wrong to ignore the practical impact that the invention had made in its own field since the priority date. For example, in several passages of a textbook, reference was made to the fact that the various advantages of the claimed invention had brought in a new era in this special field. The board concluded that it was difficult to reconcile the contents of such passages with the idea that the claimed invention was a matter of mere routine development and thus held that the invention involved an inventive step.

In T 626/96 the invention had likewise achieved great commercial success and gained widespread recognition in a number of countries. Furthermore, the success was achieved in a very short space of time, so that there seemed to be a pressing commercial need for this simple solution. Furthermore, the success was directly attributable to the structure of the product claimed and was not due to marketing techniques or advertising skills.

10.6. Market competitors

Market competitors' efforts to obtain rights of joint use constitute further secondary indicia closely related to commercial success. They may result in a positive decision on inventive step, but need not necessarily do so. In T 351/93 the board stated that the latter applied