

#### 9.21.5 Purposive selection

In T 513/90 (OJ 1994, 154) the board held that if, for a particular application of a known process, the skilled person could obviously use a material generally available on the market and suitable for the purpose, and was also highly likely to use it for reasons irrespective of its characteristics, such use should not be considered as inventive on account of those characteristics alone. It stood to reason that if carrying out such a step was itself already obvious for other reasons, the natural choice of the particular means on the market-place was devoid of mental or practical effort, or of "purposive selection", in the absence of anything to the contrary (see also T 659/00, T 1861/16).

In T 636/09 the board held that no inventive step was entailed in accepting a lower yield likely when using a more readily available raw material (e.g. where industrial hemp is substituted for marijuana (cannabis), the latter being more readily available for legal reasons).

#### 9.21.6 Automation

According to the established case law of the boards, the mere automation of functions previously performed by human operators is in line with the general trend in technology and thus could not be considered inventive (T 775/90, T 1175/02, T 438/06, T 734/13, T 711/14, T 2315/16).

The mere idea of executing process steps automatically, e.g. replacing manual operation by automatic operation, was a normal aim of the skilled person (T 234/96).

In developing an automated process from a known manual process, apart from simply automating the individual steps of the manual process, the skilled person will also incorporate the facilities that automation typically offers for the monitoring, control and regulation of the individual process steps, provided they fall within the definition of technical skill (T 850/06). See also T 2315/16.

#### 9.21.7 Enhanced effect

According to the case law of the boards of appeal enhanced effects could not be adduced as evidence of inventive step if they emerged from obvious tests (T 296/87, OJ 1990, 195; T 432/98; T 926/00; T 393/01).

In T 308/99 the claimed use was based on a thoroughly obvious property of known substances. The slightly enhanced effects associated with the claimed use in comparison with substances used in prior art emerged from obvious tests.

In T 104/92 the board held that work involving mere routine experiments, such as merely conventional **trial-and-error** experimentation without employing skills beyond common general knowledge, lacked inventive step. It would be obvious for a skilled person to use varying proportions of known polymers for outer layers with a reasonable expectation of