

particularly where a technical and expert assessment of the invention in the light of the prior art led, according to the problem and solution approach, to the conclusion that the existence of inventive step had to be denied.

In T 812/92 – the board found inventive step was also supported by the fact that shortly before the filing date of the contested patent, one of the patent proprietor's competitors offered a customer a technical apparatus without implementing the advantageous technical solution according to the invention.

In T 252/06 the board confirmed the presence of inventive step *inter alia* on the grounds that the patent proprietor's competitors had used the patent's teaching and had filed applications relating to it.

### 10.7. Simple solution

In a technical field of commercial importance to which considerable attention is directed the simplicity of a proposed solution may indicate inventive step. The difficulty of developing a simple solution without sacrificing quality may therefore indicate inventive step (T 106/84, OJ 1985, 132; T 9/86, OJ 1988, 12; see also T 229/85, OJ 1987, 237; T 44/87; T 528/89; T 73/95). This did however presuppose the absence in the prior art of anything that hinted at the proposed solution (T 712/92).

In T 29/87 the board expressed the opinion that a "simple" solution may be an indication for the presence of an inventive step if in the prior art the only processes disclosed were cumbersome, expensive, time-consuming, etc., i.e. which bore certain disadvantages and, although the problem to be solved apparently was not new and actually solved in more complex ways, the state of the art was nevertheless provided with a surprisingly "simple" solution.

In T 234/91 it was pointed out that experience in structural engineering showed that with the same or even an improved effect – in the case in point an increase in reliability – it was often much more difficult to identify and achieve a simple solution than complicated embodiments. In view of the large number of solutions suggested in the technical literature, the board came to the conclusion that the improvement achieved by the simple structural measure suggested in the contested patent had not been obvious (see also T 330/87).

In T 349/95 the subject-matter at issue related to a simple form of a simple device, a device which, however, had brought about a surprising major functional improvement. In the board's view, this surprising improvement and the fact that the prior art gave no clear hint of the solution constituted evidence of the inventiveness of the claimed solution.

A different aspect was dealt with in T 113/82 (OJ 1984, 10). In order to proceed from the known art to the invention, a series of steps needed to be taken. The board stated that this could be considered as an indicator of the presence of inventiveness, particularly in a case where the last decisive step had neither been proved to be known from the prior art nor was derivable therefrom, although this last step might at first sight seem to be a very simple one (see also T 315/87 of 13 September 1989; T 508/88; T 424/89; T 394/90).