

inventive step, as there was no reason to assume that later development was attributable to a technical prejudice which the invention had needed to overcome.

In T 347/92 the board pointed out that the finding of a relatively small operating window in an area which, according to the teaching of the most recent publications, was considered inaccessible, could not be considered obvious to a person skilled in the art.

In T 984/15 the board found that the fact that something was not explicitly disclosed, or even that it was explicitly prohibited, in a technical specification must not be necessarily interpreted as a prejudice of technical nature. There might be other non-technical reasons, such as circumventing a patented technology or simply lack of time in the meetings for further discussions that led the drafting group to dismiss or ignore an otherwise valid technical option.

One form of secondary indicia in the nature of a "technical prejudice" is a **development of the art in a different direction** (T 24/81, OJ 1983, 133; T 650/90; T 330/92).

In T 883/03 the board found that the teaching that could have led to the characterising feature of claim 1 had long formed part of the state of the art; yet for all that time experts had been "**blind**" to that knowledge. In the case in point that was a further indication of the inventiveness of the solution proposed in claim 1.

In T 872/98 the board pointed out that the presence of secondary indicia might also be attested by the fact that a competitor had, shortly after the priority date, filed a patent application with the German Patent Office in which the invention took an entirely different direction to the European application.

In T 779/02 the board indicated that a prejudice could be proved by the fact that the closest prior art and the invention were separated by a long period of time (over 16 years in the case in hand), during which time the only solutions pursued led away from the invention, and the solution provided by the invention only becoming acceptable to experts in the field after this time.

10.3. Age of documents – time factor

The age of documents known long before the filing date might only be an indication of an inventive step if a need for the solution of an unsolved problem had existed for the entire period between the date of the documents and that of the invention (T 79/82, T 295/94). Nevertheless, the long period of time to be considered was not the period that had elapsed between the publication of a document and the filing of the European patent application disclosing the teaching of that document, but that between the time the problem became apparent and the date of filing of the European patent application providing a solution (T 478/91).

In T 273/92 the board held that a period of 23 years between the publication date of the document deemed to be the closest prior art and the priority date of the contested patent in an economically significant and frequently studied field could normally be viewed as an