

Referring to **T.39/82** (OJ 1982, 419) the board confirmed in **T.818/93** that in a **combination invention** all the features might be known per se – the invention resided in the way the features were interrelated, both structurally and functionally. In assessing the inventive step of the combination in question it was therefore of no consequence that a suitable structure was already known, provided its use and application in the conditions, and circumstances disclosed in the patent were not suggested by the cited prior art. For more on combination inventions see in this chapter **I.D.9.3**.

In **T.741/92** the invention involved the new use of a known means, namely a particular mesh structure. In the case of such inventions the board took the view that it was of little importance that the means was known per se if new properties and purposes came into play in its use. The known means was used in the invention to obtain a result not previously known or obvious.

Summing up in **T.301/90**, the board held that it was a generally accepted principle in the assessment of inventive step that, whereas the use of a known measure to achieve a known result on the basis of the expected inherent effect was not normally inventive, the indication of a new and non-obvious technical result, which could be achieved through these known effects (for application to the field of chemistry, see **T.4/83**, OJ 1983, 498 and to the field of physics, see **T.39/82**, OJ 1982, 419) might nevertheless convert the use of this known measure into a new and non-obvious tool for solving a new technical problem. It might thus represent an enrichment of the art and imply an inventive step (see **T.1096/92**, **T.238/93**).

In **T.590/90** the respondents argued that both the measures taken that distinguished the technical teaching of the contested patent from that of document 1 were already part of the prior art, and their application to the process described in document 1 was obvious. However, the board held that the application of a measure known as such, contrary to warnings given in several documents, was not obvious. Since this measure involved an inventive step, the overall process of claim 1 encompassing that measure likewise involved an inventive step: the modification of a known process by two measures, at least one of which was not obvious, rendered the entire process inventive.

9.14. Obvious new use

Although **T.59/87** had found that a claim to an inherent but hidden later use of a known substance could be novel, the subject-matter of such a claim would still lack inventive step if the prior art indicated a well-established link between the earlier and later uses (see also **T.544/94**).

In **T.112/92** (OJ 1994, 192) document (1), as the closest prior art, referred to the use of glucomannan as a thickener for an ungelled processed food product, but did not mention its function as a stabiliser. The board applied the principles set out in **T.59/87** (OJ 1991, 561) to the case in hand and stated that even if glucomannan did act as an emulsion stabiliser in preparing the product in accordance with document (1), this use would have been a hidden use. It came to the conclusion that the use of a substance as a stabiliser for emulsions, if not inextricably linked with its use as a thickening agent, was at