

that this structure had later been praised in D10 (European patent, same inventors as D8, underlying application filed two months after the patent in suit) and made the subject of a granted European patent was considered by the board to be an additional indication of the non-obviousness of the concept which formed the basis of the claimed invention.

10.4. Satisfaction of a long-felt need

The fact that the state of the art has been inactive over a long period prior to the invention may be an indication that an inventive step is involved if during that time an urgent need for improvement has demonstrably existed (see T.109/82, OJ 1984, 473; T.555/91; T.699/91). This indication is closely linked to the positive indications of the time factor and age of the cited document.

In T.605/91 the board stated that it was not sufficient if only one individual skilled person discovered a "long-felt need". Only if various and repeated attempts to deal with the relevant disadvantages could be identified would such a long-felt need appear to have persisted.

In T.1014/92 the board did not accept the appellant's further argument that the long period of time (about 35 years) during which documents (1) and (2) had been available to the public without having been combined, was in itself cogent evidence that there was no obvious connection between them. The board held that this conclusion might only be drawn if evidence relating to time were corroborated by other evidence, such as long-felt want (see also T.1183/06).

In T.271/84 (OJ 1987, 405) the board found that where a process had been performed successfully on a commercial scale for more than 20 years in spite of economic disadvantages associated with it, and the claimed invention provided a solution to the technical problem of avoiding such economic disadvantages, this supported a finding of inventive step.

10.5. Commercial success

In principle, commercial success alone is not to be regarded as indicative of inventive step, but evidence of immediate commercial success when coupled with evidence of a long-felt want is of relevance provided the commercial success derives from the technical features of the invention and not from other influences (e.g. selling techniques or advertising). See Guidelines G-VII, 10.3 – March 2022 version.

In T.106/84 (OJ 1985, 132) the board found that the appellant's assertion that the commercial success his device enjoyed was merely based on the superior performance of the product related to the features claimed, rather than extraordinary sales promotion efforts, must be considered in the light of the fact that the appellant's company was rather small and conceivably could not afford to indulge in major sales campaigns and sophisticated marketing techniques. The board was thus prepared to accept that the commercial success of the invention stemmed from the technical advantages related to the features claimed.