

Chapter VII – Inventive step

1. General

An invention is considered to involve an inventive step if, having regard to the prior art, it is not obvious to a person skilled in the art. Novelty and inventive step are different criteria. The question of whether there is inventive step only arises if the invention is novel.

Art. 33(3)

GL/ISPE 13.01

2. Prior art; date of filing, date of priority

The "prior art" for the purposes of considering inventive step is as defined in Art. 33(3).

GL/ISPE 13.02

In determining what is to be considered prior art, the principles laid down in GL/PCT-EPO G-IV apply.

3. Person skilled in the art

The "person skilled in the art" should be presumed to be a skilled practitioner in the relevant field of technology, who possesses average knowledge and ability and is aware of what was common general knowledge in the art at the relevant date. They should also be presumed to have had access to everything in the "prior art", in particular the documents cited in the search report, and to have had at their disposal the means and capacity for routine work and experimentation which are normal for the field of technology in question. If the problem prompts the person skilled in the art to seek its solution in another technical field, the specialist in that field is the person qualified to solve the problem. The skilled person is involved in constant development in their technical field.

GL/ISPE 13.11

3.1 Common general knowledge of the skilled person

Section G-VII, 3.1, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

4. Obviousness

Thus the question to consider, in relation to any claim defining the invention, is whether before the filing or priority date valid for that claim, having regard to the art known at the time, it would have been obvious to the person skilled in the art to arrive at something falling within the terms of the claim. If so, the claim is not allowable for lack of inventive step. The term "obvious" means that which does not go beyond the normal progress of technology but merely follows plainly or logically from the prior art, i.e. something which does not involve the exercise of any skill or ability beyond that to be expected of the person skilled in the art. In considering inventive step, as distinct from novelty, it is fair to construe any published document in the light of knowledge up to and including the day before the relevant date according to Rule 65.2 for the claimed invention and to have regard to all the knowledge generally available to the person skilled in the art up to and including that day.

Rule 65.1

GL/ISPE 13.03,

GL/ISPE 13.09,

GL/ISPE 13.10