

Reasons) that an anticipation is accidental if it is so unrelated to and remote from the claimed invention that the person skilled in the art would never have taken it into consideration when making the invention.

In T 500/00 the amendment was an undisclosed disclaimer introduced by the appellant into claim 1 during the examining proceedings in response to an objection of lack of novelty based on prior art document D1. The question that arose was whether or not the disclosure of D1 was accidental. D1 and the application in suit concerned the same technical field, had, except for the disclaimed component, identical compositions and related to the same purpose of sufficient curing. Moreover, the same technical problem underlay both the patent in suit and D1. Since the skilled person would consider D1 as suitable prior art to make the invention, confirmed by the reference to D1 in the original application, the disclosure of D1 could not be considered as being accidental within the meaning of G 1/03. Furthermore, since D1 related to the same technical effect as the patent in suit, and since its starting polymers to be cured were structurally identical to those used in the claimed process, D1 could be considered as a suitable starting point for assessing inventive step.

The decision in T 14/01 concerned the allowability of a disclaimer aimed at removing an overlap with prior art in view of G 1/03. According to the board in this case, the allegation that a teaching extracted from prior art led away from the invention implied that the skilled person had taken this prior art into consideration. Yet for an anticipation to be accidental it was necessary that the skilled person would have never taken it into consideration. The board then decided that the prior art in question was not accidental in the sense of G 1/03, and that the disclaimer was not admissible.

In T 1297/12 document D3 itself was not unrelated and remote since it related to the same field as the patent in suit. However the appellant/patent proprietor argued that the specific novelty destroying disclosures in D3 were "unrelated and remote". The board cited T 14/01 and held that the fractions were disclosed **in a relevant document**, D3, and so could not be considered to represent an "accidental" disclosure.

In T 1049/99 the board concluded that, contrary to what the respondent (patent proprietor) claimed, the skilled person would have taken the teaching of document D21 into consideration when working on the invention in search of a solution to the technical problem defined by the respondent, using appropriate and relevant means to resolve his problem **in the same technical field** as that of the patent in suit. Moreover, contrary to the respondent's conclusions at the hearing, the board stressed that the fact that a document was difficult to find in published prior art or was difficult for the skilled person to access was not sufficient to justify the conclusion that it constituted an accidental anticipation.

In T 217/03, on the issue of whether document D1 was an accidental anticipation, the board stated that D1 did not deal explicitly with the technical problem underlying the claimed invention. However, that was not decisive for accepting D1 as an accidental anticipation. The board concluded that D1 related to the same general technical field as that of the subject-matter of claim 10 and was not from a technical point of view so unrelated and remote that the person skilled in the art would never have taken it into