

the art confronting the skilled person before the applicant's contribution, and should seek to make a "real-life" assessment of this and other relevant factors. They should take into account all that is known concerning the background of the invention and give fair weight to relevant arguments or evidence submitted by the applicant, without the benefit of hindsight.

9. Origin of an invention

While the claim should in each case be directed to technical features (and not, for example, merely to an idea), in order to assess whether an inventive step is present it is important for the examiner to bear in mind that an invention may, for example, be based on the following:

- (i) the devising of a solution to a known problem;
- (ii) the arrival at an insight into the cause of an observed phenomenon (the practical use of this phenomenon then being obvious).

Many inventions are of course based on a combination of the above possibilities - e.g. the arrival at an insight and the technical application of that insight may both involve the use of the inventive faculty.

10. Secondary indicators

10.1 Predictable disadvantage; non-functional modification; arbitrary choice

Section G-VII, 10.1, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

10.2 Unexpected technical effect; bonus effect

Section G-VII, 10.2, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

10.3 Long felt need; commercial success

See ISPE Guidelines 13.16-13.18.

11. Arguments and evidence submitted by the applicant

Section G-VII, 11, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

12. Selection inventions

Generally, the principles laid down in section G-VII, 12, in the Guidelines for Examination in the EPO apply *mutatis mutandis*. The subject-matter of selection inventions differs from the closest prior art in that it represents selected sub-sets or sub-ranges. If this selection is connected to a particular technical effect, and if no hints exist leading the skilled person to the selection, then an inventive step is accepted (this technical effect occurring within the selected range may also be the same effect as attained with the broader known range, but to an unexpected degree). The criterion of "seriously contemplating" mentioned in connection with the test for novelty of overlapping ranges should not be confused with the assessment of inventive step. For inventive step, it has to be considered whether the skilled person would have made the selection or would have chosen the