

art suggesting that favourable results might be obtained by the method of calculation applied.

In a number of other decisions, all of which referred to T 36/82 (OJ 1983, 269) the subject-matter was found not to involve an inventive step, particularly when the problem addressed was to find a suitable compromise between different parameters (T 263/86, T 38/87, T 54/87, T 655/93, T 118/94, T 1861/17). In T 410/87 the board stated that it was part of the activities deemed normal for the skilled person to optimise a physical dimension in such a way as to reach an acceptable compromise, serving the intended purpose, between two effects which were contingent in opposing ways on this dimension (see also T 409/90, OJ 1993, 40; T 660/91; T 218/96; T 395/96; T 660/00; T 1861/17).

In T 73/85 the board stated that in the case in hand the very fact that the problem of improving the property in question was solved not – as was normal – by means of a specific change in structural parameters, but by amending process parameters, had in fact to be considered surprising. In this case it did not matter that the individual reaction conditions claimed in the disputed patent were known per se; more important was whether the skilled person, in expectation of the sought-after optimisation, would have proposed the combination of measures, which were known per se, or – in the absence of possible predictions – would have tried to do so as a matter of priority.

In T 500/89 the board established that the fact that individual parameter areas taken per se were known did not imply that it was obvious to combine them specifically to solve the problem according to the contested patent. The combination of the individual parameter areas was not the result of merely routine optimisation of the process according to document 1, as there was nothing in said document to suggest this combination.

9.18. Small improvement in commercially used process

In T 38/84 (OJ 1984, 368) the board of appeal pointed out that the achievement of a numerically small improvement in a process commercially used on a large scale (here enhanced yield of 0.5%) represented a worthwhile technical problem which should not be disregarded in assessing the inventive step of its solution as claimed (see also T 466/88, T 332/90). In T 155/85 (OJ 1988, 87) the board added that it was correct to say that even small improvements in yield or other industrial characteristics could mean a very relevant improvement in large-scale production, but the improvement had to be significant and therefore above margins of error and normal fluctuations in the field in consequence of other parameters. In T 286/93 the invention related to a process for manufacturing wrapping paper and board. The results for the process had shown that the machine speed and the mechanical quality of the paper obtained had improved by some 3 % vis-à-vis a process in which the order in which aluminium polychloride and cationic starch were added had been reversed. Since a process of this kind was obviously intended for the production of paper on an industrial scale, even a small improvement had to be regarded as significant.