

least very closely related. The board held that it would have been obvious for the skilled person, knowing that glucomannan was effective as a thickening agent for emulsions, at least to try to find out if it was also effective as a stabiliser. Although T. 59/87 had found that a claim to an inherent but hidden later use of a known substance could be novel, the subject-matter of such a claim would still lack inventive step if the prior art indicated a well-established link between the earlier and later uses (see also T. 544/94).

9.15. Need to improve properties

In its Headnote to T. 57/84 (OJ 1987, 53) the board stated: if a product is required to manifest a particular property (in this case a highly fungicidal effect) under various conditions, the superiority of the invention will depend on whether or not that property is **improved under all conditions** liable to be encountered in practice and particularly under the various conditions evolved in order to test it (in this case exposure to water and wind). If comparative tests are cited in support of that superiority, it is their combined results that have to be considered. The decisive factor is whether the invention outperforms the substance used for comparison in the tests **as a whole** (in this case, results in the need to use a significantly lower concentration of the pollutant substance), even if the substance used for comparison proves better in one of the tests.

Following T. 57/84, it was stated in T. 254/86 (OJ 1989, 115) that an invention which relied on a substantial and surprising improvement of a particular property did not also need to show advantages over the prior art with regard to other properties relevant to its use, provided the latter were maintained at a reasonable level so that the improvement was not completely offset by disadvantages in other respects to an unacceptable degree or in a manner which contradicted the disclosure of the invention fundamentally (see also T. 155/85, OJ 1988, 87). It was thus not necessary for there to be an improvement in every respect (T. 302/87, T. 470/90).

In T. 155/85 (OJ 1988, 87) it was further pointed out that subject-matter falling structurally between two particular embodiments of cited disclosure and displaying, in all relevant respects, effects substantially between those known for the same embodiments, lacked inventive step in the absence of other considerations.

9.16. Disclaimer

For information on disclaimers, see in particular chapter II.E.1.7. "Disclaimers".

9.17. Optimisation of parameters

In key decision T. 36/82 (OJ 1983, 269), the board stated that inventive step was not considered to be constituted by efforts directed at the concurrent optimisation of two parameters of a particular device by the simultaneous solution of two equations which were known per se and respectively expressed those parameters as functions of certain dimensions of the device. The fact that it had proved possible to find a range of values for the dimensions in question which provided an acceptable compromise between the two parameters could not be considered surprising where there were indications in the prior