

Generally speaking, established board of appeal case law is **very strict** when it comes to recognising the existence of a prejudice. For a prejudice to be considered actually to exist, there must be a prevailing but incorrect school of thought widespread throughout the entire technical field. A solution put forward as overcoming a prejudice must clash with the prevailing teaching of experts in the field, i.e. their unanimous experience and notions, rather than merely cite its rejection by individual specialists or firms (T 531/95; see also T 62/82, T 410/87, T 500/88, T 74/90, T 793/97, T 2453/09).

In T 2044/09 the board did not interpret a declaration by a technical expert in the field as evidence that there was a prejudice in the prior art at the priority date; rather, this declaration was taken as the opinion of one expert, issued almost ten years after the priority date.

In T 69/83 (OJ 1984, 357) the board held that the mere fact that the disadvantage resulting from the omission of a component of a mixture recognised in the art as advantageous was accepted suggested conscious acceptance of a disadvantage, not the overcoming of a prejudice. fact that a disadvantage is accepted or the prejudice simply ignored does not mean that a prejudice has been overcome (see also T 262/87; T 862/91).

The board in T 1989/08 observed that this meant the standard of proof was almost as high as that required for common general knowledge in the art. For example, it was not enough that the opinion or idea was held by a limited number of individuals or that it was a prevalent view within a given firm, however large. In the case in hand all the evidence offered in support of the alleged prejudice amounted to no more than ten documents, all of which were either specialist papers or patents. This small number of publications intended for a select readership in the field was in itself a tenuous basis for asserting prejudice (see also T 25/09).

In T 179/18 the board considered that the three years separating the filing date of the patent and the filing date of the disclosed prior art was not a long period indicative of a technical prejudice.

In T 1212/01 the patent related to pyrazolopyrimidinones for the treatment of impotence (Viagra). The patentee referred to some thirty scientific articles in order to demonstrate the existence of a technical prejudice that drugs lowering blood pressure were a cause of impotence rather than a form of treatment for that condition. The board, however, stated that the contents of such a selection from the prior art could not be considered per se as creating a technical prejudice against oral treatment of male erectile dysfunction. Such a prejudice could only be established by proving that, in relation to the technical solution, a relatively widespread error or misapprehension about the technical invention existed among skilled workers in the relevant field before the priority date of the patent in suit. This was not the situation in the case in hand.

In T 550/97 the respondent (patent proprietor) had argued that, years after the invention, technically less advanced solutions had been filed for and marketed as a means of integrating different mobile radio networks. However, the board did not consider the fact that arguably less advanced solutions had been developed later, to be evidence of