

In T.1072/07 the board concluded that to solve the problem (how to select a suitable type of burner), the person skilled in the art had to make a choice between two well-known possibilities. Either choice, which in a particular situation would be based on balancing the advantages of the specific type of burner being selected, such as efficiency in its operation, with its disadvantages, such as technical adaptations required and costs involved, was therefore obvious and did not involve an inventive step.

In T.1045/12 the appellant (applicant) argued that the solution to the objective technical problem taught by D3 was one of several, equally likely options and that the board had to provide a reason why the skilled person would have selected the claimed option. The board disagreed. The fact that there were other options had no bearing on the obviousness of one specific option. Furthermore, if all options were equally likely, then the invention merely resulted in an obvious and consequently non-inventive selection among a number of known possibilities. See also T.288/15.

9.21.10 Several obvious steps

If the technical problem that the skilled person has set himself to solve brings him to the solution step by step, with each individual step being obvious to him in terms of what he has achieved so far and what remains for him to do, the solution is obvious to the skilled person on the basis of the prior art, even if two or more such steps are required, and it does not involve an inventive step (T.623/97, T.911/98, T.558/00, T.1514/05).

9.21.11 Putting the closest prior art device into practice

In T.405/13 the invention was a meter with rapid response glucose sensor further adapted to cause the measurement of current to occur at a time 5 seconds or less after the detection of sample application. The objective technical problem to be solved was to implement a timing circuit having a concrete point in time at which the timing circuit causes the measurement of current to occur. Deciding whether the claimed solution to this problem was obvious or not boiled down to the question of whether or not the skilled person, while putting the meter of D10 (biosensing meter) into practice, would arrive at a value falling within the claimed range (for a similar approach see T.408/12 and T.315/97 of 21 June 2002). In the board's view, no inventive step could be seen in including in the reasonably broad time range as required by the timing circuit of the meter of D10 the claimed value of 5 seconds, the less so since reducing measurement time had to be considered as an obvious desire of the user.

9.21.12 Animal testing and human clinical trials

In T.1493/09 the board found that the skilled person seeking to solve the problem formulated (provision of a broadly effective vaccine against HPV, especially providing broad protection against cervical cancer) would have considered not only formulations for immediate use in human clinical trials but also additional animal testing. It took the view that its assessment according to the problem and solution approach applied for the same reasons to claim 1 of auxiliary request 1 (directed to the second medical use of the vaccine composition and including the therapeutic effect "prevention or treatment of a disorder