

not obvious to a person skilled in the art. In view of the negative definition in Art. 56 EPC, the board considered that inventive step could never in fact be proven but that secondary indicia might sometimes show it was plausible. A lack of inventive step by contrast could actually be proven by conclusively showing that a solution was obvious. So proving a lack of inventive step was possible, in principle, and indeed necessary where such a lack was alleged; it was then not enough to point to secondary indicia.

In T 179/18 the board was not persuaded that any of the secondary indicia claimed by the appellant conferred inventiveness on the subject matter of claim 1. It held that secondary indicia such as the satisfaction of a long-felt need, the overcoming of a prejudice in the professional world, or economic success, were auxiliary considerations in assessing inventive step. However, in the case in hand, application of the problem-solution approach led to the clear result that the subject-matter of claim 1 did not involve an inventive step.

10.2. Technical prejudice

According to the case law of the boards of appeal (see T 119/82, OJ 1984, 217; T 48/86), inventiveness can sometimes be established by demonstrating that a known prejudice, i.e. a widely held but incorrect opinion of a technical fact, needs to be overcome. In such cases, the burden is on the patentee (or patent applicant) to demonstrate, for example by reference to suitable technical literature, that the alleged prejudice really existed (T 60/82, T 631/89, T 695/90, T 1212/01). A high standard of proof to demonstrate prejudice is required (T 1989/08).

A prejudice in any particular field relates to an opinion or preconceived idea widely or universally held by experts in that field. The existence of such prejudice is normally demonstrated by reference to the literature or to encyclopaedias published before the priority date. The prejudice must have existed at the priority date, any prejudice which might have developed later is of no concern in the assessment of inventive step (T 341/94, T 531/95, T 452/96, T 1212/01, T 25/09, T 99/19).

Generally speaking, prejudice **cannot** be demonstrated by a statement in a single patent specification (T 19/81, OJ 1982, 51; T 392/88; T 900/95), since the technical information in a patent specification or a scientific article might be based on special premises or on the personal view of the author. However, this principle does not apply to explanations in a standard work or textbook representing common expert knowledge in the field concerned (T 321/87; T 392/88; T 453/92; T 1212/01).

In T 515/91 the board regarded "ABC Naturwissenschaft und Technik" as a standard work.

In T 943/92 the existence of a prejudice was supported by a specialist book which reflected the technical knowledge in the special field of the contested patent. This book did not contain the opinion of just one specialist author, but that of experts in the field, as it had resulted from the collaboration of "numerous recognised scientists, technicians and practitioners as well as associations and institutes". General critical remarks in one textbook were not sufficient to substantiate an alleged prejudice, if a plurality of prior art documents pointed to the opposite (T 134/93).