

alternative means known by him to have the same effect. In T.410/92 the board concluded that the skilled person who encountered known problems when using newly developed materials would not be deterred from using them in order to achieve specific, desired improvements, particularly since the means of overcoming such problems could be derived from the prior art.

The Headnote in T.192/82 (OJ 1984, 415) reads as follows: If an article is known as a combination or mixture of components fulfilling known functions, the generation and application of an improved novel component for the same purpose may be patentable as such and also as an improved article incorporating the same. If the component in question forms, on the other hand, part of the state of the art together with its relevant properties, the incorporation thereof in the same article will be obvious in view of its predictable beneficial effect ("analogous substitution").

In this regard the board in T.130/89 (OJ 1991, 514) held that that the use of a known material in a combination on the basis of its known properties and in a known manner to obtain a known effect was not normally inventive ("similar use"). Exceptions to this principle might be allowed in special cases, e.g. where a selection brought unexpected advantages, a known prejudice was overcome or unforeseen difficulties were encountered, such as the need to alter another component (see also T.1216/05, T.330/07, T.422/09).

Following these decisions, the board summarised as follows in T.213/87; in the absence of any unexpected effect, the mere substitution of an element by another known for its relevant properties to provide that known effect could not be regarded as patentable.

9.8. Combination of documents

It would not be obvious to a skilled person to combine an isolated, **very old document**, which had not given rise to a trend in the art and whose teaching ran counter to the present trend, with the document reflecting the closest state of the art. See for example T.261/87 (literature from 1907), T.366/89 (a document filed in 1927), T.404/90 (a "relatively old" document published in 1949).

In T.278/14 the board rejected the argument that the need to combine three pieces of prior art in order to arrive at the claimed process confirmed the presence of an inventive step. The board held that there was no general principle which determines that in order for a lack of inventive step to be established only two documents may be combined.

In T.745/92 the board pointed out that the disclosure of two prior documents – even if they were classified under the same IPC classification – could only be combined so as to result in a finding of lack of inventive step if such combination would have been obvious to a skilled person seeking to solve the problem underlying the claimed invention (see also T.104/95, T.395/00).

In T.715/09 the board stated that IPC classification alone was no reason for determining whether or not two pieces of prior art could be combined. The mere fact that two