



UPPSALA
UNIVERSITET

Praktiska aspekter vid bedömningen av uppfinningshöjd den 5 november 2014

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Vidgande av fackmannens allmänna kunnande

- Dels inom fackmannens specialistområde
- Dels genom att det krävs mindre för att fackmannen ska konsultera någon inom ett annat teknikområde.



Uppfinningshöjd och fackmannens allmänna kunnande

- Traditionellt: teknikens närmast liggande ståndpunkt + fackmannens allmänna kunnande = sökta kraven.
- Problem-Lösnings-Metoden: skillnad tekn. stdp. och kraven = praktiska problemet. Vetskap om problemet + fackmannens allmänna kunnande = sökta kraven.
- Fackmannens allmänna kunnande är viktigt och inkluderar inte allt i teknikens ståndpunkt.



Fackmannens allmänna kunnande

- Om fackmannens allmänna kunnande blir orealistiskt stort närmar det sig innehållet i teknikens ståndpunkt och patent blir svårt att erhålla.
- Traditionell utgångspunkt: Fackmannen ska känna till hand- och läroböcker inom sitt teknikområde, men typiskt sett inte patent inom området och inte kunskap utanför teknikområdet.



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- The Patent covers a therapy for asthma which combines formoterol and budesonide [ICS] in a single inhaler which can be used both for maintenance and for relief in relation to a treatment for asthma.



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- Kategori 1 av allmänt kunnande:
“statements in standard reference texts and in the guidelines on asthma care and a few leading journal articles from The Lancet and the New England Journal of Medicine”.
- Kategori 2 av allmänt kunnande:
akademiska artiklar som “were sufficiently prominent in the main academic journals in the field as to constitute part of the relevant CGK”.



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- Tredje kategorin av allmänt kunnande: artiklar “which were not in leading journals in the field of respiratory medicine, and would not have been likely to have been read by the notional skilled person in the ordinary course of keeping himself up to date. On the other hand, these materials would have been quickly identified by any person conducting a literature search and review into the use of formoterol and ICS in relation to the treatment of asthma.”



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- “The authorities indicate that CGK includes not just information directly in the mind of the notional skilled person, but such information as he would be able to locate by reference to well-known textbooks. This guidance needs to be adapted and kept appropriately up to date for the procedures for dissemination of scientific knowledge in the age of the internet and digital databases of journal articles.



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- “Searches of such databases are part and parcel of the routine sharing of information in the scientific community and are an ordinary research technique. In my view, if there is a sufficient basis (as here) in the background CGK relating to a particular issue to make it obvious to the unimaginative and uninventive skilled person that there is likely to be ...”



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- ... -- not merely a speculative possibility that there may be -- relevant published material bearing directly on that issue which would be identified by such a search, the relevant CGK will include material that would readily be identified by such a search.”



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- “In my assessment, both in 1993 and 1998 there was a sufficient well-established level of background CGK regarding the existence of formoterol ... with ICS in the treatment of asthma, ... and of academic interest in the area that the notional uninventive and unimagined skilled person would have thought it obvious that he should conduct a literature search of the kind carried out on behalf of Professor Geddes in these proceedings.”



Teva v AstraZeneca AB, UK Patents Court, 2 September 2014

- Problematiskt när det inom fackmannens allmänna kunnande förväntas att fackmannen ska undersöka relevant publicerat material som han/hon antar kan finnas (effekter av formoterol och ICS i astmabehandling).
- Man har väsentligt avlägsnat sig från hand- och läroböcker. Sådana publikationer läses inte av en majoritet av fackmän, inte heller ingår de bland etablerade metoder för problemlösning.



Fackmannes kunnande vidgat utanför teknikområdet.

EPO T 986/96 (10 8 2000):

- “According to the established case law of the boards of appeal, even though the term "state of the art" as defined in Article 54(2) EPC could mean the whole of technology, for the purposes of Article 56 EPC the person skilled in the art is normally not assumed to be aware of patent or technical literature in a far removed area (see T 11/81). In appropriate circumstances, however, ...”



EPO case T 986/96 (10 8 2000) the Board held:

- “... the knowledge of a team consisting of persons having different areas of expertise can be taken into account (see T 141/87 and T 99/89). This would be the case when, in particular, for the solution of a part of the problem an expert is appropriate, while for another part of the problem one would need to look to another expert in a different technical field.”



In T 1271/05 (27.11.2007) the Board held that:

- “The Board further notes that decision T 422/93 emphasizes under point 3 of its headnote that: "The appropriate skilled person's basic knowledge does not include that of a specialist in the different technical field to which the proposed solution belongs if the closest prior art gives no indication that the solution is to be sought in this other technical field".



In T 1271/05 (27.11.2007) the Board held that:

- “This statement also implies a contrario that the skilled person's knowledge includes that of an expert in a different technical field if the closest prior art contains an indication leading to that second technical field, as is the case for the present patent. Alternatively, such an indication could also, according to the circumstances, imply that said knowledge would correspond to the knowledge of a group of experts.”



In T 1271/05 (27.11.2007) the Board held that:

- “... As stressed by respondent II, although the paper manufacturing industry and the integrated circuit industry constitute remote fields, the closest prior art, as disclosed in documents E9 or E10, provides evidence that it was already known before the priority date of the present application to integrate IC chips in security papers. ...”



In T 1271/05 (27.11.2007) the Board held that:

- “In particular, the paragraph bridging columns 3 and 4 in E9 and the paragraph column 1, lines 11-21 in E10 contain direct references to the field of the integrated circuits and to the fact that the knowledge of the expert in that field is indeed essential in order to take advantage of the various possibilities offered by such chips.”



In T 1271/05 (27.11.2007) the Board held that:

- “... Consequently, documents E9 and E10 would directly lead the expert in the industry of security papers to consider the contribution which could be expected from an expert in the IC chip industry in order to solve a problem associated with the incorporation of an integrated circuit in a security paper. The Board fully concurs with the analysis put forward by respondent II, in this respect, ...”



In T 1271/05 (27.11.2007) the Board held that:

- “... that the skilled person or the skilled team has to be determined in view of the developments actually achieved in a specific field at the priority date of the application as illustrated by the closest prior art.



In T 1271/05 (27.11.2007) the Board held that:

- “To conclude, since the closest prior art provides evidence that the technical fields of security paper manufacturing and integrated circuits have come in contact and since the problem identified above in relation with the closest prior art is directly related to the integration of an integrated circuit in a security paper, it is therefore justified to consider that the skilled person is in fact a team of experts specialised, respectively, in the manufacturing of security papers and in the field of integrated circuits.”



Sammanfattning

- Ett vidgande av fackmannens allmänna kunnande.
- Inom fackmannens teknikområde, utöver läro- och handböcker, till artiklar som genom sökningar hade kunnat påträffas och som fackmannen skulle anta finnas.
- Utanför fackmannens teknikområde, om det existerade kombinationer i teknikens närmaste ståndpunkt av de två teknikområdena.
- Stor risk för ex post facto-bedömning.