



INVENTIVE STEP AT THE EPO

Art. 52(1) EPC

- European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial applicability.

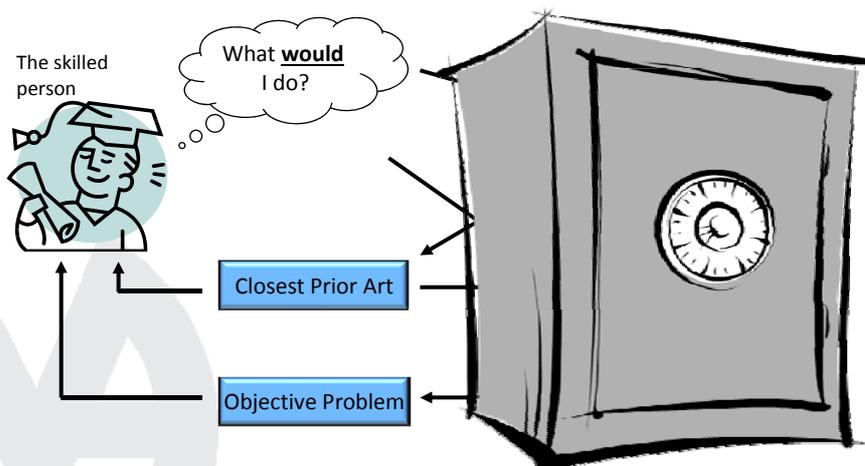
Art. 56 EPC

- An invention shall be considered as involving an **inventive step** if, having regard to the **state of the art**, it is not **obvious** to a **person skilled in the art**.
- If the state of the art also includes documents within the meaning of **Article 54, paragraph 3**, these documents shall not be considered in deciding whether there has been an inventive step.

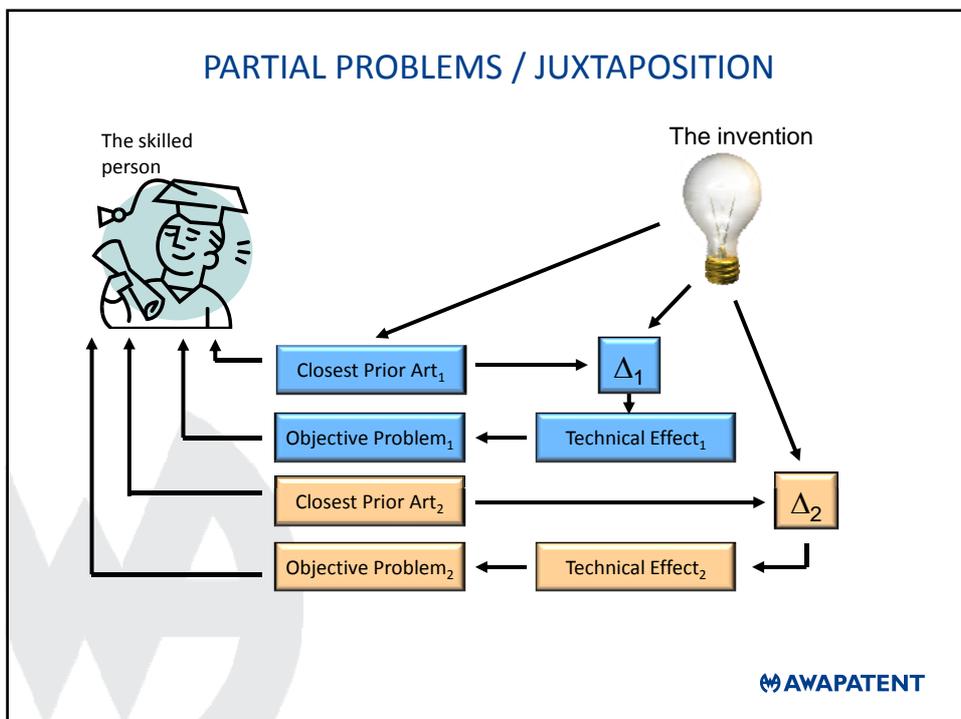
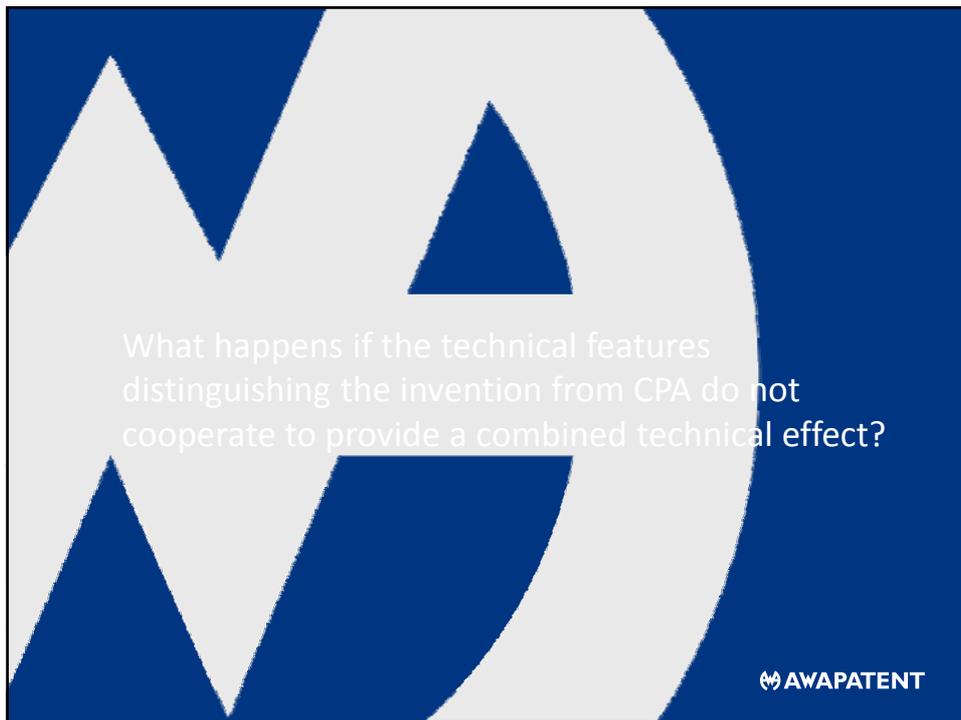
 AWAPATENT

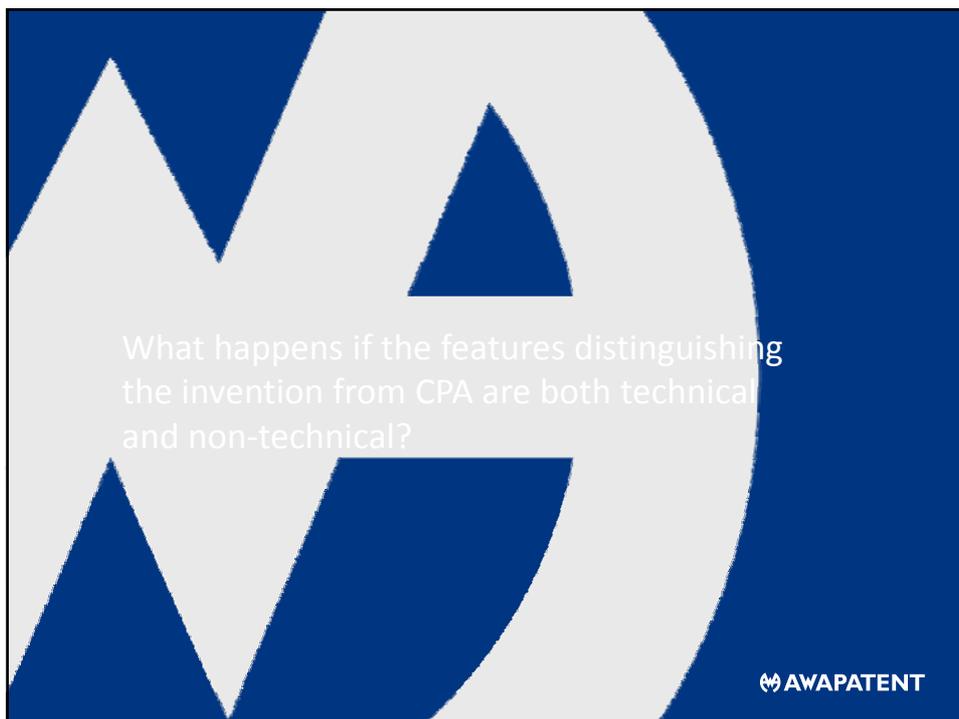
THE PROBLEM-SOLUTION APPROACH

Starting out from CPA and the OP, is the invention an obvious solution?



 AWAPATENT





What happens if the features distinguishing the invention from CPA are both technical and non-technical?

 AWAPATENT

GL G-VII, 5.4

The non-technical aspects of the claim(s) are identified; a requirements specification is derived from the non-technical aspects set out in the claims and the description so that the skilled person in the art of a technical field (e.g. an expert in computer science) is informed of the non-technical concept.



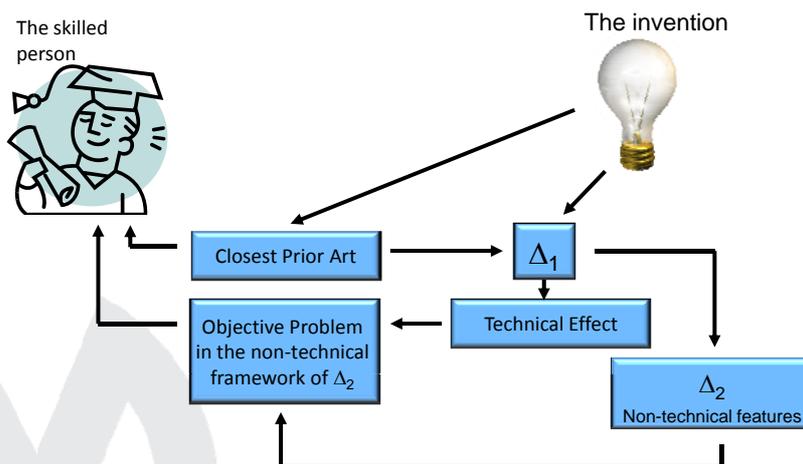
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THE COMVIK APPROACH (T 641/00)

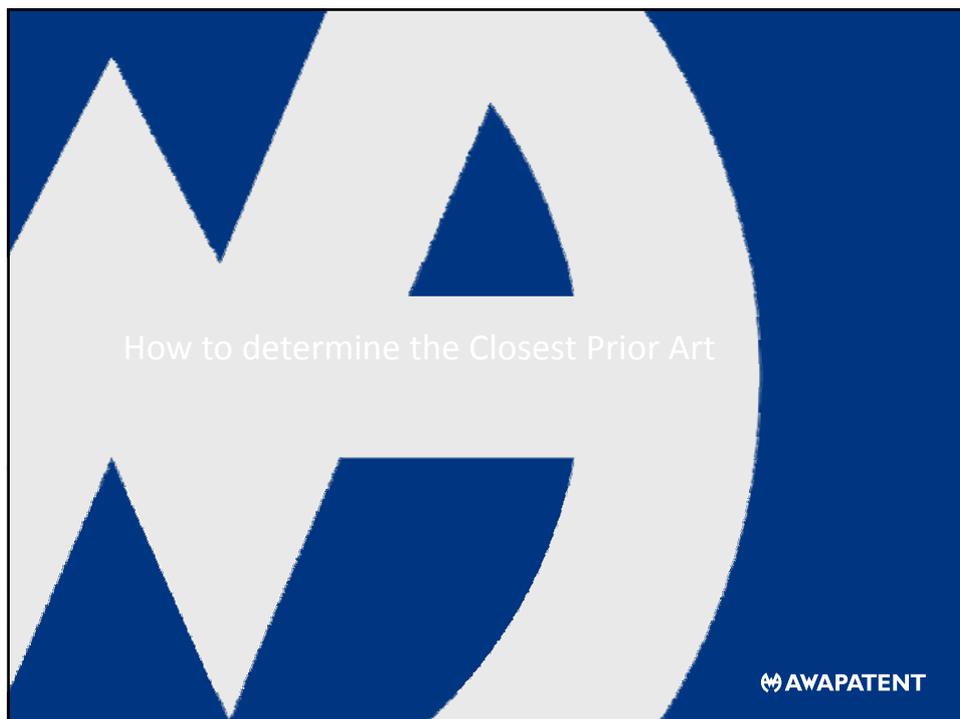
1. *"An invention consisting of a mixture of technical and non-technical features and having technical character as a whole is to be assessed with respect to the requirement of inventive step by taking account of all those features which contribute to said technical character whereas features making no such contribution cannot support the presence of inventive step."*
2. *"Although the technical problem to be solved should not be formulated to contain pointers to the solution or partially anticipate it, merely because some feature appears in the claim does not automatically exclude it from appearing in the formulation of the problem. In particular where the claim refers to an aim to be achieved in a non-technical field, this aim may legitimately appear in the formulation of the problem as part of the framework of the technical problem that is to be solved, in particular as a constraint that has to be met."*

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NON-TECHNICAL HINDSIGHT



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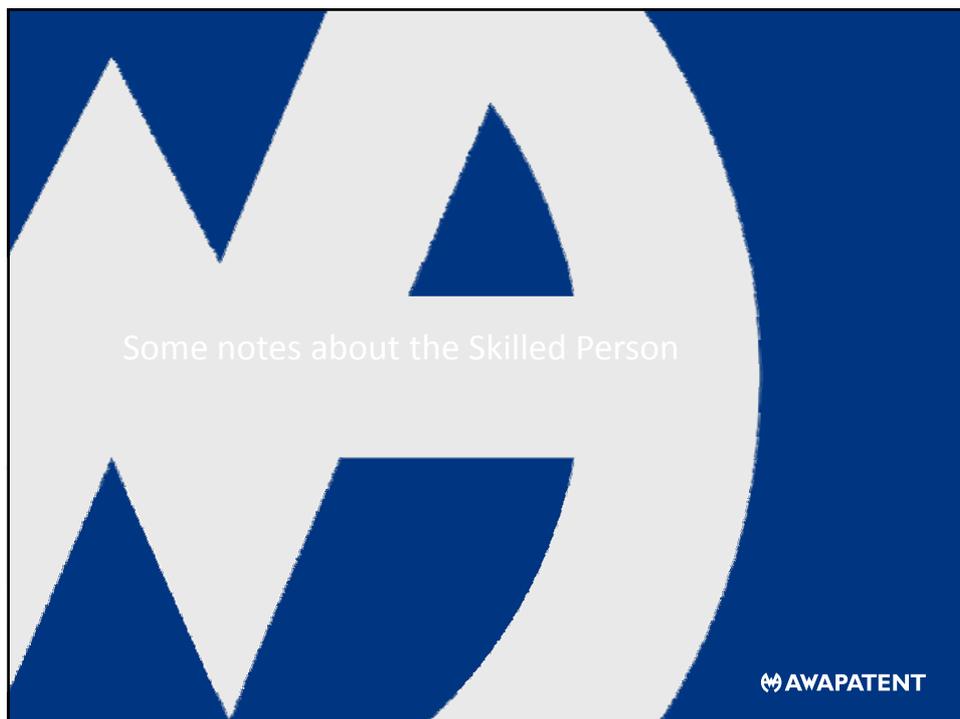


DETERMINING THE CLOSEST PRIOR ART

The closest prior art is normally a prior art document disclosing subject matter **conceived for the same purpose** or **aiming at the same objective** as the claimed invention and **having the most relevant technical features in common**, i.e. requiring the **minimum of structural modifications**.

A further criterion is the **similarity of technical problems**.

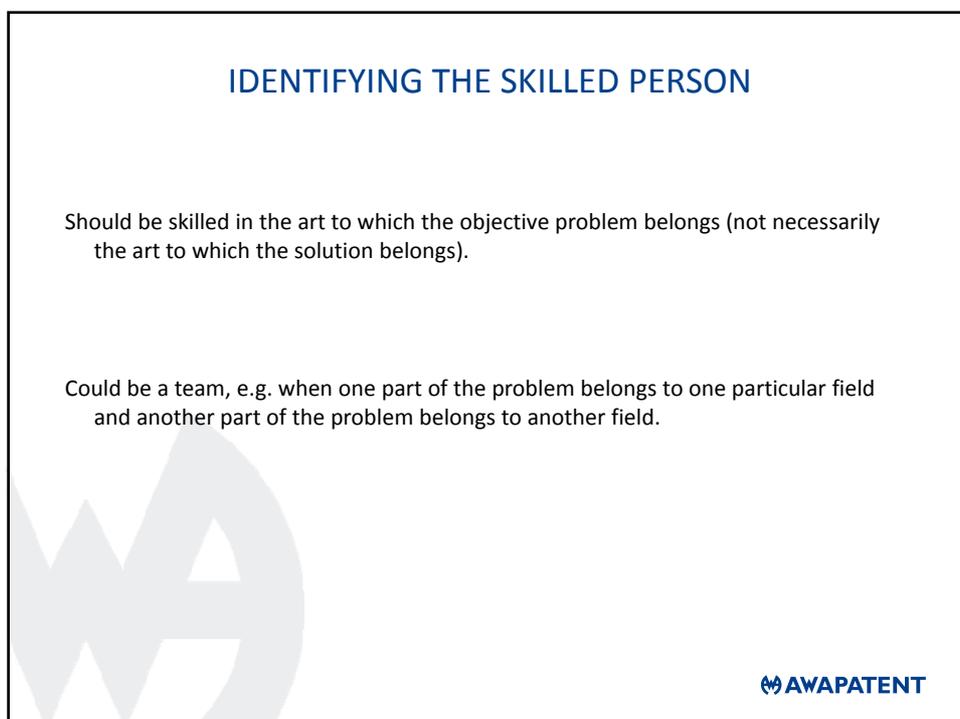
The closest prior is also held to be the **easiest route for the skilled person** to arrive at the claimed solution or the **most promising starting point** for an obvious development leading to the claimed invention.



IDENTIFYING THE SKILLED PERSON

Should be skilled in the art to which the objective problem belongs (not necessarily the art to which the solution belongs).

Could be a team, e.g. when one part of the problem belongs to one particular field and another part of the problem belongs to another field.



CHARACTERISTICS OF THE SKILLED PERSON

An experienced practitioner of average knowledge and abilities.

Aware of common general knowledge in the relevant art at the relevant time.

Having access to everything in the state of the art.

Having normal means and capacity for routine work.

Lacks all inventive capability.

Able to seek solutions in a neighboring field if same or similar problems arise there, and in remote fields if prompted to do so.



Questions?

Comments?

