



Inventive Step

Minneapolis and Portland,
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Article 52(1) EPC

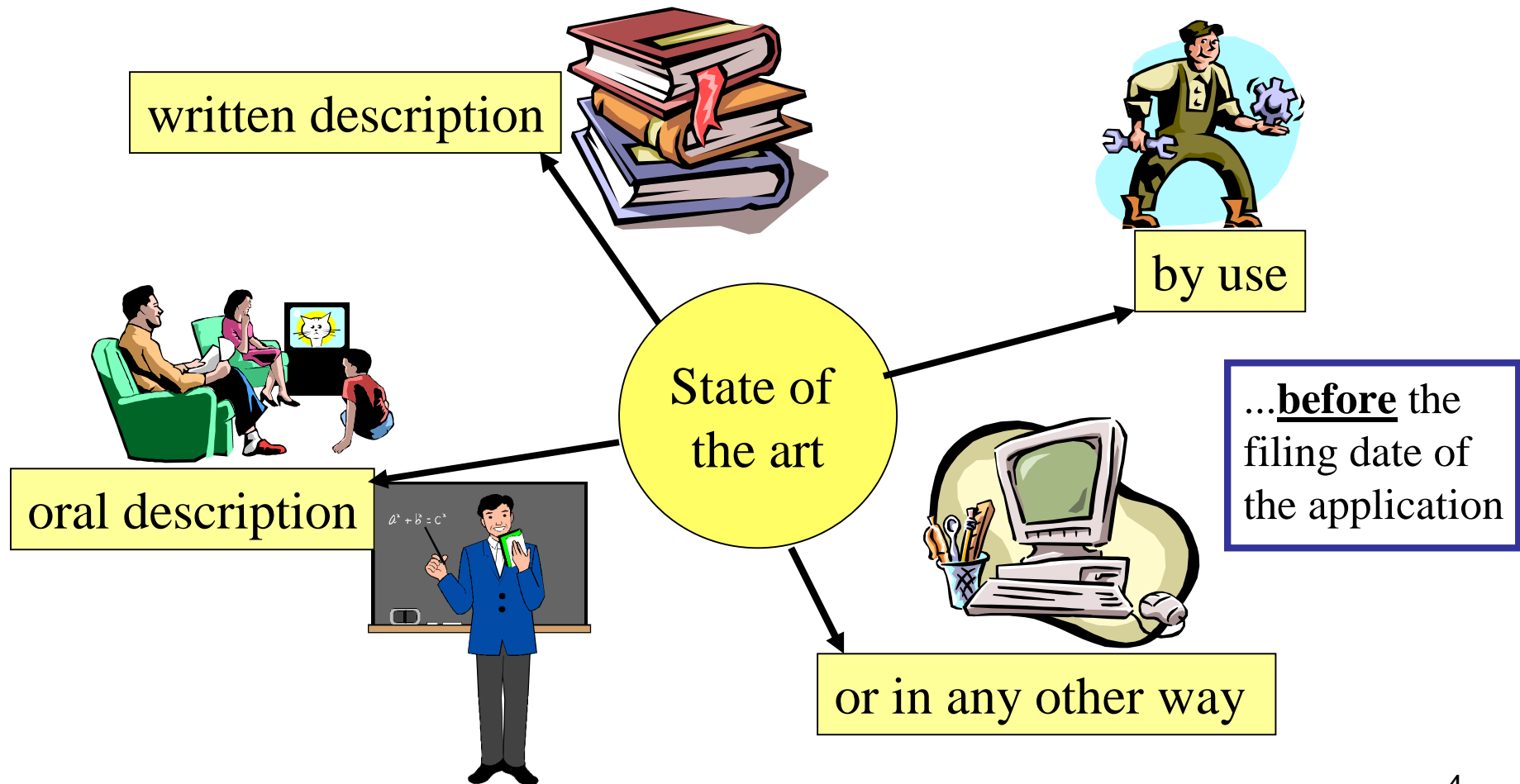
European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

Article 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**.

Art. 54(2): What is the "state of the art"

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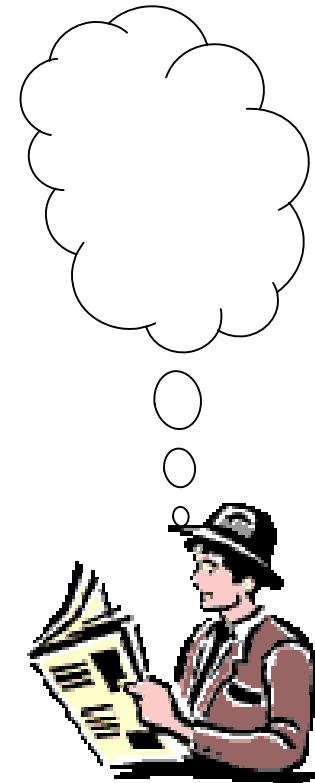


The person skilled in the art

- Compare to imaginary "man in the street", "man on the Clapham omnibus", "man on the Underground" from, especially, British law.
- person skilled in the art is peculiar to patent law.

The person skilled in the art

- An ordinary practitioner
- Aware of what is common general knowledge in a particular technical field (the art in question) at the relevant date.
- Has access to everything in the state of the art.
- Has normal capacity for routine work, but has no inventive skills.
- In some fields the skilled person can be equated with a team, rather than with a single person.



How do we decide on obviousness?

- Various tests in different national systems.
- One of the tests used by the German office was that every invention is a solution to a technical problem.
- In the very first case heard by the Board of Appeal the problem and solution approach was used to determine the question of inventivity.

The problem and solution approach (PSA)

1. Determine the **closest prior art**
2. Based on this, establish the **objective technical problem** to be solved
3. Consider whether the claimed invention, starting from the closest prior art and the objective technical problem, would have been **obvious** to a skilled person.


Guidelines C-IV, 9.8

Stage 1

Identify the **Closest Prior Art (CPA)**

The item of prior art (normally a written disclosure) disclosing technical effects, purpose or intended use most similar to the invention.

Often it has the greatest number of features in common with the invention.



Stage 2

Establish the objective technical problem

How to modify or adapt the closest prior art to achieve the technical effect(s) which the invention provides over the closest prior art.

Stage 3

Decide on obviousness

Is there an indication in the prior art that would prompt the skilled person to solve the objective technical problem by modifying or adapting the closest prior art to arrive at the claimed invention?

The problem and solution approach (PSA) - five questions (1)

1. (Stage 1) What is the **closest prior art**?
2. (Stage 2) What is the **difference**, in terms of the claimed technical features, between the claimed invention on the one hand and the cpa on the other?
3. What **technical effect** is caused by this difference?

The problem and solution approach (PSA) - five questions (2)

4. What, therefore, is the **objective technical problem** underlying the claimed invention?
5. **(Stage 3)** Would the skilled person solve this problem in the manner indicated on the basis of the totality of the prior art, without at any stage employing any **inventive skill**?