

EP Case Law in Brief: Erroneous Disclosures

Appendix

Appeal Board decisions where a disclosure was found to form part of the prior art



Case [T0234/20](#)

IPC A61K, L

Feature Noradrenaline concentration of 0.2 mg/ml

Type of document US patent

Evidence Expert declaration

BoA reasons



2.2 The appellant maintained that the skilled person would recognize the disclosure of the noradrenaline concentration of 0.2 mg/ml defined in claim 11 of document D1 as erroneous and that document D1 did not describe dilute noradrenaline solutions as defined in the claims of the patent.

In this matter the Board agrees with the finding in the decision under appeal (see pages 11-13, section 2.3.1.4) that the stand-alone disclosure of a noradrenaline concentration of 0.2 mg/ml in claim 11 of document D1 does not represent an immediately recognisable erroneous disclosure and therefore cannot be ignored. The comprehensive explanations in the decision already address the arguments in the statement of grounds of appeal and document D10. The respondent's request not to admit document D10 remains therefore without consequence.

Case [T2626/17](#)

IPC H01B, H02B

Feature Pressure reduced dielectric breakdown voltage of 100 vol% SF6

Type of document Presentation

Evidence Generally accepted dielectric strength

BoA reasons



2.5 [] Furthermore, the respondents argued that a skilled person would disregard the disclosure of document D4 because it was manifestly erroneous. The value of the pressure reduced dielectric breakdown voltage of 100 vol% SF₆ according to the graph on slide 5 was 33 kV /(cm bar), whereas the accepted literature value was in fact 89 kV / (cm bar).

The board agrees that it is accepted case law that a document normally forms part of the state of the art (even if the disclosure is deficient), unless it can unequivocally be proven that the disclosure of the document is not enabling, or that the literal disclosure of the document is manifestly erroneous and does not represent the intended technical reality. The board can further accept that the latter value cited by the respondent is a standard literature value. However, the precise figure will depend on experimental details such as the shape of the electrodes, which are not specified. Furthermore, and more importantly, there is nothing in D4 to suggest that the different gases were not measured by the same test equipment, and that therefore the comparison of the dielectric breakdown voltages among these gases was incorrect. The important information here, and thus the intended technical reality in the sense of the case law, is that in a given test equipment, C6 fluoroketone performs comparably to 100 vol% SF₆ in the low pressure range. The absolute number is not so decisive for the purpose of deciding whether the fluoroketone is a viable substitute for SF₆. The situation here is similar to a thermometer which is not calibrated properly. It would still be possible to compare temperatures, even if the temperature of the freezing point of water were shown to be a value different from 0°C.

Case	T1459/18
IPC	H01J
Feature	Top view
Type of document	JP patent
Evidence	None

BoA reasons



2.1.3 Finally, the Board comments on the following two decisions of the Boards of Appeal, which further illustrate the Board's decision in this context:

- In T 230/01 it was held that a document normally forms part of the state of the art, even if its disclosure is deficient, unless it can unequivocally be proven that the disclosure of the document is not enabling, or that the literal disclosure of the document is manifestly erroneous and does not represent the intended technical reality. In the case at hand, the Board concludes that the disclosure of document D2 as explained above under point 1.2.3 constitutes a fact as the disclosure of document D2/D2-translated is self-consistent and can be carried out. No contradiction arises from D2-translated which could indicate that the translation would be erroneous and that the device in document D2, as set out in point 1.2.3 above, must be understood differently. On the contrary, the allegation by the appellant that an upward bending ion beam was never disclosed and never used prior to the filing date and that the ion beam in D2 must be

understood as being guided exclusively in the horizontal plane is without evidence of proof.

- In case T 428/15 the Board did not rely on a computer-generated translation because the quality of the translation did not allow the Board to understand with a sufficient degree of certainty what was in fact described in the relevant document. This however is different from the present case, wherein the machine translation is self-consistent and without any contradiction.

2.1.4 In conclusion, the Board cannot see any reason not to trust the machine translation D2-translated. Therefore, the request for a certified translation of document D2 is rejected.

Case	T2410/17
IPC	A61M, F
Feature	Fluid-impermeable film
Type of document	US patent
Evidence	None (internal contradiction)
BoA reasons 	2.2 As argued by the appellant, the film 17 is explicitly disclosed in paragraph [0421] as being fluid-impermeable. This makes it adapted to define a reservoir in which a reduced pressure may be maintained over the wound, as required by claim 1. 2.3 The respondent contested this view, arguing that the disclosure of paragraph [0421] was manifestly erroneous. The person skilled in the art considering D3 as a whole would have recognised this and understood that the film 17 could not be fluid-impermeable, but was in fact porous as consistently disclosed for the other embodiments (especially those of similar construction illustrated in Figures 2-4, 8, 9; see for example paragraphs [0427], [0429] and [0440], which all refer to “the porous film (17)”). 2.4 The respondent’s argument does not convince the Board, which sees no reason to regard the disclosure of paragraph [0421] as erroneous.

Case	T0632/12
IPC	H03M
Feature	Matrices belong to the systematic part of the parity-check matrix
Type of document	Article submission to working group
Evidence	None (internal contradiction)
BoA reasons	3.7 The Board notes, however, that page 8 of document D1 contains an error - or at least deviates from the general disclosure on pages 1 to 4 and the other



examples on pages 5 to 7 and 9 - in that the matrices B and D belong to the systematic part of the parity-check matrix rather than the parity part.

...

3.9 As to the consequence of document D1 including the above-mentioned error on page 8, the Board notes that a document normally forms part of the state of the art, even if its disclosure is deficient, unless it can be proved that the disclosure is not enabling or that the literal disclosure is manifestly erroneous and does not represent the intended technical reality (see decision T 230/01 of 26 April 2005, reasons 5.2, and Case Law of the Boards of Appeal, 8th edition, I.C.4.9).

In the present case, the skilled person would, whether he is aware of the error or not, directly and unambiguously derive a parity-check matrix from the example on page 8, namely the parity-check matrix H composed of matrices A, B, T, C, D and E arranged as shown in point 3.3 above. It is this matrix H that satisfies the restrictions on the parity part imposed by the invention.

In fact, upon detecting the error, the skilled person reading document D1 would have no problem recognising, for example by comparing matrix sizes, that the column specified by matrices B and D should have been included as the rightmost column in matrices A and C, and that matrices B and D should have been formed from what on page 8 is the leftmost column of T and E. It is important to note that performing this correction leaves the resulting parity-check matrix unchanged; only the decomposition of the matrix H into matrices A, B, T, C, D and E is affected.

Case	T0833/11
IPC	C07J, A61K, P
Feature	Fluticasone esters, such as... monohydrate
Type of document	PCT patent
Evidence	None

BoA reasons



6.6.1 [...] There was considerable dispute between the parties as to how this disclosure would be read by the skilled person. However, both parties agreed that it would be immediately recognisable that an error had occurred, since “monohydrate” is not an ester. The board notes that, apart from this term, the disputed phrase cannot be said to be devoid of technical meaning, since the remaining exemplified esters listed, namely, “phosphate” and “furoate” are chemically feasible.

Nevertheless, this does not mean that the skilled person would regard this disclosure as constituting a suitable starting point for a drug discovery programme.

Case	T1932/09
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IPC A61B, H04L

Feature Prior art enablement

Type of document DE patent

Evidence None

BoA reasons



2.6 In its first line of argument, the appellant argued that D7 did not provide the skilled person with an enabling disclosure, so that D7 should not be considered as the closest prior art.

2.6.1 According to Article 54(2) EPC, “the state of the art” comprises “everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application”. It is established jurisprudence (see e.g. T 230/01, Reasons point 5.2, and decisions cited therein) that a document normally forms part of the state of the art, even if its disclosure is deficient, unless it can unequivocally be proven that the disclosure of the document is not enabling, or that the literal disclosure of the document is manifestly erroneous and does not represent the intended technical reality. Such a non-enabling or erroneous disclosure should then not be considered part of the state of the art.

...

2.6.3 The Board consequently finds that the appellant’s submissions do not contain sufficient evidence to unequivocally prove that D7 is indeed speculative, i.e. not enabling. It is thus not incumbent on the EPO to prove the contrary of what the appellant has merely alleged.

The Board thus reaches the conclusion that document D7 is to be taken into consideration as the closest prior art.

Case [T1435/06](#)

IPC A61C

Feature For treatment of root canal

Type of document PCT patent

Evidence Priority document

BoA reasons



2. [...] There is no reason to believe that the above-cited reference in D1 to the root canal on page 8, lines 17 to 19, is erroneous or does not represent the technical reality intended by its author. On the contrary, there are various references to the treatment of root caries (page 5, lines 2 and 18; page 27, lines 1 to 2; claim 5), indicating that the disclosure of D1 is not limited to the treatment of normal caries in the dentine, but that treatment of the root is also envisaged. Contrary to the appellant’s assertion, the priority documents of D1 do not belong to the disclosure content of D1 and are not to be taken into account when assessing novelty.

Case	T0898/06 and T1517/06
IPC	C08B
Feature	Prior art enablement
Type of document	Journal article
Evidence	Declarations and journal article
BoA reasons 	T0898/06, 2.4.6 In view of the above, a person skilled in the art would, in reality, not completely write off the whole of the teaching in D1 in the way suggested by the Appellant Proprietor but would, if he/she suspected any inaccuracy, conduct his/her own experiments with an earnest desire to make them work despite the suspected inaccuracy. This, apparently, is what has been done by Professor Tester and James J. Kasica in D16 and D25, respectively. Consequently, the Board agrees with the finding in the decision under appeal that D1 is state of the art according to Article 54(2) EPC.

Case	T0892/01
IPC	A61K
Feature	Suitable for treatment of wrinkles
Type of document	US patent
Evidence	US patent
BoA reasons 	5.7.2 In Article 54(2) EPC, “the state of the art” is clearly and unambiguously defined as “everything made available to the public by means of a written or oral description, by use, or in any other way before the date of filing of the European patent application”. A document normally forms part of the state of the art, even if its disclosure is deficient, unless it can unequivocally be proven that the disclosure of the document is not enabling, or that the literal disclosure of the document is manifestly erroneous and does not represent the intended technical reality. Such a non-enabling or erroneous disclosure should then not be considered part of the state of the art (see e.g. T 77/87, OJ EPO 1990, 280; T 591/90 of 11 December 1991). The onus of proving the allegation that the disclosure of (10) is erroneous or not reliable or does not represent the intended technical reality rests in the present case with the appellants (proprietors). 5.7.3 The board has no doubts at all on the outstanding scientific and professional qualifications of the appellants, leading them to their personal and subjective evaluation of the teaching in (10). However, in the absence of any objective evidence and real proof, the appellants’ personal evaluation of the teaching of (10) and their subjective opinion are insufficient to prove in an unequivocal manner that the therapeutic skin treatment described in (10) is indeed unsuitable for use in the treatment of wrinkles in the broadest sense of that term, as used in (10) and likewise in the patent, and that the disclosure of (10) is accordingly erroneous and does not represent the intended technical reality. Consequently, document (10), as it stands, is certainly to be taken into

consideration when determining the problem to be solved and assessing novelty and inventive step.

Case [T1193/03](#)

IPC A61K

Feature Vaccine formulation

Type of document University thesis

Evidence Declaration

BoA reasons



8.2 The legal principle concerned, as summarized in point 4.6 of decision T 412/91, is that "...In principle, what constitutes the disclosure of a prior art document is governed not merely by the words actually used in its disclosure, but also by what the publication reveals to the skilled reader as a matter of technical reality. If a statement is plainly wrong, whether because of its inherent improbability or because other material shows that it is wrong, then although published it does not form part of the state of the art. Conversely, if he would not recognise that the teaching is wrong, it does belong to the state of the art." For the reasons given below, the board concludes that on the facts of this case, this legal principle is not applicable to exclude document D85 from being treated as state of the art. The appellant's line of argumentation would require that the skilled person reading document D85 would have indeed recognized the above mentioned aspects as deficiencies, and been certain that they were deficiencies sufficiently serious as to make it necessary to completely disregard the disclosure as technical reality.

Case [T0230/01](#)

IPC A61K

Feature Treatment of allergenic conditions

Type of document PCT patent

Evidence Declaration

BoA reasons



5.3 The onus of proving the allegation that the disclosure of (1) is speculative, not reliable or does not represent the intended technical reality rests in the present case with the appellant. However, neither the appellant's submissions nor Dr Storm's declaration contain any convincing or objective evidence, let alone real proof, to support the appellant's contentions that the disclosure in (1), relating to DCL's capability of selectively preventing histamine from binding to H1 histamine receptors, is indeed speculative, or that the skilled reader would have considered the information given in (1) to have been insufficient for it to be concluded that DCL does indeed have an inhibitory effect on allergic conditions.

5.4 Consequently, the disclosure of document (1), as it stands, is certainly to be taken into consideration as the closest and most relevant state of the art, when determining the problem to be solved and assessing novelty and inventive step.

Case	T0161/98
IPC	A62D
Feature	Carbon tetrafluoride as a fire preventing agent
Type of document	US patent
Evidence	Internal contradictions
BoA reasons	1. D1 was published before the priority date of the present patent application and is therefore state of the art within the meaning of Article 54(2) EPC. The Board cannot accept the appellant's submission that a skilled person would have found all the technical information provided by D1 inconsistent and unreliable, so that the whole document would not form part of the state of the art. The Board fully agrees with the statements in earlier decisions according to which technical information which is wrong (T 77/87, OJ EPO 1990, 280) or which is so implausible in view of common general knowledge that the skilled reader would reject it as erroneous (T 412/91 of 27 February 1996, point 4 of the reasons and further decisions cited there) should be excluded from the state of the art. In the Board's judgment, however, it does not at all follow from the cited earlier decisions that each technical teaching in a document containing wrong statements will no longer form part of the state of the art. What does not belong to the state of the art is the wrong information, and not the whole technical teaching of the document. In the present case, D1 contains information that turned out later on to be incorrect, such as the boiling point of pentafluoroethane which is indicated in Figure 2 as being -80°C, whereas the correct boiling point is -48,5°C. Since the exact value of the boiling point is of relevance only insofar as the suitable compounds should be gaseous at temperatures supporting human life, the Board sees no reason why the incorrect boiling point would have deterred the skilled person from considering the relevant technical teaching of D1, i.e. that in addition to carbon tetrafluoride, a number of other halogenated carbon compounds are useful in a process for preventing fire. The Board can accept, for the sake of argument, that a part of the technical information in D1 may be based on "speculation" in the sense of extrapolation or generalisation of findings based on experimentally established facts. This in itself is however no reason to assume that a skilled person, being interested in technical reality (see T 77/87, point 4.1.2 of the reasons) would have disregarded that information. [...]

Case	T1009/97
IPC	A61K
Feature	

Type of document	Journal article
Evidence	3 declarations
BoA reasons	5.6. However, neither the appellant's submissions nor the expert's declarations contain any convincing or objective evidence, let alone real proof, to show in an unequivocal manner that the disease treated in (9) was indeed not Crohn's disease, or that the clinical data were indeed incorrectly interpreted, or that the patient's improvement was indeed not the result of her treatment with orally delivered budesonide, and, in particular, that Dr Wolman's express conclusions at the end of (9) were erroneous or not reliable. In this respect, the board must give the same weight to Professor Schölmerich's declaration submitted by respondent I and his submissions during oral proceedings. According to Professor Schölmerich's expert opinion, the scientific correctness of the clinical data and results reported by Dr Wolman in (9) was beyond doubt (see Schölmerich: section 3, end of paragraph 4) and, on the basis of the clinical data provided in (9), the improvement in the patient's condition was the logical consequence of her treatment with orally delivered budesonide. The board has no doubts at all on the outstanding scientific and professional qualifications of the Declarants leading them to their personal and subjective evaluation of the teaching in (9). However, in the absence of any objective evidence and real proof, the Declarants' personal evaluations of document (9) and their subjective opinions are clearly insufficient to prove in an unequivocal manner that the essential facts reported in (9) and the conclusions drawn by Dr Wolman were in fact erroneous or not reliable. Consequently, document (9), as it stands, is certainly to be taken into consideration when determining the problem to be solved and assessing novelty and inventive step.

Case	T0160/92
IPC	G03C, B41C
Feature	N/A
Type of document	JP patent abstract
Evidence	None (argued procedural violation due to lack of citation of JP patent)

BoA reasons



2.5 With respect to this possibility, the question of citability of an abstract must be well distinguished from the different question which of the teachings of an abstract and an original document have to be considered by the Examining or Opposition Division if both documents are available to them and contain conflicting teachings. The Board of Appeal Decision T 77/87 (OJ 7/1990, 280), on which the Appellant entirely relies for opposing the citability of abstracts, relates to this latter question.

Likewise, the “notification” also mentioned by the Appellant (Supplement to OJ 6/1990, 24), is actually a short summary of the above Decision T 77/87, and the sentence “the disclosure of this abstract document should be interpreted by reference to its original for the purpose of ascertaining the technical reality of what has been disclosed and should not be regarded as an independent document in isolation”, referred to by the Appellant, must be understood in the context of the case underlying that decision, which context is clearly taken into account in the decision itself.

The decision concerns an appeal after opposition procedure in which the abstract and the corresponding original document had both been made available to the Board, and comes to the conclusion that “when, as here, it is clear from related contemporaneously available evidence that the literal disclosure of a document is erroneous and does not represent the intended technical reality, such an erroneous disclosure should not be considered as part of the state of the art” (paragraph 4.1.4 of the reasons).

In the present case, this question did not arise since only the abstract D1 is on file and there is no indication that its disclosure might be erroneous, or that its disclosure might otherwise have to be interpreted differently in the light of the disclosure of the original document. Therefore, the literal disclosure of D1 belongs *prima facie* to the state of the art. The Appellant would have had the burden of proof to show that this disclosure was actually not part of the state of the art. The Appellant failed to do so.

The teaching of D1 taken alone, therefore, is to be considered as part of the state of the art.



Appeal Board decisions where a disclosure was found to not form part of the prior art



Case	T1015/03
IPC	C23C
Feature	Wt% Al in Pt-Al coating
Type of document	Journal article
Evidence	Internal contradiction

BoA Reasons



4.1 [] The disclosure of document D1, due to a discrepancy between the mentioned nominal Pt-Al-coating composition containing 20-25 wt.% Al and 35-55 wt.% Pt and the concentration profile of the sole sample revealing an Al concentration of only about 12-14 wt.% of the specimens (see page 1, right hand column, second paragraph; and page 4, figure 3), is considered not to disclose an unambiguous teaching. It is unclear whether said nominal composition ranges are erroneous and the concentration values of Al and Pt given in figure 3 are correct or vice-versa. Consequently, this document will not be considered with respect to inventive step since the skilled reader is mainly interested in technical reality (see Case Law of the Boards of Appeal of the European Patent Office, 4th edition, 2001, chapter I.C.2.10; particularly decision T 591/90, not published). This condition is not fulfilled as D1 does not allow deducing which embodiment represents this technical reality. Therefore D1 is not further considered.

Case	T1080/99
IPC	G06F
Feature	Cursor position
Type of document	JP patent abstract
Evidence	Full JP patent (contradiction)

BoA reasons



4.4 The Appellants have pointed out that decision T 77/87 relates to abstracts published in a chemical journal and hinted that such abstracts were not comparable with official Patent Abstracts of Japan (see point XIV above). The Board is however of the opinion that the present case can indeed be compared to case T 77/87. In both cases there is a discrepancy between the abstract and the original document. In both cases there is a clear cross-reference from the abstract to the original document. The title of the chemical abstract makes this clear and in the case of “Patent Abstracts of Japan” the cross-reference to the original document is inherently included in the system, since every abstract is related, and refers to, the corresponding original patent application.

In this respect attention is also drawn to decision T 160/92 (OJ EPO 1995, 35) the headnote of which states that “The teaching of a prepublished abstract of a Japanese patent document, considered per se without its corresponding original document, forms prima facie part of the prior art and may be legitimately cited as such if nothing on file points to its invalidity as prior art”. In this case the Board also pointed out (see point 2.5 of the reasons) that T 77/87 had concluded that the disclosure of an abstract “...should not be regarded as an independent document in isolation”, but should be interpreted by reference to its original if both documents are available and contain conflicting teachings. In case T 160/92 however only the Japanese abstract was on file and there was no indication that its disclosure might be erroneous or might otherwise have to be interpreted differently in the light of the disclosure of the original document. The literal disclosure of the abstract thus belonged prima facie to the state of the art. The Board added that the appellants would have had the burden of proof to show on the basis of the teaching of the original document that this disclosure was not actually part of the state of the art.

4.5 The Appellants have also referred to decision T 412/91 (not published in OJ EPO), which concludes that “If a statement [in a prior art document] is plainly wrong,... then although published it does not form part of the state of the art” (see point 4.6 of the reasons) and can be disregarded, and have pointed out that the decision nevertheless states that if the skilled reader of a document “...would not recognise that the teaching is wrong, it does belong to the state of the art”.

The Board agrees with the statement in T 412/91, but only in the sense that if it is not possible to discern that the teaching concerned is wrong, then the practical result is that the teaching is considered to be prior art. However if (contrary to T 160/92, see point 4.4 above) it is shown that the English-language version of a Japanese abstract does not correspond to the published patent application, then the “technical reality” (see T 77/87, point 4.3 above) of the prior art should normally be resolved with the aid of the published Japanese patent application.

4.6 Consequently, it appears that, in view of its legal nature and intended purpose, a Japanese patent abstract in English (“Patent Abstracts of Japan”) is a publication intended to reflect the technical content of the corresponding Japanese patent application for the purpose of quick prima facie information of the public, as is the purpose of any kind of abstract or summary of technical subject-matter. Hence, the contents of such abstracts are to be interpreted and possibly re-evaluated in the light of the original document if the latter is available. Indeed, if an abstract appears to add something to the original document then this points to an error in the abstract, or at least to an error in its interpretation.

4.7 In this context the Board does not accept the argumentation of the Appellants that the Patent Abstracts of Japan have a special status because of the language of the original documents. It is true that these abstracts are produced to inform the public outside Japan about patent applications in Japan. However also under these circumstances a skilled reader lacking knowledge of

the Japanese language will establish the “technical reality” in case of doubt or particular interest by having the original documents translated.

4.8 In the present case, the original document D1 and an English translation thereof are available so that the contents of the abstract D1a can be compared with the full original disclosure. As accepted by the Appellants (see point XII above), document D1 describes two distinct embodiments of controlling a cursor system, the first of which (see Figures 2 to 4 and associated text) relating to highlighting of pre-existing different icons while moving the finger on the screen from one icon to another, and the second of which (see Figures 5 to 7 and associated text) relating to the creation of a new cursor at a position touched with a finger and to moving the new cursor by the finger to a desired different position on the screen. Document D1 however does not disclose an embodiment where a pre-existing cursor is touched and dragged to a desired point on the screen, as could be understood from document D1a taken alone. Such an interpretation of D1a would combine features of the two embodiments of D1 to form a third “embodiment”, as was conceded by the Appellants in the oral proceedings.

The Board therefore concludes that in the present case a skilled person would have considered the interpretation of abstract D1a suggested by the Appellants which diverges from the disclosure of original document D1 to be misleading in the sense that it adds something to the original document. This addition consequently does not belong to the state of the art. []

Case	T0412/91
IPC	C22C
Feature	Proportion of Cu in an alloy steel powder
Type of document	GB patent application
Evidence	Internal contradictions + US equivalent document

BoA reasons



3.5. That uncertainty as to the intended lower limit for Cu would have the effect that a worker, seeking to establish the true intentions of document (1), would search for, and readily to find the US equivalent, which is document (1a) above. It can readily be found because document (1) identifies the patentee, the number of the Convention Application, and the date of filing in the USA. Document (1a) sets the lower limit for Cu at 0.75%, and includes in column 2 line 65 to column 3 line 4 a passage corresponding to that quoted above. The skilled reader would thus reach the firm conclusion that the figure of 0.15% is attributable to an error, and that the higher minimum level for Cu of 0.75% must have been intended.

[]

4.6. These decisions reflect a consistent practice of the Boards, to which the Board adheres. In principle, what constitutes the disclosure of a prior art document is governed not merely by the words actually used in its disclosure, but also by what the publication reveals to the skilled reader as a matter of technical reality. If a statement is plainly wrong, whether because of its inherent improbability or because other material shows that it is wrong, then although published it does not form part of the state of the art. Conversely, if he would not recognise that the teaching is wrong, it does belong to the state of the art.

4.7. In the present case, the issue is again, what did document (1) disclose to the skilled person as a matter of technical reality. Taking into account the fact that, for the reasons given in point 3 above, he would have regarded the lower limit for Cu content as 0.75%, the Board holds that for the purposes of Article 54 EPC, what forms the state of the art is the lower limit for Cu of 0.75%, and not the lower limit of 0.15% actually printed in Claim 1 of document (1). This conclusion is based on the combined effect of internal contradiction (points 3.1 to 3.4) and the ready availability of an external disclosure (point 3.5).

Case	T0029/92
IPC	F26B, A21B, F27B, F24C
Feature	Microwave heating
Type of document	DE patent
Evidence	Contradiction from referenced DE patent
BoA reasons 	4.2. Having regard to the contested decision, the first instance relied primarily on the disclosure of DE-B-2 248 640, column 2, lines 24 to 38. This passage indicates in fact that it is known from DE-B-1 757 892 to heat the goods to be baked with infra-red radiation and simultaneously with circulated heated air. Reviewing the disclosure of DE-B-1 757 892 reveals, however, that this citation does not describe heating of goods by a combination of infra-red radiation and hot air convection heating but by microwave heating in combination with hot air convection heating (cf. Claim 1 and column 3, line 42 to column 4, line 12 of the citation). Thus, there exists manifestly a contradiction between the disclosure of DE-B-2 248 640 as far as it relates to the prior art known from DE-B-1 757 892 and the factual disclosure of the latter document. In a similar case (cf. Decision T 77/87, OJ EPO 1990, 280) it was decided that a document containing a cross- reference to a further document should be interpreted by reference to that further document for the purpose of ascertaining the technical reality of what has been disclosed. The erroneous disclosure of the document containing the cross-reference should not be considered as part of the state of the art. In agreement with the cited decision, the Board considers that the above-cited passage of DE-B-2 248 640 has to be ignored as being erroneous and that the effective disclosure of DE-B-1 757 892 has to be taken account of.

Case	T0077/87
IPC	C08F
Feature	Vinylidene chloride-vinyl chloride-butyl acrylate-itaconic acid copolymer
Type of document	Journal article abstract

Evidence

BoA reasons



Full JP patent (contradiction)

4.1.2 When determining the state of the art for the purpose of Article 54 EPC, what has to be considered is what has been made available to a skilled man. A skilled man is interested in technical reality. The literal disclosure of a prior published document *prima facie* stands on its own when assessing novelty. This is the general rule.

[]

4.1.4 As already stated, document (7) is an abstract of document (7') which is the original document and was also prior published, and the title of the abstract makes this clear by means of a cross-reference. Thus the disclosure of abstract document (7) should be interpreted by reference to its original, i.e. to document (7'), for the purpose of ascertaining the technical reality of what has been disclosed and should not be regarded as an independent document in isolation. The original document is the primary source of what has been made available as a technical teaching and its abstract is by its nature merely a secondary and derivative source.

It is axiomatic that an original basic document and its abstract cannot disclose two different subject-matters as a matter of technical reality. When, as in the present case, there is a substantial inconsistency between the original document and its abstract, it is clearly the disclosure of the original document that must prevail. The disclosure in the original document provides the strongest evidence as to what has been made available to the skilled man. When, as here, it is clear from related contemporaneously available evidence that the literal disclosure of a document is erroneous and does not represent the intended technical reality, such an erroneous disclosure should not be considered as part of the state of the art. The general rule in relation to the literal disclosure of a document set out in paragraph 4.1.2 above does not then apply.

Thus, in the Board's judgment, the literal disclosure of document (7) does not form part of the state of the art, because document (7') must be considered as providing the definitive description of the monomer composition in question. It follows that document (7) does not deprive Claim 1 of the patent in suit of novelty.

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