



The Development of European Patent Law in 2025

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- Case law of the Technical Boards of Appeal (TBA) of the European Patent Office (EPO)
- Decisions of the EPO's Enlarged Board of Appeal (EBA)
- Case law of the Unified Patent Court (UPC)
- Case law of national courts, e.g. the German Bundesgerichtshof (BGH)

- Focus on 2025
- Focus on the UPC and especially the UPC's Court of Appeal (UPCoA).
 - The most exciting forum
 - Practice based on EBA, TBA and national case law
 - A key driver of harmonisation

- BGH 13 October 2025 – X ZR 107/24 – *Spenderteil*

«The principles according to which a patent claim is to be construed on the basis of Art. 69(1) EPC and the Protocol on the interpretation of this provision (...) have long been clarified in the case law of the Senate. These principles are consistent in all essential respects with the case law of the Unified Patent Court and the Enlarged Board of Appeal of the European Patent Office.»

■ UPCoA 26 February 2024 – CoA 335/2023 – 10x Genomics v NanoString

«The interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather, the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim.

These principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent.»

■ EBA 18 June 2025 – G 1/24

«The claims are the starting point and the basis for assessing the patentability of an invention under Articles 52 to 57 EPC.

The description and drawings shall always be consulted to interpret the claims when assessing the patentability of an invention under Articles 52 to 57 EPC, and not only if the person skilled in the art finds a claim to be unclear or ambiguous when read in isolation.»

■ EBA 18 June 2025 – G 1/24

«The diverging case law [...], where the description is referred to only in cases of unclarity or ambiguity, is contrary to the wording, and hence the principles, of Article 69 EPC. It is also contrary to the practice of the national courts of the EPC states and to the practice of the UPC [...].»

■ EBA 18 June 2025 – G 1/24

«The Enlarged Board finds it a most unattractive proposition that the EPO deliberately adopt a contrary practice to that of the tribunals that are downstream of its patents. On this point, the Enlarged Board agrees with the harmonisation philosophy behind the EPC (see G 5/83, Reasons 6, and G 3/08, Reasons 7.2.2). [...] The Enlarged Board notes that the current case law of the UPC [...] appears to be consistent with the above conclusions.»

- «Direct and unambiguous disclosure» (EPO) v «direct and unambiguous disclosure» (BGH)
- «Intermediate generalisations» (EPO) v «intermediate generalisations» (BGH)

- BGH 14 October 2025 – X ZR 141/23 – *Stell- und Regelantrieb*

«An embodiment disclosed in the application as filed may be generalised in such a way that only one or only some of several features of this embodiment, which taken together but also considered individually are conducive to the result of the invention, is used to amend the claim (in confirmation of BGH, 11 February 2014 – X ZR 107/12, BGHZ 200, 63 = GRUR 2014, 542 para. 23 – *Kommunikationskanal*).»

- UPCoA 2 October 2025 – CoA 764/2024 – expert e-Commerce v Seoul Viosys

«An inadmissible extension of the subject-matter (added matter) exists if the subject-matter of the granted claim goes beyond the content of the application as filed. In order to determine this, the court must first ascertain what information the skilled person, based on an objective assessment and referring to the filing date, would immediately and unambiguously derive from the entirety of the application as filed, using his or her common general knowledge. In this context, implicitly disclosed subject-matter must also be regarded as part of the content, i.e. subject matter that clearly and unambiguously results from what is expressly stated.»

■ EBA 18 June 2025 – G 1/24

«The above considerations highlight the importance of the examining division carrying out a high-quality examination of whether a claim fulfils the clarity requirements of Article 84 EPC. The correct response to any lack of clarity in a claim is amendment. This approach was emphasised in the Comments of the President of the EPO [...].»

■ TBA 29 July 2025 – T 697/22 (Referral G 1/25)

«1. If the claims of a European patent are amended during opposition proceedings or opposition-appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description of the patent, is it necessary, to comply with the requirements of the EPC, to adapt the description to the amended claims so as to remove the inconsistency?

2. If the first question is answered in the affirmative, which requirement(s) of the EPC necessitate(s) such an adaptation?

3. [...]

- TBA 29 July 2025 – T 697/22 (Referral G 1/25)

2. [...]

3. Would the answer to questions 1 and 2 be different if the claims of a European patent application are amended during examination proceedings or examination-appeal proceedings, and the amendment introduces an inconsistency between the amended claims and the description of the patent application?»

- Inventive Step v Non-Obviousness
- Problem-Solution Approach v suitable starting point
- Wording of the claim v properly construed patent claim

- UPC Munich Local Division 4 April 2025 – CFI 501/2023 – Edwards Lifesciences v Meril

«For assessing whether an invention shall be considered obvious having regard to the state of the art, the problem-solution approach developed by the EPO shall primarily be applied as a tool to the extent feasible to enhance legal certainty and further align the jurisprudence of the UPC with the jurisprudence of the EPO and the Boards of Appeal ...»

- UPC Central Division (Paris) 20 October 2025 – CFI 189/2024 – Meril Life Sciences v Edwards Lifesciences

«[...] first, the identification of the objective problem underlying the claimed invention, which must be carried out in light of the patent's specification; second, the identification of the state of the art at the time of the claimed invention, which can be represented by one or more realistic starting points and is left to the initiative of the parties; and, finally, whether it would have been obvious for the person skilled in the art to arrive at the claimed solution.

[...]

- UPC Central Division (Paris) 20 October 2025 – CFI 189/2024 – Meril Life Sciences v Edwards Lifesciences

«[...]

For the assessment of the inventive step, a 'holistic approach' – that is, a broader way of assessing non-obviousness by considering the invention as a whole, rather than just focusing upon isolated distinguishing features – appears, in general, to be more appropriate.»

- UPCoA 25 November 2025 – CoA 464/24 – Meril Italy v Edwards Lifesciences

UPCoA 25 November 2025 – CoA 528/24 – Amgen v Sanofi-Aventis

«National courts of the various EPC countries have different approaches and use different guidelines when assessing whether an invention involves an inventive step. One of those approaches is the so-called 'problem-solution approach' used by the EPO and the TBA of the EPO. In some jurisdictions, such as France, Italy, The Netherlands and Sweden, this approach is applied as well, but not necessarily as the only possible approach. [...]

- UPCoA 25 November 2025 – CoA 464/24 – Meril Italy v Edwards Lifesciences

UPCoA 25 November 2025 – CoA 528/24 – Amgen v Sanofi-Aventis

«[...] In other jurisdictions, such as Germany and the UK, other approaches – sometimes referred to as more 'holistic' – are used. Despite the differences in approach, all of these are merely guidelines to assist in the establishment of inventive step as required by Article 56 EPC, that, when properly applied, should and generally do lead to the same conclusion.»

- UPCoA 25 November 2025 – CoA 464/24 – Meril Italy v Edwards Lifesciences

UPCoA 25 November 2025 – CoA 528/24 – Amgen v Sanofi-Aventis

«It first has to be established what the object of the invention is, i.e. the objective problem. [...] This must be done by establishing what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in context of the description and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching). [...] In order to avoid hindsight, the objective problem should not contain pointers to the claimed solution. [...]

- UPCoA 25 November 2025 – CoA 464/24 – Meril Italy v Edwards Lifesciences
UPCoA 25 November 2025 – CoA 528/24 – Amgen v Sanofi-Aventis

[...] The claimed solution is obvious when at the relevant date the skilled person, starting from a realistic starting point in the state of the art in the relevant field of technology, wishing to solve the objective problem, would (and not only: could) have arrived at the claimed solution. [...]

- UPCoA 25 November 2025 – CoA 464/24 – Meril Italy v Edwards Lifesciences
UPCoA 25 November 2025 – CoA 528/24 – Amgen v Sanofi-Aventis

[...] A starting point is realistic if the teaching thereof would have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem. This may for instance be the case if the relevant piece of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention. There can be more than one realistic starting point and the claimed invention must be inventive starting from each of them. [...]

- UPCoA 25 November 2025 – CoA 464/24 – Meril Italy v Edwards Lifesciences

UPCoA 25 November 2025 – CoA 528/24 – Amgen v Sanofi-Aventis

[...] The skilled person has no inventive skills and no imagination and requires a pointer or motivation that, starting from a realistic starting point, directs it to implement a next step in the direction of the claimed invention. As a general rule, a claimed solution must be considered not inventive/obvious when the skilled person would take the next step prompted by the pointer or as a matter of routine and arrive at the claimed invention.»

■ UPCoA 25 November 2025 – CoA 528/24 – Amgen v Sanofi-Aventis

«[...] Whether there is a reasonable expectation of success depends on the circumstances of the case. The more unexplored a technical field of research, the more difficult it was to make predictions about its successful conclusion and the lower the expectation of success. Envisaged practical or technical difficulties as well as the costs involved in testing whether the desired result will be obtained when taking a next step may also withhold the skilled person from taking that step. On the other hand, the stronger a pointer towards the claimed solution, the lower the threshold for a reasonable expectation of success. [...]»

- Jurisprudence of the UPCoA is developing and consolidating.
- The court pursues its own path which is based on both the practice of the TBA and national approaches but conversely also influences the practice of the EPO and other European courts.
- It is therefore worthwhile to study national decisions, particularly from jurisdictions with a long tradition of interpreting and applying the EPC. In case of doubt, future UPCoA case law will not be far from it.
- Lawyers and Patent Attorneys representing a party before the UPC bear a special responsibility for the further development of UPC jurisprudence.

Thank you very much
for your kind attention!