

Obviousness/Inventive Step: The German Approach

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I. Inventive, but not novel?

The decision "Olanzapine" of the German *Bundesgerichtshof* (Federal Court of Justice), dated December 16, 2008: paving the way for selection patents?

II. Inventive Step

1. Methodology

How to examine for inventive step?	Obviousness instead of inventiveness.
How to avoid hindsight?	Inducement instead of "normal creativity".
How to avoid arbitrariness?	Objective criteria instead of reliance on the skilled person.
How to avoid subjectivity?	Examination of prior art instead of the genesis of the invention.

2. Examining prior art taking expert knowledge into consideration:

- What is the pertinent art?
- Who is the skilled person?
- What is the skilled person's education and experience?
- How does the "could-would" approach work?

3. "Could-would" in more detail:

The logic of the invention:	no substitute for obviousness
"Obvious to try":	may be sufficient
Unexpected results:	not sufficient if solution is obvious for other reasons ("bonus effect")
Different technical problem:	may result in the same solution.