

Congress Paris 2010  
ADOPTED RESOLUTION  
October 6, 2010

**Resolution**

**Question Q213**

**The person skilled in the art in the context of the inventive step  
requirement in patent law**

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**AIPPI**

**Noting that:**

- 1) AIPPI has decided to study the inventive step as it relates to patentability and, given the complex nature of the issue, is proceeding in stages, beginning with consideration of the person skilled in the art; the present resolution, therefore, is the first step in a broader process.
- 2) AIPPI has previously studied issues relating to patent law leading to the adoption of a number of resolutions, including Q69, Q126, Q167 and Q180, but none of these resolutions dealt with the person skilled in the art in the context of the inventive step requirement.
- 3) The resolution at the Munich Congress in 1978 (Q69) considered in some detail the attributes of a person of skill in the art, but only in the context of the requirements for a sufficient disclosure.

The resolution from the Munich Congress stated, among other things, that the patent description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and that such a person:

- a) is skilled in the art corresponding to the technology with which the invention is concerned;
- b) is of average knowledge and average ability in the relevant technologies; and
- c) does not have the whole technology at his/her fingertips, but knows the state of the art which is part of the average knowledge required in his/her professional work.

**Considering that:**

- 1) The concept of the person skilled in the art seems to be universally accepted with respect to the assessment of patentability as well as in the analysis of the sufficiency of disclosure and in determining the scope of the patent.
- 2) There is broad agreement that the definition of the person skilled in the art should be standardized in all areas relating to patentability, including the inventive step and sufficiency.
- 3) There is also broad agreement as to the necessity to properly define the person skilled in the art in the administrative and judicial proceedings when this question is considered by the parties.
- 4) There is however considerable diversity of views among National Groups of the AIPPI, as to the nature and characteristics of the person skilled in the art. This variety of views shows the need for further study of the topic.
- 5) This resolution does not intend to treat either the question of the content of the prior art in relation to the novelty requirement, or the question of the assessment of the infringement.

**Resolves that:**

- 1) The person skilled in the art is a legal fiction.  
  
There should be a common approach in formulating the definition of the person skilled in the art applicable in administrative or legal proceedings that consider inventiveness in the context of the patentability of an invention or the validity of a patent.  
  
This definition should include the characteristics of the person skilled in the art.
- 2) The person skilled in the art has at least the following characteristics:
  - a) This person possesses common general knowledge as well as knowledge in the field (or fields) to which the invention relates that the average person in that field (or fields) would be expected to have or which would be readily available to that average person through routine searches;
  - b) This person possesses the skills that are expected from the average person in the field (or fields) to which the invention relates.
  - c) This person is able to perform routine experimentation and research and can be expected to obtain predictable solutions as compared to the prior art.
- 3) The assessment of the person skilled in the art should be made as of the priority date or other relevant date under applicable law for the purposes of assessing patentability.

- 4) In general, the person skilled in the art is an individual person.

Depending on the technical field and the complexity of the invention, the person skilled in the art may correspond to a team of people from different disciplines, provided that would have been a common practice in the technical field of the invention at the relevant time.

- 5) The characteristics of the person skilled in the art should be the same for the evaluation of inventiveness as for other requirements of patentability or patent validity.
- 6) Since the question of whether or not the person skilled in the art can have any creativity over and above that characteristics described above is directly linked to the question of the evaluation of the obviousness of an invention, which the AIPPI will discuss at the Hyderabad EXCO in 2011, it is recommended that this issue be considered further at that time.