



Panel Session XII: What's the (technical) problem?

Consideration is often given to the technical problem by patent offices and courts when assessing patentability, specifically, the existence of an inventive step.

The relevance attributed to the technical problem is an issue in itself. The EPO problem-solution approach renders the identification of the technical problem central to any reasoning. Other systems have a different approach.

It is also relevant to some patent offices whether the technical problem is identified in the specification (expressly or implicitly from any statement of advantages or objectives). Failure to comply with any formal requirement in this regard may have consequences for validity.

Reformulation of the technical problem is another issue – offices and courts may take different approaches as to whether this is permissible and, if so, when and how it is done. Reformulation may be acceptable when new prior art is identified. What is the position when the technical problem is not identified as solved, or a technical effect is not sufficiently demonstrated? Can the applicant request any reformulation? And what is the remaining relevance of the initial formulation?

The speakers will compare the requirements relating to the technical problem in patent applications and patents across jurisdictions, and seek to identify a preferred approach.