

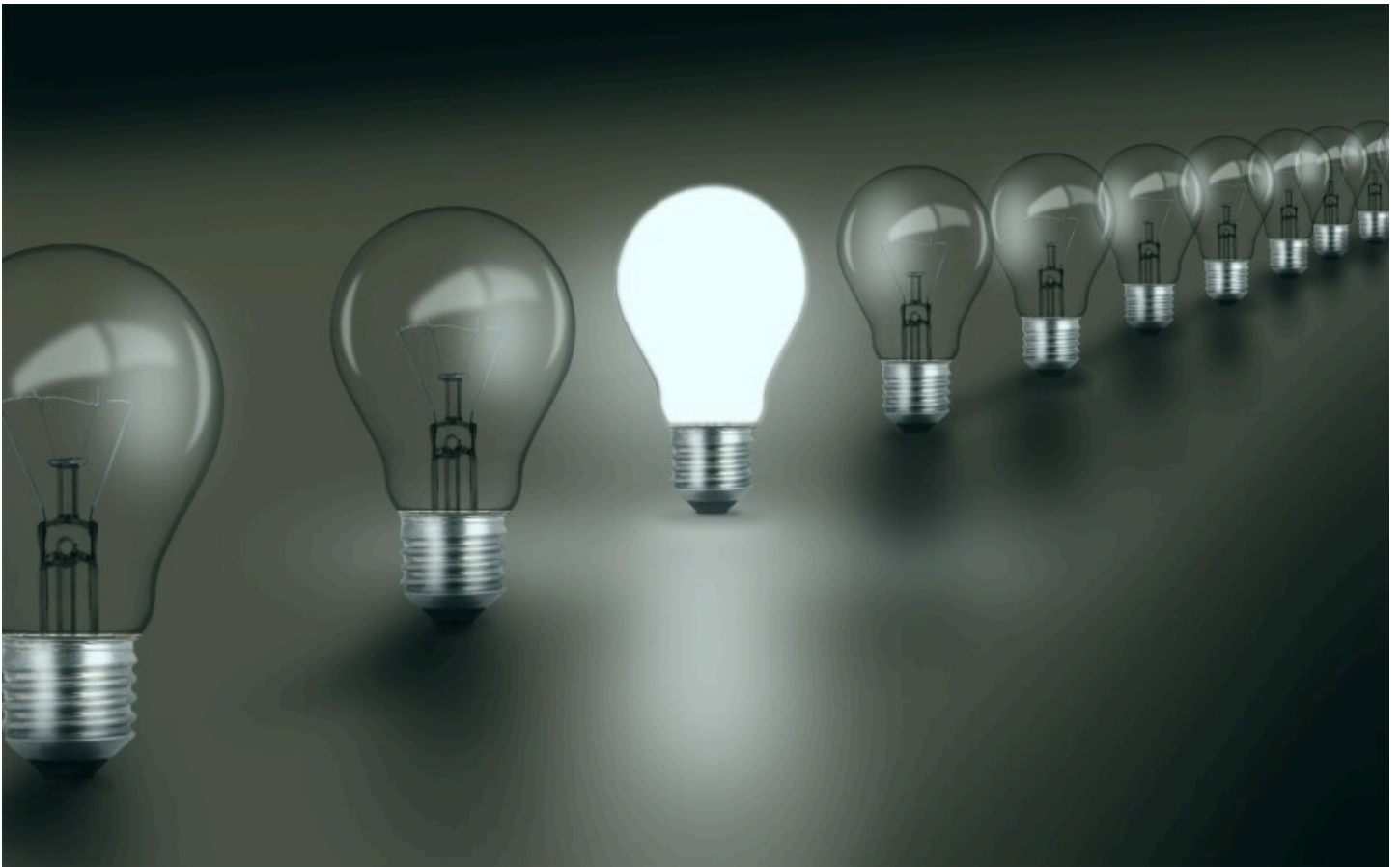
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UPC Court of Appeal decision defines new approach to inventive step

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Jakob Pade Frederiksen of Inspicos highlights how a recent ruling relating to the applicable standard for inventive step assessment diverges from the EPO's problem-solution approach

On November 25 2025, the Court of Appeal of the Unified Patent Court (UPC) handed down its decision in *Amgen v Regeneron Pharmaceuticals* ([UPC_CoA_529/2024](#)). Among other issues, the decision deals extensively with questions of non-obviousness and defines the UPC's standard when establishing inventive step.

The approach taken by the UPC is different from the so-called problem-solution approach that has been widely followed by the EPO since the early 1980s. According to the latter, it must be established, on the basis of the claim feature(s) that distinguish(es) the invention from the 'closest' prior art document, what the technical problem solved by such feature(s) is. If the claimed solution to the technical problem was obvious at the filing date in view of any prior art available to the skilled person, the presence of an inventive step is negated.

According to the *Amgen* decision, however, it first has to be established what the object of the invention is. This must be assessed from the perspective of the skilled person, with its common general knowledge, as at the filing date. This must be done by determining what the invention adds to the state of the art, and "not by looking at the individual features of the claim". Rather, the object of the invention is to be established by comparing the claim as a whole in the context of the description and the drawings. The UPC's approach also takes into account the inventive concept underlying the invention, which must reflect the technical effect(s) that the skilled person understands, on the basis of the application, to be achieved with the claimed invention.

Hence, the UPC approach differs from the approach taken by the EPO in that neither a 'closest prior art document' nor the distinguishing claim feature(s) need to be identified.

Following the UPC Court of Appeal's methodology, the claimed solution is obvious when the skilled person, starting from a realistic starting point in the state of the art in the relevant field of technology and wishing to solve the objective problem, would have arrived at the claimed solution. There can be more than one realistic starting point, and the claimed invention must be inventive starting from each of them.

It remains to be seen if the EPO will adopt the UPC approach or stick to the problem-solution approach, and to what extent cases based on the same facts will be decided differently by the two bodies.

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