By Lodewijk Pessers

“The Inventiveness Requirement in Patent Law” tries to answer the question of how the inventiveness requirement has evolved over time, that is, from the very first moment that we can distinguish its contours up to the present day. In doing so, it focuses on three aspects in particular: what are the historical phases that can be discerned in the requirement’s evolution? What are the socio-economic and political forces that have determined or influenced its course? And how can similarities and dissimilarities between the jurisdictions under examination (i.e., the United States, the United Kingdom, Germany, and the Netherlands) be explained?

The book is divided into two parts. The first describes the evolution in its first three phases: the medieval, the mercantilist, and the pre-modern phase. The second is dedicated to the modern phase and devotes particular attention to two different “schools” that developed in the 19th century and which continue to be relevant for the doctrine’s direction, even today. The first of these, dubbed the qualitative school, is based on the idea that patents should reward the traditional (others would say ‘archetypical’) inventor. The criterion of inventiveness, in this view, is meant to distinguish between the routine products of workmen and the extraordinary output of inventors. In this tradition concepts such as ‘genius’, ‘originality’, ‘reversibility’ and ‘process’ are relevant. The second school, which is known as the quantitative school, prefers to represent innovation as an incremental process that typically takes place in a corporate or industrial context. Inventiveness, in this view, is more a useful result than a recent contribution beyond routine. The fields of attention within this school of thought are ‘hindsight reasoning’ and avoiding this reasoning, and what are known as secondary considerations. It also tends to present itself as being more objective than the qualitative approach.

As increasing numbers of patents are being issued worldwide, the concept of inventiveness (translated into criteria as ‘non-obviousness’ and ‘inventive step’) has received more and more attention. In current debates, this question is often asked: whether the requirement of inventiveness is still balanced and adequate? Do we need a ‘better’ way to assess whether a patent application is patentable? As the title suggests, the book tries to lay the groundwork for further and more in-depth discussions about the current standards of inventiveness.