

Directorate 521		Patent Law	
Director	H. Pihlajamaa	Munich,	06.10.2015
Head of Subject		Our Ref.	151/740, CL 2015-524-0103, 54.9 A 54 55 56 83 122 112a 54.90 R 28 R 29
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Addressee: Directorate 5.2.4
via:
Subject: Comments on revised Annex II of document SCP/12/3 rev.2: Report on the International Patent System (WIPO)

Internal note

Please find below our comments on the parts of the above document relating to the EPO:

1. Prior Art
No comments
2. Novelty
No comments
3. Inventive step (Obviousness)
Please amend the text as follows:

“The invention is not obvious to a person skilled in the art having regard to the state of art. The state of the art consists of anything made available to the public by a written or oral description, use or in any other way before the filing date (priority date). ~~and the contents of European patent applications (and of PCT applications designating EP subject to the payment of the filing fee, and, where required, the filing of the translation of the international application as originally filed) with an earlier filing date (priority date) published on or after that date..”~~”

4. Grace period
Please amend the text as follows:

“Disclosure not to be taken into consideration in determining the ~~novelty-state of the art~~ if it occurred ~~no earlier than six months preceding within six months before~~ the filing date due to, ~~or in consequence of:~~”

1. an evident abuse in relation to the applicant or his legal predecessor, or
2. display of the invention by the applicant or his legal predecessor at an official or officially recognized international exhibition.”

5. Sufficiency of Disclosure
No comments

6. Exclusions from Patentability

Taking into account the EPC and its Implementing Regulations, please amend the text as follows:

- “1. Discoveries, scientific theories and mathematical methods **as such**.
2. Aesthetic creations **as such**.
3. Schemes, rules and methods for performing mental acts, playing games or doing business **as such**.
4. Programs for computers **as such**.
5. Presentation of information **as such**.
6. Inventions, the commercial exploitation of which would be contrary to public order or morality, **in particular in respect of biotechnological inventions which concern the following:**
(a) processes for cloning human beings;
(b) processes for modifying the germ line genetic identity of human beings;
(c) uses of human embryos for industrial or commercial purposes;
(d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.
7. Plant or animal varieties and essentially biological processes for the production of plants or animals, other than microbiological processes and products **thereof**.
8. Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body. **Products, in particular substances or compositions, for use in any of these methods are not excluded**.
9. The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene.
10. An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.”*

7. Exceptions and Limitations of the Rights

Please amend the text as follows:

- “1. A European patent (application) confers in principle in each Contracting State of the EPC the same rights as would be conferred by a national patent (application) in that State.
2. Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between a loss of rights and publication in the European Patent Bulletin of the*

mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

3. Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between a decision of the Board of Appeal and publication in the European Patent Bulletin of the mention of the decision of the Enlarged Board of Appeal on a petition for review, may without payment continue such use in the course of his business or for the needs thereof.”