

Responses given by the Hungarian Intellectual Property Office

I. Inputs for the preparation of the following documents and a new webpage

(i) A Draft Reference Document on the Exception Regarding Farmers' and/or Breeders' Use of Patented Inventions

•The inputs may relate to, for example, relevant provisions of laws, court cases, challenges faced by Member States in implementing the exception and the results of the national/regional implementation.

The Hungarian Patent Act* does not provide for any exceptions regarding farmers' and/or breeders' use of patented inventions, therefore we do not have relevant cases or examples. In our opinion, introducing such exceptions into the current legal framework does not seem to be necessary.

In addition, it is important to note that in the Hungarian legal system, plant varieties cannot be protected by a patent. They are subject to the separate plant variety protection. Consequently, the Hungarian Patent Act regulates the Farmers' and/or Breeders' exception as an exception to the plant variety protection. According to Article 109/A of the Hungarian Patent Act the farmer may exploit the product of the harvest in his own holding without the permission of the holder for the purposes of propagation – other than the hybrids and synthetic plant varieties – which he obtained by sowing in his own holding the seed or tuber of the plant variety being under plant variety protection and belonging to plant species specified in paragraph (2).

(ii) Study on Substantive and Procedural Requirements Regarding Voluntary Division of Patent Applications by Applicants.

• In addition to the requirements regarding the voluntary division of patent applications by applicants, the inputs may include issues relating to the prohibition of double patenting and any other relevant information.

Voluntary division of application

Pursuant to Article 73 of the Hungarian Patent Act 'if the applicant has claimed patent protection for more than one invention in one application, he may divide the application, retaining the date of filing and any earlier priority, until the day on which the decision on the grant of the patent is delivered'.

According to the Hungarian Patent Act, any person who claimed patent protection for several inventions in a single application may divide his application before the day when the decision relating to the patent is adopted, keeping the date of application and the earlier priority, if any. Although there is no explicit mention on voluntarily filed divisional applications in the Patent Act however, it is deductible from the legal context that filing divisional applications is bound to the compliance with the unity requirement. Our current practice follows this principle.

Double patenting

Double patenting is not prohibited explicitly by the Hungarian Patent Act. It means that it is possible to grant more than one patent to the same applicant even if the applications claim the same subject-matter and if the applications do not form part of the state of the art pursuant to Article 2 (3) of the Hungarian Patent Act. This applies especially to the following typical situations: two applications filed on the same day or an application and its priority application made by the same applicant. However, if one of the applications form part of the state of the art, lack of novelty can be a ground for refusal.

(iii) Document updating Sections V and VI of Annex to document SCP/35/7(Artificial Intelligence (AI) and Inventorship).

- ***Section V: National/Regional Legal Frameworks Regarding the Concept of Inventorship.***
- ***Section VI: The “DABUS” Case. The inputs may also include information regarding new cases and decisions on AI as an inventor.***

According to Article 7 (1) of the Hungarian Patent Act, 'Inventor' means a person who has created an invention. In the practice, 'a person' can exclusively be a human being. Consequently, there is no option for designating an AI or any non-human entity as an inventor either, since only a natural person can be an inventor. Changing this principle would need to amend the Fundamental Law of Hungary which however, seems to be unlikely in the near future.

In Hungary there is not any recent case or decision on AI as an inventor.

(iv) Compilation of legislative and policy measures adopted by Member States relating to Standard Essential Patents to be presented on a dedicated page of the SCP website

• The inputs may also include references to notable case law. For each referenced case, please provide a brief summary and, if available, the corresponding URL address.

The Hungarian Intellectual Property Office is not aware of any existing Hungarian practice or cases regarding standard essential patents (SEPs).

* Act XXXIII of 1995 on the Protection of Inventions by Patents

II. Updated information in order to maintain the information collected through the activities of the SCP up to date

(i) certain aspects of the applicable national or regional patent law, related to prior art, novelty, inventive step (non-obviousness), grace period, sufficiency of disclosure, exclusions from patentable subject matter and/or exceptions and limitations of the rights, available at:
http://www.wipo.int/scp/en/annex_ii.html

(ii) national and regional laws on opposition systems and other administrative revocation and invalidation mechanisms, available at:
https://www.wipo.int/scp/en/revocation_mechanisms/

(iii) international worksharing and collaborative activities for search and examination of patent applications, available at:
<https://www.wipo.int/en/web/patents/topics/worksharing/index>

(iv) compilation of laws and practices regarding the scope of client-attorney privilege and its applicability to patent advisors, available at:
https://www.wipo.int/scp/en/confidentiality_advisors_clients/national_laws_practices.html

Confidentiality of Communications between Clients and their Patent Advisors – Hungary

Hungarian Law expressly provides for confidentiality of communications between clients and their patent advisors including explicitly documents.

Article 15 of Act XXXII of 1995 on Patent Attorneys came into force on 1 January 2018 and contains the following provisions on confidentiality of communications between clients and their patent advisors.

(1) Any facts, information or data coming to the knowledge of a person exercising patent attorney activities in the course of these activities shall be considered patent attorney secrets.

(2) The person exercising patent attorney activities shall be obliged to keep patent attorney secrets, unless this Act provides otherwise. This obligation of secrecy shall extend to documents and other data carriers of the patent attorney that contain patent attorney secrets.

(3) The person exercising patent attorney activities shall refuse to give witness evidence or supply data on patent attorney secrets in any official or judicial proceedings, except if the owner of the patent attorney secret released him from the obligation of secrecy.

(4) The obligation of secrecy of the person exercising patent attorney activities shall not depend on the continuation of the legal relationship established for the purpose of pursuing patent attorney activities, and it shall continue to exist without any limitation in time even after the termination of the patent attorney activities or of the patent attorney legal relationship.'

Article 22 of the same Act contains disciplinary sanctions for violation of these obligations.

(v) expedited examination programs, available at:
<https://www.wipo.int/scp/en/expedited-examination-programs.html>