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Patents on Genes:

Recent Practical Experiences and Case Studies

Dr. Maria Petz-Stifter, Hungarian Patent Office, maria.petz@hpo.hu

ABSTRACT

Hungarian regulation is fully harmonised with the EPC and Directive 98/44/EU. The presentation gives a brief overview of the regulation in Hungary and the special provisions (e.g. written opinion for early establishment about novelty, inventive step and industrial application, sequences shall be submitted on an electronic data carrier, express novelty search) shows the legal practice and case studies for assessing questions of novelty, inventive step, industrial application, unity, clarity and support. There are not court decisions or case law for patenting of genes in Hungary. In practice the case law of the EPO's boards of appeal is taken into consideration. Examiners are supported by the guidelines of HPO

The most important considerations of legal practice in the patenting of genes are:

- The human intervention (isolation) ensures the patentability
- For genes absolute product protection is allowed
- For patenting structural features are required
- In the description the industrial applicability (special function) has to be disclosed
- The disclosed function should be real (supported) not speculative
- Homologs, variants, mutants are patentable only when are characterised by structural and functional features
- DNA showing a high homology with known DNA without unexpected effect is not patentable
- The same origin of the DNAs does not assure the unity of the application