

*Inventive step*

**LAW ON PATENTS AND UTILITY MODEL REGISTRATION** (Title amended, State Gazette No. 64/2006; in force as from 09.11.2006)

**Inventive Step**

**Art. 9.** (amended, State Gazette No. 66/2002) An invention shall be considered to involve an inventive step if, having regard to the state of the art in accordance with Article 8(2), at the filing date or the priority date, respectively, it is not obvious to a person skilled in the art.

**State of the art**

**Art. 8.** (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, anywhere in the world, before the filing date or the priority date, as appropriate, of the patent application.

(3) (amended, State Gazette No. 66/2002) The state of the art shall comprise also the content of all national patent applications, the European and international patent applications designating the 4 Republic of Bulgaria, of which the filing date or priority date, as appropriate, are prior to the date referred to in paragraph (2), provided that after that they are published in the Official Bulletin of the Patent Office.

(4) (new, State Gazette No. 64/2006, in force as from 09.11.2006) The state of the art shall comprise also the content of all national applications for utility model registration, of which the filing date or priority date, as appropriate, are prior to the date referred to in paragraph (2), provided that after that a mention of the registration thereof is published.

**GUIDELINE FOR DRAFTING, FILING AND EXAMINATION OF THE PATENT APPLICATION**

*In force with Government Decree Ng 53/19 March 2008 z.*

*Prom. SG. 33 of 28 March 2008.*

**Art. 49.** (1) The inventive step shall be assessed, according to Art. 9 of

the Law of patents and utility model registration.

(2) The state of the art for the purposes of considering inventive step does not include the content of the patent application, published on the date of filing of the patent application or on later date.

(3) The term "obviousness" means that, the invention follows plainly or logically from the state of the art, i.e. it does not require knowledge, beyond that expected for the skilled in the art.

(4) Person skilled in the art should be presumed to be,:

1. Person, who aware common general knowledge in his/her art and adjacent ;

2. Person, who has general technical skills, expected for any technician, KaKTO III abilities for improvement of his/her art by himself/herself.

**Art. 53.** (1) The inventive step shall be assessed for each already considered as new, independent claim, defining invention.

(2) In assessment of inventive step the prototype should be determined, so as to identify the distinguishing feature(s) between the invention and the prototype and the problem, defined by the effects resulted from the distinguishing feature(s). The problem may be formulated as a search of an alternative of already known product, which alternative would provide the same or similar effects.

(3) The invention shall be considered bodily in assess whether it follows plainly or logically from the state of the art for the skilled person in the light of the already defined problem. In case there is not any functional connection between the technical features of invention, constituting combination of known elements, they be analyzed separately

(4) In assess of the existence of an inventive step ;ay be combined the content of a document which discloses the closest solution to the contents of the documents or portions thereof, as well as different parts of the same document or other materials, revealing the differences found between the claimed and the closest solution. The contents of these documents may be combined, if one skilled in the art would deal with the

problem of the present invention, would combine them.

(5) The invention should be considered as involving an inventive step, when:

1. It provides at least one technical advantage, which is new and unexpected for the skilled person in the art and may be due to one or more technical features, included in the claims;
2. The defined problem in itself is new, even when the solution is obvious;
3. It solves a technical problem, which stood unsolved a long time in the field before people, or satisfies long-standing demand;
4. In cases where there are data for quick commercial success due to the technical features of the invention, rather than of advertising and means of its sale.

(6) The application of an already known technical solution in a given technical art has an inventive step when for its use in a new purpose it exhibits new properties and such use is possible only through its proper non-obvious adjustment.

(7) The applicant may provide additional data, examples and other kind of information as a proof of inventive step presence. Additionally presented information should be taken into account in assessing inventive step, but not considered as a part of the description.

#### *Sufficiency of Disclosure*

**LAW ON PATENTS AND UTILITY MODEL REGISTRATION** (Title amended, State Gazette No. 64/2006; in force as from 09.11.2006)

#### **Description of Invention**

**Art. 37. (1)** (amended, State Gazette No. 64/2006, in force as from 09.11.2006) The description shall contain the title and the technical field to which the invention belongs; the prior art, as far as known to the applicant, with citation of the documents in which it is described; clear and adequate disclosure of the essential technical features of the invention and its advantages, in such manner that the invention may be carried out by a person skilled in the art; brief explanations of the drawings and at least one embodiment of the invention using examples, if necessary, and

reference to the drawings, if any, as well as the manner of working the invention in industry, where this is not obvious from the description or the character of the invention.

**(2)** (amended, State Gazette No. 66/2002; amended, State Gazette No. 64/2006, in force as from 09.11.2006) Where the patent application refers to the use of biological material or to material such that is not available to the public and cannot be described in the patent application in such a way as to enable the invention to be carried out by a person skilled in the art, the description shall contain the biological material deposit data -- the number and date of the deposit and the name and address of the international depository authority according to Article 7 of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the deposit being made no later than the priority date. The description of the application shall contain all information on the characteristics of the deposited biological material the applicant disposes of.

**(3)** (new, State Gazette No. 64/2006, in force as from 09.11.2006) If the biological material is deposited outside the Republic of Bulgaria, the applicant shall, within three months following publication of a mention about the patent application, make a deposit of that material in the National Industrial Microorganisms and Cell Cultures Bank too, so that any person who has the right of access could get a biological material sample in the Republic of Bulgaria in accordance with a procedure as laid down in a regulation of the Council of Ministers concerning the deposit and access for the purposes of patent procedure.

**(4)** (new, State Gazette No. 64/2006, in force as from 09.11.2006) If biological material deposited in accordance with paragraph (3) is no longer available in the National Industrial Microorganisms and Cell Cultures Bank due to the fact that it is no longer viable or for some other reason, the applicant shall make another deposit of the material within a term and in a manner as laid down in the regulation referred to in paragraph (3).

**(5)** (new, State Gazette No. 64/2006, in force as from 09.11.2006) Where an invention relates to a sequence or partial sequence of a gene, the patent application shall contain a disclosure of the industrial applicability of such sequence.

## **Claims**

**Art. 38.** The claim or claims shall define the matter for which protection is sought. They shall be clear and precise and be supported by the description.

## **GUIDELINE FOR DRAFTING, FILING AND EXAMINATION OF THE PATENT APPLICATION**

*In force with Government Decree Ng 53119 March 2008 a.*

*Prom. SG. 33 of 28 March 2008.*

**Art. 8.** (1) The description shall disclose the invention enough clearly and fully, HCHO 111 nbnHo, so that one skilled in the art to accomplished it.

(2) The description contains:

1. Title of the invention;
  2. The Field of the invention, to which the invention pertain;
  3. Prior art, to the extent known to the applicant and which contributes to the understanding, searching and examination the invention , including the closed prior art in the light of the problem solved; where possible reference to the information sources;
  4. Technical Description of the invention , as defined by the claims, described in a manner, allowing understanding of the problem, even when it is not formulated explicitly and its solution; statemen of the advantages of the invention over the prior art, if any;
  5. Short explanation of the figures of the attached drawings, if any;
  6. detailed description of at least one way for accomplishment of the invention, for which the applicant claims, with use of examples, where it is appropriate and 111 reference to the figures, if any; where the invention was explained with figures, after any element or unit shall specify the corresponding number or letter, which indicates it in the figures;
  7. The applicant shall include the way the invention can be produced or used in industry and agriculture, where it is not obvious from the description or nature of the invention.
- (3) The individual parts of the description under par. 2 are marked with the following titles: Field of the invention, Prior art, Technical description, Brief Description of the drawings, Examples for accomplishment of the invention, applicability (use) of the invention.

(4) The manner of describing and the order of the separate parts of the description according to para. 3 can be modified, if it contributes to a clear and simple disclosure of the Invention.

#### Specificities for description for the invention in the field of chemistry

**411. 9. (1)** For new chemical compounds with general formula, the examples should include representatives of the various classes of the compounds, included in the formula and method(s) for its preparation including their physicochemical parameters.

(2) For the substances, prepared by nonchemical pathway, containing as a component/components  $q$  compounds with general formula, , the examples should include representatives of the various classes of the compounds, included in the formula.

(3) Chemical compounds and their structures are referred to by their name in the current international chemical nomenclature.

(4) For biologically active substances, including those derived from natural raw materials, in addition to the physico-chemical characteristics are indicated the results of biological tests.

(5) In medical and dietetic food shall be indicated in addition to the physico-chemical characteristics, data received in pharmacological studies of effect and safety, and when clinical trials data are available- the achieved data.

(6) In all other chemicals for a specific purpose shall be indicated the results of their application.

#### Specificities for description for the invention in the field of biotechnology

**Art. 10.** (1) Where in the application for biotechnological invention there are one or more nucleotide or amino acid sequences, the description shall be accompanied with the list of this sequences , compiled in accordance with administrative instructions to the Patent Cooperation Treaty (PCT). The sequences list shall be filed as a separate part of the description and be accompanied by a tabulated data for the respective sequences and the applicant. List of the sequences, filed with the

Patent Office of Republic of Bulgaria after the date of filing, shall not consider as a part of the application .

(2) When sequence listing presented as a separate part of the description contains text, this text should be present in the description.

(3) In the description of the patent application, relating to the biological material or the use of such material according to Art. 37, par. 2 of Law of patents and utility model registration, there should be identified the morphological and biochemical characteristics of the material and propose for its taxonomic description.

(4) For invention relating to novel strains of microorganisms, in the description must also disclose: Latin name of the strain, identifying its genus and species origin; the set of characterizing cultural, morphological, and physiological and biochemical features; information about the origin of the strain and /or the method of its production. Should In addition, the applicant has to provide data in regard with beneficial substances produced together with instructions for stability of the beneficial properties.

(5) In descriptions of inventions involving the use of microorganisms must state only the Latin name of the microorganism and data for its deposit.

(6) For inventions relating to cell cultures except the Latin name and purpose shall also indicate the information on genera and species origin to the parental cells and data deposit.

### **Claims -form and content**

Art . 11. (1) the claims shall be formulated in a single sentence. It has to define the subject, for which protection is sought, through technical features of the invention, to be clear and precise and correspond to the description.

(2) For each invention there shall be formulate one or more claims, the first of them is independent and the following are dependent.

(3) In the independent claims are included the technical features of the invention, which are defined by acceptable general terms in such a way as to cover all possible particular embodiments of the execution or use of the invention. The independent claim consists of:

1. A first part indicating the object of the invention and the known technical features, which are common for the invention and the prototype, if any;

2. Characterizing part, beginning with the words "characterized by" or "characterized in" that sets new technical features, for which in combination with the features mentioned in paragraph. 1 protection is sought.
- (4) Each dependant claim is dependent on the independent claim and /or on one or more preceding dependent claims and only with the features included therein, characterize one particular embodiment of the invention.
- (5) The total number of the claims shall be reasonable, consistent with the nature of the invention for which protection is sought.
- (6) It is not allowable inclusion in the claims of advantages, negation (lack of technical feature) and economic indicators.
- (7) It is allowable inclusion of properties and results in the claims of the inventions concerning the strains of microorganisms and substances with unknown construction.
- (8) It is allowable inclusion in the claims of physical properties of the substances as technical features, if they unambiguously define the scope of the protection.
- (9) It is allowable characterizing of the invention or its technical feature through feature thereof via result, which must be achieved only when it could not be characterize otherwise and the result is such that it can be directly and unequivocally confirmed through tests or methods, disclosed sufficiently in the description.
- (10) It is allowable determination of the features in the claims by their function, provided that the skilled person without any inventive effort can provide the resources needed for carry out this function.
- (11) It is allowable inclusion in the claims of two or more alternative features, joined by the conjunction "or" in the absence of general feature.
- (12) When the claim is more complicated and/or its division would be resulted in misrepresentation or deception in regards with technical essence of the invention, it is allowable its formulation without splitting in two parts.
- (13) When the claim concerns to the use of known substances or composition in the method of treatment or diagnosis of humans or animals, it should be formulated without splitting in two parts.
- (14) The independent claim for new chemical substance is not divided in parts and includes the name of the compound according to the chemical nomenclature in force and/or its general formula with indication of any substituents. For high molecular

weight compounds are included the structure of the macromolecule determined by the unit / units of frequency, terminal and side groups and the parameter of the molecular weight.

(15) The claims for substances with unknown structure are not divided in two parts and contains the name of the substance, the method for its preparation, properties and characteristics, which are directly related with the substance structure .

(16) In the clam for biological material are indicated its name in Latin transcription, the number under which it is deposited in an international depository authority, the name of that body and the nature of the practical use of the material. Such claim is not divided in two parts.

(17) In the claims may also include mathematical expressions as a new feature when it reflects technical means.

(18) In the claims for methods for measurement, control or direction may also be allowable inclusion of mathematic expression, non-reflecting technical means, only when it is directly related with the new technical features.

(19) The technical features are accompanied by the related indication in the drawings, if, any, presented in brackets, when this contributes to a better understanding of the nature of the invention.

### **Clams for different categories of inventions**

**Art. 12. (1)** The Product claim according to Art. 19, par. 4 of Law of patents and utility model registration concerns to physical object (article, device, machine or system of interactive devices, as well as substances or compositions). The Product claims contain elements, components, connections and/or proportion between the elements, their mutual disposal, materials, making up the elements, and other features related to the product, such as result, function etc., where this is necessary for a clear and precise definition of the essence.

(2) The category method according to art. 19, par. 5 of Law on patents and utility model registration and utility model registration, are related all kind of actions, , applied to material products, energy, living objects, with use any material agent. The method claims contain operations and its succession, the conditions, for taking place these operations, as well as the means necessary for carry out certain

operations, where it is necessary for clear and precise definition of the essence of the method. This category includes the use of the product.

(3) In a patent application may be formulated claims both different and same categories of inventions, in accordance with the requirements of unity based on Art. 40 of Law on patents and utility model registration

(4) Where the application refers to a group of inventions, for each invention, included in the group, are formulated one independent claim and if appropriately dependent claims. The first independent claim is formulated for the invention, which most fully corresponds to the nature of the problem to be solved. The dependant claims are grouped together with this independent claim, to which they are dependant, directly or through preceding dependent claims.