

## REPORT FROM GUATEMALA ON INVENTIVE STEP AND SUFFICIENCY OF DISCLOSURE

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### **Inventive step**

*(i) Definition of person skilled in the art*

Not defined in Guatemalan legislation.

*(ii) Methods used to evaluate inventive step:*

Article 95 of Decree No. 57/2000, Industrial Property Law

Inventive step: An invention shall be considered to have an inventive step if, for a person skilled in the technical field concerned, the invention is neither obvious nor obviously derived from the state of the relevant art.

*(iii) relative to the prior art, inventive level (non-obviousness) needed to meet the inventive step requirement*

Article 117. Decree No. 57/2000, Industrial Property Law

Substantive examination, paragraph 3:

The question of whether an invention is unpatentable for lack of novelty or inventive step is settled on a case-by-case basis as appropriate, taking into account the relevant facts, *inter alia*:

- (a) the scope and content of the prior art;
- (b) differences between the current state of the art and the claim;
- (c) the level of ordinary skill in the relevant art; and
- (d) appropriate secondary factors such as commercial success, long identified but unmet needs, failure of others and unexpected results.

### **Sufficiency of disclosure**

(i) enabling disclosure requirement

(ii) support requirement



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(iii) written description requirement

The 3 paragraphs above are found in the following articles of Decree No. 57/2000, Industrial Property Law:

Article 108: Description (as amended by Article 55 of Decree No.11/2006, Implementing Law DR-CAFTA)

The description shall disclose the claimed invention sufficiently clearly and comprehensively to enable its execution by a person skilled in the relevant technical field. The description shall also disclose the best mode known to the applicant for executing the claimed invention.

An invention that is the subject of a patent application shall be sufficiently supported by its presentation so that an expert in the technical field may reasonably confirm that the patent applicant possessed the invention on the application filing date, or at least on the filing date of the priority application.

Article 109 (amended by Article 56 of Decree No. 11/2006): Description of biological material:

Where the invention pertains to a product or a process involving biological material that is not available to the public and the invention cannot be described so as to be understood and executed by a person skilled in the art, it shall be supplemented by depositing a sample of the material.

The sample of biological material shall be deposited with a depositary institution established within or outside the country and recognized under treaties or conventions to which the Republic of Guatemala is a party, no later than the date of filing of the application, or where a right of priority is claimed, the date of filing of the priority application.

When a deposit of biological material for the purposes of a patent application is to be made, it shall be so indicated in the description, together with the name and address of the depositary institution, the deposit date and the deposit number issued by the institution. The nature and features of the deposited material shall also be described where necessary for the purposes of the presentation of the invention.

The deposit of biological material shall be valid for the purposes of granting a patent if done under conditions allowing any interested party to obtain samples of the material, no later than date of publication of the relevant patent application.\*\*



- 1 \*\* Guatemala adhered to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure by Decree No. 17/2006 issued by its Congress. Therefore, Article 109 should be based on the decree.

#### Article 110. Drawings.

Drawings shall be submitted where necessary for understanding or executing the invention. The drawings shall be considered part of the description.