

Report Q180

in the name of the Hungarian Group
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Content and relevance of industrial applicability and/or utility as requirements for patentability

Questions

1. What is the situation in your country?

1.1 Does your country know industrial applicability or utility as an additional requirement for patentability besides novelty and inventive step?

In Hungary, the patentability requirement of industrial applicability comes from the statutory law.

According to Hungarian Act No. XXXIII of 1995 on the Protection of Inventions by Patents (in the following referred to as HPA), which has been harmonised with the EPC, patents shall be granted for any inventions in any fields of technology which are new, involve inventive activity and are susceptible to industrial application. [HPA Art. 1(1)].

1.2 How does this comply with TRIPS?

The Hungarian law follows Art. 27 TRIPS. It is considered that the terms industrial applicability and utility are synonyms.

2. Industrial applicability

2.1 How is industrial applicability defined?

In Hungary, there is a definition of industrial applicability by law, namely, an invention shall be considered susceptible to industrial application if it can be made or used in any kind of industry or agriculture. Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall, in particular, not be regarded as susceptible to industrial application. This provision does not apply, however, to products, in particular substances (compounds) or compositions, for use in such methods [HPA Art. 5(1) and (2)].*

Further explanations for the term "industrial applicability" are given in the Examination Guidelines of the Hungarian Patent Office published under the title "Guidelines for patent prosecution" (in the following referred to as Guidelines). The Guidelines state that the term "industry" is to be understood according to Art. 1(3) of the Paris Convention in the broadest

* HPA Art. 5 has been supplemented with Art. 5/A which fully complies with EU Biotech Directive 98/44/EC.

sense, and give a definition that the term “industry” covers all human activities (manufacture or service) transforming or utilising natural resources. This definition seems to be very close to the “utility” requirement in the U.S. patent law. The term “applicability” means that the invention can be made or used in a reproducible way, i.e. repeatedly with the same result. According to the Guidelines, an invention is industrially inapplicable, if carrying out the invention is impossible, unreproducible or the result is unreliable.

Industrially inapplicable inventions are e.g. mechanical or electric perpetual motion apparatuses, further methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body. However, products and apparatus for use in the latter methods are considered industrially applicable.

2.2 What is the relevance of industrial applicability and how does it affect granting proceedings?

In Hungary, the requirement of industrial applicability plays a minor role in patent examination proceedings and very few applications are refused due to the lack of this requirement.

There is a special relation between industrial applicability and disclosure requirement. If the invention can not be reproduced repeatedly with the same result, then the invention generally can not be disclosed in the specification and the drawings in a manner sufficiently clear and detailed for it to be carried out by a person skilled in the art. However, in the examination proceedings these two requirements are to be examined separately. Industrial applicability is required for the invention, sufficient disclosure is required for the specification and the drawings, respectively.

The Patent Office has the burden of reasoning concerning lack of industrial applicability of an invention. If the lack of industrial applicability of an invention can not be shown by the Patent Office, the invention is to be considered industrially applicable and objections concerning realizability of the invention can be raised on the basis of the disclosure requirement, only.

The Hungarian Group is not aware of any special tool for the examiners to assess lack of industrial applicability. However, the Hungarian provisions concerning formalities of patent applications can be of some help for assessing industrial applicability, as according to the provisions, the specification shall contain a brief description of the field of applicability of the invention.

2.3 How is industrial applicability treated in proceedings concerning the validity of patents?

There are no provisions for opposition proceedings in Hungary, a patent can be invalidated in a nullity (revocation) action, only. A patent shall be revoked if the subject matter of the patent does not satisfy the patentability requirements, inclusive industrial applicability. Therefore, lack of industrial applicability is a separate ground for revocation.

The party initiating nullity has the burden of proof concerning lack of industrial applicability of an invention.

As patents lacking industrial applicability are granted very seldom, and proving the lack of this requirement can be very difficult, nullity actions are rarely based primarily on this ground. The lack of industrial applicability is sometimes used as a secondary or supplementary ground in revocation actions.

3. Utility

As stated above, the patentability requirement of industrial applicability comes from the statutory law in Hungary. There is no utility requirement in Hungary and the Hungarian Group does not wish to see utility as a requirement for patentability instead of industrial applicability in the future.

4. Conclusions

In the opinion of the Hungarian Group, industrial applicability should be used as a requirement for patentability in order to exclude inventions, the monopolising of which is contrary to the purpose of the patent system. Such inventions are, for example, the above-cited methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body, or inventions that could be applied solely in the private sphere for one's own needs.

The Hungarian group suggests the following definition for industrial applicability.

An invention shall be considered industrially applicable if it can be made or used for exploitation in any kind of industry. Industry shall be understood in its broadest sense according to the Paris Convention.

Considering the still existing differences between the interpretation of industrial applicability and utility by various countries, the Hungarian Group is in favour of further harmonisation of both requirements. The two requirements could be generally used as synonyms if inventions applicable only for private use would be excluded from patentability by the utility requirement as well. Therefore, the Hungarian Group suggests to limit the interpretation of the utility requirement so as to exclude inventions applicable for private purposes, only.

Summary

In Hungary, the patentability requirement of industrial applicability comes from the statutory law, and a definition of industrial applicability is given by the Patent Act of 1995. However, the requirement of industrial applicability plays a minor role in patent examination and revocation proceedings and very few applications are refused or patents are revoked due to the lack of this requirement.

There is no utility requirement in Hungary and the Hungarian Group does not wish to see utility as a requirement for patentability instead of industrial applicability in the future.

The Hungarian Group suggests the following definition for industrial applicability.

An invention shall be considered industrially applicable if it can be made or used for exploitation in any kind of industry. Industry shall be understood in its broadest sense according to the Paris Convention.

The Hungarian law follows Art. 27 TRIPS. It is considered that the terms industrial applicability and utility are synonyms. However, considering the still existing differences between the interpretation of industrial applicability and utility by various countries, the Hungarian Group is in favour of further harmonisation of both requirements. To this end, the Hungarian group suggests to limit the interpretation of the utility requirement so as to exclude inventions applicable for private purposes, only.

Résumé

En Hongrie, la brevetabilité est soumise à l'applicabilité industrielle en vertu de la loi statutaire, la définition de l'applicabilité industrielle étant fournie par la Loi Hongroise des Brevets. Cependant, l'exigence de l'applicabilité industrielle joue un rôle mineur dans l'examen des brevets et dans les procédures de révocation, et très peu de demandes de brevet sont refusées et très peu de brevets sont révoqués en raison d'un manquement à cette exigence.

Il n'existe pas d'exigence d'utilité en Hongrie, et le Groupe hongrois ne souhaite pas voir l'applicabilité industrielle remplacée par l'utilité en guise de condition préalable de la brevetabilité.

Le Groupe hongrois suggère la définition suivante pour l'applicabilité industrielle.

Une invention doit être considérée comme applicable du point de vue industriel si elle peut être effectuée ou utilisée pour l'exploitation dans n'importe quelle branche industrielle. L'industrie est à comprendre dans le sens le plus large, conformément à la Convention de Paris.

La loi hongroise s'en tient à l'Art. 27 TRIPS. Les termes d'applicabilité industrielle et celui d'utilité sont considérés comme synonymes. Néanmoins, vu la persistance de différences dans l'interprétation de l'applicabilité industrielle et de l'utilité dans les différents pays, le Groupe hongrois est favorable à une harmonisation ultérieure de chacune des exigences. Le Groupe hongrois propose à ces fins de limiter l'interprétation de l'exigence d'utilité de façon à exclure les inventions pouvant être appliquées seulement à des fins privées.

Zusammenfassung

In Ungarn ist die gewerbliche Anwendbarkeit als Bedingung für die Patentierbarkeit gesetzlich festgelegt, und die Definition der gewerblichen Anwendbarkeit legt das Ungarische Patentrecht fest. Trotzdem spielt die Bedingung der gewerblichen Anwendbarkeit in den Prüfungs- und Nichtigkeitssverfahren von Patenten eine geringe Rolle, und auf Grund des Fehlens dieser Anforderung werden sehr wenig Anmeldungen zurückgewiesen oder Patente als nichtig erklärt.

In Ungarn wird keine Nutzbarkeit gefordert, und die ungarische Gruppe möchte auch in Zukunft die Nutzbarkeit nicht anstelle der gewerblichen Anwendbarkeit als Bedingung sehen.

Die ungarische Gruppe empfiehlt die folgende Definition für die gewerbliche Anwendbarkeit:

Eine Erfindung ist als gewerblich anwendbar zu betrachten, wenn sie in irgendeiner Weise gewerblich herstellbar oder nutzbar ist. Der Ausdruck Gewerbe ist im weitesten Sinne entsprechend der Pariser Convention zu verstehen.

Das ungarische Recht hält sich an den Art. 27 des TRIPS-Abkommens. Die Ausdrücke gewerbliche Anwendbarkeit und Nutzbarkeit sind als Synonyme betrachtet. In Anbetracht der noch existierenden Differenzen in der Interpretation der Ausdrücke gewerbliche Anwendbarkeit und Nutzbarkeit in den verschiedenen Ländern befürwortet die ungarische Gruppe, die beiden Begriffe in Einklang zu bringen. Deshalb schlägt die ungarische Gruppe vor, die Auslegung der Nutzbarkeit dahingehend einzuschränken, dass nur für private Zwecke geeignete Erfindungen ausgeschlossen werden.