AIPPI

Questionnaire March 2006

Q180 – Content and relevance of industrial applicability and/or utility as requirements for patentability

Answer of the Hungarian Group

in the name of the Hungarian Group

by Marcell KERESZTY (Head of the Working Committee), Judit KERÉNY, Imre MOLNÁR, Dr. Tivadar PALÁGYI and Dr. István POLGÁR

1) When taking into account all the patentability requirements applied in your country, can you quote examples of patentable inventions for which not the least practical use can be expected?

No.

2) In any event, does your Group consider that inventions without any practical use should be patentable? Why?

No. That would be contrary to the basic concept of the patent system, i.e. that patents should serve technical development.

3) If your Group considers that inventions without any practical use should not be patentable, should the required use be ascertained at the filing or priority date? Or should it be sufficient that such use is either reasonably expected or only potential?

Reasonably expected or potential use should be sufficient.

4) Still if your Group considers that inventions without any practical use should not be patentable, should the required use be explicitly described in the patent specification? Or should an explicit description of said practical use be required only when it is necessary for the skilled person? In other words, is it sufficient that the practical use is expected by the skilled person in light of the specification?

It is sufficient that the practical use is expected by the skilled person in light of the specification. [Decree of the Minister of Justice No. 20/2002 (XII. 12.) on Patent Formalities, Art. 4(1) h)]

5) Regarding the words defining the required use, does your Group have better terms to suggest than the terms "specific" (i.e. particular to the claimed subject-matter), "substantial" (i.e. conferring a real-world value to the claimed subject-matter) and "credible", that are classically used in some of the countries applying the utility requirement? If so, please provide a list of candidates.

No.

6) Does your Group feel it essential to refer to a field of use, such as "industry" within the meaning of the Paris Convention?

Yes, in the broadest possible meaning covering all sectors of economic activities.

7) Does your Group feel that the concept of "practical use" needs to be further defined? If so, would your Group agree with a definition providing that an invention has a practical use if it can be implemented in order to produce an effective result? Does your Group have another proposal?

No further definition of "practical use" seems to be necessary. Defining definitions leads to an inflation of legal provisions. It is case law that should define this expression.

8) Does your Group think it necessary to develop a new criterion (namely a criterion different from the two existing criteria of industrial applicability and utility) or does it consider it possible to refer to the existing utility requirement, with or without additional limits?

The Hungarian group is in favour of maintaining the "industrial applicability" (or an equivalent) criterion.

9) Would the adoption of a third harmonized criterion based on a use requirement would seriously conflict with the existing patent law? In particular, would it imply to amend other domestic provisions than those relating to the current requirement of industrial application or utility? If so, which amendment(s) seem(s) necessary? (As an example, the adoption of a third harmonized criterion may lead some countries to adopt separate provisions for the purpose of excluding the patentability of therapeutical methods).

The adoption of a third harmonized criterion based on a use requirement would not seriously conflict with the existing written Hungarian patent and utility model law, however, Art. 5(2) of the Hungarian Act No. XXXIII of 1995 on the Protection of Inventions by Patents relating to excluding the patentability of therapeutical methods would have to be amended as well.