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The Law

The Munich Convention of 5 October 1973 is the foundation for European patent law. It is an open international agreement whose parties can include states from outside the European Community¹. The European patent system has been in effect for more than 30 years and to date around 900,000 applications have been made. This number is growing every year.

Fundamental rules

The most important part of the system laid down by the Munich Convention is the opportunity to make a single application and obtain a single protection title within each of the contracting states. Needless to say, the requirements for patentability (novelty, inventive step, industrial applicability) as well as the basis for patent revocation are the same. It is for the applicant to choose the states where the invention is to be protected.

What is an invention?

Under Art. 52 of the Convention, patents are granted to inventions which:

- are new;
- involve an inventive step;
- can be applied in industry.

Novelty - an invention is new if it does not form part of the existing state of the art in technology. The state of the art is anything that was disclosed to the public prior to the application date in oral or written form, through use or in any other way.

Inventive step - an invention is said to involve an inventive step if, with respect to the existing state of the art, it is not obvious for a person skilled in the art. The inventive step requirement is designed to prevent the patenting of obvious solutions, which would slow down the development of technology.

Industrial applicability - this requirement is met if the subject matter of the invention can be manufactured or used in industry of any kind, including agriculture.

Exclusions or what cannot be patented

The Convention excludes the following solutions from the definition of "invention", making them unpatentable:

- discoveries, scientific theories and mathematical methods;
- aesthetic creations;
- schemes, rules and methods for performing mental acts, playing games or doing business, and computer programs;
- presentations of information.

Nevertheless, the above-mentioned subject matter or activities are excluded from protection as such.

Moreover, it is not possible to protect

- methods for the medical treatment of animals and humans;
- diagnostic methods applied to animals and people.

Furthermore, the following categories of solutions are excluded, too:

- inventions whose publication or exploitation is contrary to public order or morality;
- plant or animal varieties and other biological processes for the production of plants or animals. This provision does not apply to microbiological processes or to the products thereof, which are patentable.

On the other hand there is no obstacle to the patentability of chemical substances, including medicines, their specific compositions, or diagnostic devices used in the above methods.

Benefits of obtaining a European Patent

A European Patent holder is granted protection in many countries following a single application, which is less expensive than obtaining protection in each country separately. From the point of view of states that are members of the European Patent Organisation, this diminishes the need to expand national patent offices since the number of national applications instantly decreases.

Under Art. 63 of the Convention, a protection granted by European Patent law lasts for 20 years (from the date of filing)

Under Art. 69 paragraph. 1 of the Convention, the subject matter of the protection is determined by the content of the patent claims set out in the patent application. Descriptions and drawings are used to interpret the claims. In other words, the patent claims are used in the European Patent Office proceedings to show what exactly is to be protected by the exclusive right in the form of a patent.

It should be stressed, however, that in the Protocol on the Interpretation of Art. 69, the scope of protection is broader than the wording of this article suggests.

Possibility of patent revocation

Once a patent has been granted, the competency for any further decisions falls wholly with the national patent authorities. The Convention, however, lays down the common grounds for revocation, which can happen in the following cases:

- if the patent subject matter is not patentable according to the criteria specified above;
- if the patent description does not disclose the invention in a manner that would be complete and clear enough to enable a person skilled in the art to implement it;
- if the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 61, beyond the content of the earlier application as filed;
- if the protection conferred by the patent has been extended;
- if the patent holder was not entitled to the patent under the terms of the Convention.

1. An updated list of EPO Contracting States can be found at: www.european-patent-office.org