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**ASSOCIATION INTERNATIONALE
POUR LA PROTECTION DE LA PROPRIETE INTELLECTUELLE**

**INTERNATIONAL ASSOCIATION
FOR THE PROTECTION OF INTELLECTUAL PROPERTY**

**INTERNATIONALE VEREINIGUNG
FÜR DEN SCHUTZ DES GEISTIGEN EIGENTUMS**

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Report
Special Committee Q180

Content and relevance of industrial applicability and/or utility as requirements for patentability
Le contenu et la pertinence des critères de l'application industrielle et/ou de l'utilité comme conditions de brevetabilité
Inhalt und Bedeutung der gewerblichen Anwendbarkeit und/oder Nützlichkeit („utility“) als Patentierungsvoraussetzungen

Report Q180

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

Composition of the Committee

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Background

Article 27 TRIPS provides that, subject to certain exceptions, patents shall be available for any invention, whether product or process, in all fields of technology, provided that it is new, involves an inventive step and is capable of industrial application.

According to the footnote relating to Article 27 TRIPS, for the purpose of said article, the term "*capable of industrial application*" may be deemed by a Member State to be synonymous with the term "*useful*".

The Draft SPLT under discussion at the WIPO contains a provision in Article 12(4) which deals with industrial applicability and/or utility as a third condition of patentability besides novelty and non obviousness.

In its Resolution Q170, which relates to SPLT, the AIPPI reiterated the opinion that it is in the users' interest to adopt a harmonisation treaty on at least some substantive patent aspects at the earliest possible date. Accordingly, it decided to reserve for future discussions, leading to "SPLT2", the most difficult issues among which is Article 12(4) relating to the third requirement for patentability.

With Q180, AIPPI decided to consider more thoroughly the similarities and differences of the two current criteria and to study whether it is possible to find a third harmonized criterion.

The Geneva Resolution of 2004 confirmed the need for a third harmonized criterion, set some guidelines and concluded that further studies should be conducted for the purpose of defining the content of said third harmonized criterion.

Regarding the guidelines set in said Resolution, it was notably agreed that the third criterion at issue is not intended to address any requirement of technical content, and that patentability exclusions based on morality, public order, ethics or the like should be defined by each country independently from said criterion.

The Executive Committee in Berlin in 2005 confirmed the possibility and the advantages of a third harmonized criterion.

The session held in Berlin also helped figure out the questions to be solved for defining the content of a third harmonized criterion.

In this respect, it was pointed out that there are two options, namely either developing a new criterion, different from the two existing criteria, or adopting one of the two existing criteria.

A Questionnaire was drawn up further to the Berlin Executive Committee.

This Report summarises the replies received from 28 Groups to this Questionnaire.

The attached tables give a more detailed view of these replies.

This Report also refers to two recent decisions issued respectively by the Board of Appeal of the EPO and by the United States Court of Appeals for the Federal Circuit (CAFC):

- **EPO**
  T 0870/04, May 11, 2005, BDP1 Phosphatase/Max Planck,
- **CAFC**
  September 7, 2005, 421 F.3d 1365 In re Dane K. Fisher and Raghunath v. Lalgudi

These two decisions were analysed in a recent article of Ernest Gutmann, "*La convergence des exigences de susceptibilité en matière d'application industrielle et d'utilité selon les droits de brevets européens et américain*" ("*Convergence of the industrial application and utility requirements under European and US law*") (in *Propriétés Intellectuelles*, 2006, n° 20, p. 340) and show a harmonized construction of the criteria.

Hereafter, the results of the survey are discussed:

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?

For example, what about:

- *a chemical compound without any expected use?*
- *nucleotide or aminoacid sequences without any expected use?*
- *perpetual motion machines?*

An overwhelming majority (24 replies out of 28) confirm the absence of examples of inventions which are patentable although not the least practical use can be expected.

The countries which do not reach the same conclusion seem to focus only on the industrial applicability criterion (which requires that the subject of the invention can be manufactured *or* used in the industry) and to forget the impact of the other patentability requirements.

However, the grounds for this prevailing conclusion vary from countries to countries.

Italy and Malaysia mention a requirement for "*a certain utility*" (Italy) or "*some form of use in the form that a patentable invention provides in practice the solution to a specific problem in the field of technology*" (Malaysia).

On the contrary, other countries, such as the Netherlands, point out that the non patentability of inventions without the least practical use may result from different requirements: for example, for homeopathic medicines, the lack of practical use would result from a lack of enablement, while, for other inventions, it stems from a lack of industrial applicability.

The German Group points out that the non patentability of chemical compounds or nucleotide or aminoacid sequences without any practical use results from a lack of inventive step.

Therefore, the replies to question 1 seem to confirm that the routes are sometimes different but the result the same, namely the non patentability of inventions without any practical use.

It should be noted that some answers tend to establish a link between the industrial applicability requirement and the requirement for a technical content: however, the Resolution adopted in Geneva in 2004 had concluded that the third criterion at issue is not intended to address any requirement of technical content.

It should also be noted that the US reply reminds of the US case law denying patentability to a process producing a compound with no known application.

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

Consistently with the answer to previous question 1, a great majority of Groups is in favour of the non patentability of inventions without practical use.

However, it is interesting to note that four countries would accept the patentability of inventions without practical use, although they had no example thereof: Georgia, The Netherlands, the Philippines and the UK.

The latter points out that the utility of the invention may appear only after the filing of the patent.

It should be noted that this approach seems refused in the decision T 0870/04 of the EPO, which states that *"the purpose of granting a patent is not to reserve an unexplored field of research for an applicant"*.

Canada and the U.S. raise a difficulty regarding the adjective "*practical*" which they consider not clear enough: they consider that this additional word is not necessary and may lead to confusion.

However, it is interesting to note that this word is used in the recent EPO and CAFC decisions which are quoted above.

In particular, the EPO decision T 0870/04 states that industrial applicability cannot be acknowledged if no "*practical*" application – or use – can be identified in the patent application.

Similarly, the CAFC decision of September 7, 2005 uses the phrase "*practical utility*" as a synonymous with the phrase "*substantial utility*", in accordance with some previous decisions.

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?

The Groups are more divided when considering whether the required use should be ascertained (proved) or only reasonably expected and when this requirement should be applied.

However, the majority of Groups favours a reasonable expectation at the filing date (or the priority date, if any) (14, against 11).

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?

A clear majority (21 out of 28) of Groups considers that an explicit description of the expected use should be required only when necessary for the skilled person.

This choice is consistent with the rule according to which the specification shall be read with the eyes of the skilled person.

It is also compatible with the requirement of the Directive 98/44/EC of July 6, 1998 relating to biotechnology which provides , in its Article 5, § 3, that "*the industrial application of a sequence or a partial sequence of a gene must be disclosed* ("*concrètement exposé*" in French), *in the patent application*", because, in the field of biotechnology, the practical application of the invention may be presumed to be available to the skilled person only if explicitly disclosed.

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.*

Interestingly the two countries applying the utility requirement, namely the US and Canada, do not wish to specify that the required use – or utility – is "*specific*", "*substantial*" and "*credible*".

Although these terms are used in U.S. case law, the U.S. Group considers that these terms are not necessary.

The Canadian Group considers they are "*overly restrictive*" in some instances, opinion shared by Germany.

The main argument in favour of these terms is put forward by the Netherlands: it is better to keep a known wording.

Only a small number of countries have other candidates.

The number of countries classified, in the attached tables, as "*implicitly accepting*" those terms (about 10 for each term) is not really significant because they only state that they do not have better proposals.

Among them other terms suggested, one should note the term "*reproducible*" (Canadian Group) and the terms "*reliable*" (Japan) or "*foreseeable*" which seem to convey a similar idea.

Therefore, it does not really seem necessary to use the terms "*specific, substantial and credible*".

The most relevant term may be "*reproducible*".

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

According to a clear majority (17 against 10), it is not essential to refer to a field of use such as "*industry*" within the meaning of the Paris Convention.

About 4 countries would be in favour of referring to a use in any sector of economic activity.

However, such a reference would probably raise a difficulty in the utility countries, which have no objection against patents protecting inventions the use of which is limited to the private (non economic) sphere.

Furthermore, the term "*economic*" (or equivalent) may lead to construction difficulties.

About 3 Groups perceives, in the term "*industry*", a reference to the field of technology.

However, this direction goes against with the decision, already taken, to separate the definition of the third patentability criterion and the requirement for a technical content.

Therefore, it does not seem necessary to try to define a field of use.

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?*

It is interesting to note that, for 11 Groups, it is not necessary to define further the concept of "*practical use*".

Several Groups mention the dangers of definitions, such as the risk of inflation or narrow interpretation, while the Greek Group would like a definition as detailed as possible (probably in order to insure a real harmonization).

A good compromise may be a definition broad enough to be acceptable by the majority of Groups.

When considering the possible definitions, 12 Groups are in favour of the proposed definition, against 9.

Among the 9 Groups disagreeing with the proposed definition, 3 comments point out that the term "*effective*" should be avoided because creating confusion and because in contradiction with US approach.

This risk seems real and it seems reasonable to amend the proposed definition to avoid the term "*effective*".

The Canadian Group has a difficulty with the term "*practical*" which goes against the wording of a decision of its highest Court.

However, the term "*practical*" present the huge advantage of being used both in the recent EPO and CAFC decisions which are quoted above.

If it raises a serious difficult, it might be replaced by a term such as "*concrete*".

Some other Groups introduce again a reference to the technical character of inventions.

However, such a reference should be avoided for the reasons set out above.

Likewise, it seems better not to resort to the term "*industrial*", which would raise the same difficulties as the term "*industry*".

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?*

It is interesting to note that only 3 Groups are in favour of the creation of a new criterion.

A great majority prefer to use one of the current criteria (11 in favour of utility as such, 5 in favour of a modified utility and 13 in favour of industrial application).

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).*

Most interestingly, 27 Groups (out of 28 Groups) state that the adoption of a third criterion based on a use requirement would not seriously conflict with the patent law in force in their countries.

Conclusion

The replies to the Questionnaire, as well as the recent EPO and CAFC case law, tend to show that, in practice, the content of the industrial applicability and utility requirements is very similar: an invention is both useful and industrially applicable if at least one practical use or application is expected by (or is available to) the skilled person in light of the specification at the filing (or priority) date.

The next Congress in Goteborg should lead to discuss whether such a harmonized construction would solve the difficulties raised by the Draft SPLT, without obliging any country to replace its current criterion.

It should also lead to check whether this harmonized construction meets the concerns of the Groups which emphasized the advantage of keeping known terms as much as possible and of avoiding the use of overly restrictive terms.

Should it seem necessary to consider further the requirement of technical content, further studies should be conducted by a new committee or other body suitable for that issue.

1. Examples of patentable inventions for which not the least practical use can be expected

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?
For example, what about:
- a chemical compound without any expected use?
- nucleotide or aminoacid sequences without any expected use?
- perpetual motion machine?

	Patentability of chemical compounds without any expected use		Patentability of nucleotide or aminoacid sequences without any expected use		Patentability of perpetual motion machine		Other examples or remarks
	Yes	No	Yes	No	Yes	No	
Argentina		×		×		×	
Brazil		×		×		×	
Canada		×		×		×	
Denmark		×		×		×	
Egypt		×		×		×	
Estonia	×(1)		×(1)			×	
Finland		×		×		×	
Georgia		×		×		×	
Germany		×(2)		×(2)		×(2)	
Greece		×		×		×	
Hungary		×		×		×	
Indonesia		×		×		×	
Italy		×(3)		×(3)		×(3)	
Japan		×		×		×	
Malaysia		×(4)		×(4)		×(4)	
Mexico		×		×		×	Not patentable: - salt without any specific use - computer generated compounds the purpose or expected use of which is unknown
Nigeria	No answer						Patentable? - pharmaceutical compounds produced from experiments with transgenic animals
The Netherlands		×(5)		×		×(6)	
Philippines	No answer						Patentable without any use: - repositionable adhesive, - plastic insect, - wonder drug, without any specified use
Poland		×		×		×	Industrial application must be indicated
Republic of Korea		×		×		×	
South Africa	×		×			×	
Spain		×		×		×	
Sweden		×		×		×	
Switzerland		×		×		×	
The United Kingdom		×		×		×	
The United States		×		×		×	
Venezuela		×		×		×	
Total number	2	24	2	24	2	24	

1. "*If it can be manufactured in economy*"
2. For lack of inventive step or enablement
3. Italy : This results from the concept of invention, which *"inherently implies a certain utility"*.
4. Malaysia: *"Our patent law provisions require some form of use in the form that a patentable invention provides in practice the solution to a specific problem in the field of technology"*
5. For lack of industrial applicability
6. For lack of enablement

2. Patentability of inventions without any practical use

In any event, does your group consider that inventions without any expected practical use should be patentable? Why?

	Relevancy of the patentability of inventions without any practical use		
	Yes	No	Remarks
Argentina		×	
Brazil		×	
Canada		×	Problem with the word "practical"
Denmark		×	
Egypt		×	
Estonia	×		
Finland		×	
Georgia	×(1)		
Germany		×	
Greece		×	
Hungary		×	"According to the basic concept of the patent system, patents should serve technical development"
Indonesia		×	Indonesian law "requires inventions to be a solution to a technical problem"
Italy		×	"A patentable invention should solve a technical problem"
Japan		×	
Malaysia		×	An invention should solve a problem in a field of technology
Mexico		×	Inventions without any practical use would create a monopoly without giving back anything to the society
Nigeria		×	Patents for inventions without any use would "stifle development and create financial burden on R & D"
The Netherlands	×(2)	×(3)	
Philippines	×		Because some inventions become practical in the near future
Poland		×	Patents for inventions without any practical use would be blocking for future inventions supported by real embodiments
Republic of Korea		×	Inventions without any practical use do not contribute to the development of industry
South Africa		×	The burden of proof should be on the person alleging inutility
Spain		×	
Sweden		×	
Switzerland		×	
The United Kingdom	×		Because what is not useful today may be so tomorrow
The United States		×	
Venezuela		×	"The invention is usable when it can be materially workable in practice for providing with a higher or lower degree of perfection the industrial result pursued"
Total number	5	24	

1. If the subject of the patent does not breach the public interest
2. If if the lack of enablement can be remedied
3. For invention without any practical use

3. Certainty of the required use

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?

	Certainty required at the filing or priority date	Reasonable expectation or potential use sufficient	Other solutions or comments
Argentina	×		
Brazil		×	
Canada		×	
Denmark	×		
Egypt		×	At the filing (or priority) date
Estonia		×	
Finland		×	
Georgia	No use required		
Germany		×	Use reasonably expected from the content of the applictation
Greece	×		
Hungary		×	
Indonesia	×		
Italy	×		
Japan	×		
Malaysia	×		
Mexico		×	At the filing (or priority) date
Nigeria	×		
The Netherlands		×	
Philippines		×	
Poland	×		
Republic of Korea		×	
South Africa		×	Potential use should be sufficient and should be presumed until the contrary is proved
Spain			Analysis case by case
Sweden		×	At the filing (or priority) date
Switzerland	×		
The United Kingdom	Against use requirement		At the filing (or priority) date
The United States	×		
Venezuela		×	At the filing (or priority) date
Total number	11	14	

4. Description of the required use

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?

	Explicit description always required	Explicit description required only if necessary
Argentina		×
Brazil		×
Canada		×
Denmark		×
Egypt		×
Estonia	No use required	
Finland		×
Georgia	No use required	
Germany		×
Greece	×	
Hungary		×
Indonesia	×	
Italy		×
Japan		×
Malaysia		×
Mexico		×
Nigeria	×	
The Netherlands		×
Philippines		×
Poland	×	
Republic of Korea		×
South Africa		×
Spain	×	
Sweden		×
Switzerland		×
The United Kingdom		×
The United States		×
Venezuela		×
Total number	5	21

5. Words defining the required use

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.

	Specific	Substantial	Credible	Other words or comments
Argentina	implicitly accepted	implicitly accepted	- "tangible" - "technically feasible"	
Brazil	explicitly accepted	explicitly accepted	explicitly accepted	
Canada	explicitly refused	explicitly refused	explicitly accepted	*"specific"* and *"substantial"* may be *"overly restrictive"* in some instances. Added term: *"reproducible"*
Denmark	implicitly accepted	implicitly accepted	implicitly accepted	
Egypt	explicitly accepted	implicitly refused	implicitly refused	
Estonia	implicitly refused	implicitly refused	implicitly refused	"manufactured or used in economy"
Finland	exlicitly refused	explicitly refused	explicitly refused	Accepts only EPO and Finnish vocabulary
Georgia	implicitly refused	explicitly accepted	implicitly refused	
Germany	explicitly refused	explicitly refused	explicitly refused	Because those terms may become "*over restrictive*"
Greece	implicitly refused	implicitly refused	implicitly refused	- "distinctive" - "distinguishable"
Hungary	implicitly accepted	implicitly accepted	implicitly accepted	
Indonesia	explicitly accepted	explicitly accepted	explicitly accepted	
Italy	implicitly accepted	implicitly accepted	implicitly accepted	
Japan	implicitly accepted	implicitly accepted	"reliable"	
Malaysia	implicitly refused	implicitly refused	implicitly refused	"provides in practice a solution to a problem in that field of technology and can be made or used in any kind of industry"
Mexico	implicitly refused	implicitly refused	implicitly refused	"forseeable"
Nigeria	implicitly accepted	"significant"	implicitly accepted	
The Netherlands	explicitly accepted	explicitly accepted	explicitly accepted	Better to keep a known wording
Philippines	no answer	no answer	no answer	
Poland	implicitly accepted	implicitly accepted	implicitly accepted	
Republic of Korea	implicitly refused	implicitly refused	implicitly refused	- "actual or potential use" - "recognized or potential use"
South Africa	implicitly accepted	implicitly accepted	implicitly accepted	
Spain	implicitly accepted	implicitly accepted	implicitly accepted	
Sweden	implicitly accepted	implicitly accepted	implicitly accepted	
Switzerland	implicitly accepted	implicitly accepted	implicitly accepted	
The United Kingdom	explicitly refused	explicitly refused	explicitly refused	
The United States	explicitly refused	explicitly refused	explicitly refused	Because those terms do not appear in the statutes and are not necessary
Venezuela	implicitly accepted	implicitly accepted	implicitly accepted	
Total number	4 explicitly accepted 12 implicitly accepted 6 implicitly refused 5 explicitly refused	4 explicitly accepted 11 implicitly accepted 6 implicitly refused 6 explicitly refused	4 explicitly accepted 10 implicitly accepted 7 implicitly refused 6 explicitly refused	

6. Reference to a field of use

Does your group feel it essential to refer to a field of use, such as “industry” within the meaning of the Paris Convention?

	Essential to refer to a field of use such as *"industry"* within the meaning of the Paris Convention		Other suggestions or comments
	Yes	No	
Argentina		×	The guidelines of the Argentina Patent Office refer to any physical activity of "technical character"
Brazil		×	The term "industry" may be replaced for clarification
Canada		×	The term "industry" leads to confusion and should be avoided
Denmark		×	"An economic sector"
Egypt	×		
Estonia	×		
Finland		×	
Georgia	No use required		
Germany		×	
Greece	×		Because included in Greek law
Hungary	×		"Industry" in a broad meaning covering all sectors of economic activity
Indonesia		×	The required use should cover "any development in the field of technology and having a technical content"
Italy	×		"Industry" in a broad meaning covering any "economical sector"
Japan		×	
Malaysia	×		"Industry" in its broadest sense
Mexico		×	The meaning of "industry" should be expanded. Suggests a reference to the technical field or the sector of economy?
Nigeria	×		
The Netherlands	×		New definition would create confusion
Philippines		×	
Poland		×	
Republic of Korea		×	
South Africa		×	Satisfied with its current provisions requiring that the invention is "capable of being used or applied in trade or industry or agriculture"
Spain	×		
Sweden		×	
Switzerland		×	
The United Kingdom		×	
The United States		×	In the U.S., utility may be satisfied in a non-industrial setting
Venezuela	×		
Total number	10	17	

7. Concept of *"practical use"*

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 definition required	In favor of the proposed definition		Other suggestions or comments
		Yes	No	
Argentina		×		Definition close to utility
Brazil	×	×		
Canada			×	Canada has a problem with "practical use" because its highest Court stated that the "practical usefulness of the invention does not matter": "It is sufficient utility to support a patent that the invention gives either a new article, or a better article, or cheaper article, or affords the public a useful choice"
Denmark	×	×		
Egypt		×		
Estonia		×		
Finland	×			"Applicable in practice" sufficiently defined
Georgia	×			
Germany		×		Good starting point for the Congress
Greece		no answer		Wishes a detailed definition
Hungary	×			Definitions lead to inflation
Indonesia			×	Indonesian Law provides that an invention is a solution to a technical problem and can be applied in industry
Italy			×	"An invention has a practical use if its implementation **according to the specification** is expected by the skilled person to produce an effective **technical** result"
Japan			×	"The requirement of "practical use" should be met if a use is specific, substantial and reliable"
Malaysia			×	"The invention has to provide a solution to a specific problem in the field of technology and can be made or used in any kind of industry"
Mexico		×		The proposed definition should be supplemented to include the "satisfaction of necessities criteria"
Nigeria		×		The proposed definition is "a given". The "practical use" "must be defined in a unambiguous categorical manner that will not dilute the essence be sought"
The Netherlands	×		×	The term "effective" may create confusion. "It should be sufficient that a skilled person, on the basis of the patent description, can reasonably expect a certain use of the invention"
Philippines		×		
Poland	×	×		The proposed definition should be supplemented to require an "effective and repeatable result"
Republic of Korea	×			
South Africa	×			"Introducing definitions increases the risk of a narrow interpretation"
Spain			×	"The proposed definition should be supplemented to exclude the patentability of inventions that cannot be reproduced or that do not materialise in a corporeal result" and to require a description of "**how** the invention can be put in practice"
Sweden			×	The term "effective" creates confusion
Switzerland	×	×		
The United Kingdom	×			
The United States			×	The terms "effective result" go against current US approach because a process producing a chemical compound produces an "effective result" even if the compound has no known applicability and a mathematical algorithm to calculate results could be effective even if those results do not confer a real world value"
Venezuela		×		
Total number	11	12	9	

8. New criterion

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?

	Necessity of a new criterion	Utility as such	Utility modified	Industrial application	Other or comments
Argentina	If impossible to harmonize the meaning of the current criteria in one single definition	Maybe feasable	×		"Harmonization of the meaning of existing criteria in one single definition (1st choice)"
Brazil				×	"The practical use criterion is an element of construction of the industrial application requirement"
Canada		×			
Denmark		×	×	×	
Egypt		×		×	
Estonia		× (with the Paris Convention meaning)			
Finland	×				
Georgia					"Novelty and inventive step are sufficient"
Germany		×			"Without the case law developped in utility countries"
Greece		×		×	"However, the existing criteria should be more specifically defined by law"
Hungary				×	
Indonesia		×		×	
Italy				×	"Not necessary to develop a new criterion since the "industrial applicability" would approximate the utility requirement in all cases where the implementation of the invention produces an effective technical result"
Japan	×				"The two current approaches are substantially the same and the best would be have these two concepts developed into a single concept"
Malaysia				×	
Mexico	×				"The development of a new criteria is necessary to fuse the existing industrial applicability and utility criteria"
Nigeria			×		"Utility with some flexibilities"
The Netherlands					"Harmonization of the interpretation of the existing criteria in one single definition, including the technical requirement"
Philippines		×	×		
Poland		?		?	
Republic of Korea				× (as interpreted in Korea)	
South Africa			×		"Opposed to any further restrictived criteria and in favor of existing restrictions to be liberalised"
Spain				×	
Sweden		×		×	"The choice of an existing concept allows to build on existing doctrine and case law"
Switzerland		×		×	
The United Kingdom				×	

9. Risk of conflict

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).

	Serious conflict between use requirement and existing law?			Necessary amendments?
	Yes	No	Other	
Argentina		×		No substantial amendments
Brazil		×		None
Canada		×		None
Denmark		×		None
Egypt		×		None
Estonia		×		None
Finland		×		None
Georgia		×		
Germany		×		- Methods for treatment of the human or animal body by surgery or therapy - diagnostic methods - biotechnical inventions
Greece		×		None
Hungary		×		Therapeutical methods
Indonesia		×		None (at present)
Italy		×		None
Japan		×		Therapeutical methods
Malaysia	×			The scope of patentable inventions would be limited
Mexico	No answer			Yes (no more precision)
Nigeria	No answer			No answer
The Netherlands		×		None
Philippines		×		None
Poland			Depends on the criterion	(Maybe) therapeutical methods
Republic of Korea		×		None
South Africa		×		Yes (no more precision)
Spain		×		The rule that: - software - business methods - scientific theories, mathematical methods, scientific works, ways of presentation of information are not patentable
Sweden		×		None
Switzerland		×		None
The United Kingdom			A third harmonized criterion would only introduce new uncertainties in the existing patent law	
The United States			Conflict if the 3rd criterion prohibits business or therapeutical method patents	
Venezuela		×		Maybe
Total number	1	22	3	