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review

Patenting Biotechnological Inventions in Europe

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Introduction

The patent system has been able to provide the protection for the achievements of different technologies and in that way it has supported further development and growth of the industry where those achievements were implemented. Modern technologies like information technology and biotechnology with genetic engineering that appeared in the 70s have overgrown the frames of the existing patent system because of their exponential development during the last thirty years. Industry that invests a huge amount of money in these technologies, especially in the field of biotechnology, where the results are very uncertain, has started to claim changes in the patent system.

The term biotechnology represents a huge and comprehensive field of science and its application. Genetic information and its expression are the most important and innovative part of current knowledge in biotechnology. Rapid development of biotechnology in the last years is based mainly on these two items. Modern biotechnology has broken many basic principles of patentability and in addition to the above, has set out many ethical and moral issues related to «the patenting of life». There were several attempts, some of them also controversial, to shape an appropriate legal framework for the protection of biotechnological inventions, especially inventions in the domain of molecular biology. Different countries have generated different solutions which have resulted in the development of several different patent practices.

The purpose of this paper is to show the current approach of the European Patent Office (EPO) in regard to the prosecution of patent applications and to the patent granting in the field of biotechnology.

Biotechnological Patents at the EPO

The present centralized European system for granting patents originated in 1973 when the European Patent Convention (EPC) was adopted. The original version was partly changed and amended later but the basic principles have remained the same (the most recent changes were proposed at the conference in Munich, November 2000). Today, it is possible to get protection for an invention by a single European patent application filed at the EPO in 24 European countries-members of the EPC and in six so-called «extension countries» that have signed a special «extension agreement» (Table 1). The whole procedure for granting patents (from filing of a patent application to its examination and final grant of patent) is centralized and performed by the EPO. After the grant the «European patent» becomes a bundle of independent national patents, which are further in terms of validity, enforcement and interpretation of common rules of the EPC related to the determination of scope of granted protection subject to national legislation and legal practice.

According to the EPC novelty, the substantive requirements for patentability are inventive step and industrial applicability, as it is the case everywhere in the world. Discoveries and methods for treatment of human or animal body by surgery or therapy and diagnostic methods practiced on human or animal body are not regarded as patentable inventions. Inventions, the publication of which would be contrary to «order public» or morality, plant or animal varieties and essentially biological processes for the production of plants or animals are specifically excluded from patentability. The EPC requires that a European patent application discloses the inventions in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. The subject matter for which the protection is sought should

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