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INTELLECTUAL
PROPERTY



Treaty Series No. 70 (1980)

Convention on the Unification of Certain Points of Substantive Law on Patents for Invention

Strasbourg, 27 November 1963

[The United Kingdom instrument of ratification was deposited on 16 November 1977
and the Convention entered into force on 1 August 1980]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
August 1980*

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CONVENTION ON THE UNIFICATION OF CERTAIN POINTS OF SUBSTANTIVE LAW ON PATENTS FOR INVENTION

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose, among others, of facilitating their economic and social progress by agreements and common action in economic, social, cultural, scientific, legal and administrative matters;

Considering that the unification of certain points of substantive law on patents for invention is likely to assist industry and inventors, to promote technical progress and contribute to the creation of an international patent;

Having regard to Article 15 of the Convention for the Protection of Industrial Property signed at Paris on 20th March 1883,⁽¹⁾ revised at Brussels on 14th December 1900,⁽²⁾ at Washington on 2nd June 1911,⁽³⁾ at The Hague on 6th November 1925,⁽⁴⁾ at London on 2nd June 1934,⁽⁵⁾ and at Lisbon on 31st October 1958,⁽⁶⁾

Have agreed as follows:

ARTICLE 1

In the Contracting States, patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step. An invention which does not comply with these conditions shall not be the subject of a valid patent. A patent declared invalid because the invention does not comply with these conditions shall be considered invalid *ab initio*.

ARTICLE 2

The Contracting States shall not be bound to provide for the grant of patents in respect of

- (a) inventions the publication or exploitation of which would be contrary to "*ordre public*" or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by a law or regulation;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to micro-biological processes and the products thereof.

⁽¹⁾ Commercial No. 28 (1884), C. 4043.

⁽²⁾ Treaty Series No. 15 (1902), Cd. 1084.

⁽³⁾ Treaty Series No. 8 (1913), Cd. 6805.

⁽⁴⁾ Treaty Series No. 16 (1928), Cmd. 3167.

⁽⁵⁾ Treaty Series No. 55 (1938), Cmd. 5833.

⁽⁶⁾ Treaty Series No. 38 (1962), Cmd. 1715.

ARTICLE 3

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry including agriculture.

ARTICLE 4

1. An invention shall be considered to be new if it does not form part of the state of the art.

2. Subject to the provisions of paragraph 4 of this Article, the state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of the patent application or of a foreign application, the priority of which is validly claimed.

3. Any Contracting State may consider the contents of applications for patents made, or of patents granted, in that State, which have been officially published on or after the date referred to in paragraph 2 of this Article, as comprised in the state of the art, to the extent to which such contents have an earlier priority date.

4. A patent shall not be refused or held invalid by virtue only of the fact that the invention was made public, within six months preceding the filing of the application, if the disclosure was due to, or in consequence of:

- (a) an evident abuse in relation to the applicant or his legal predecessor,
or
- (b) the fact that the applicant or his legal predecessor has displayed the invention at official, or officially recognised, international exhibitions falling within the terms of the Convention on international exhibitions signed at Paris on 22nd November 1928⁽⁷⁾ and amended on 10th May 1948.⁽⁸⁾

ARTICLE 5

An invention shall be considered as involving an inventive step if it is not obvious having regard to the state of the art. However, for the purposes of considering whether or not an invention involves an inventive step, the law of any Contracting State may, either generally or in relation to particular classes of patents or patent applications, for example patents of addition, provide that the state of the art shall not include all or any of the patents or patent applications mentioned in paragraph 3 of Article 4.

ARTICLE 6

Any Contracting State which does not apply the provisions of paragraph 3 of Article 4 shall nevertheless provide that no invention shall be validly protected in so far as it includes matter which is or has been validly protected by a patent in that State which, though not comprised in the state of the art, has, in respect of that matter, an earlier priority date.

⁽⁷⁾ Treaty Series No. 9 (1931), Cmd. 3776.

⁽⁸⁾ Treaty Series No. 57 (1951), Cmd. 8311.

ARTICLE 7

Any group of Contracting States who provide for a common patent application may be regarded as a single State for the purposes of paragraph 3 of Article 4, or of Article 6.

ARTICLE 8

1. The patent application shall contain a description of the invention with the necessary drawings referred to therein and one or more claims defining the protection applied for.

2. The description must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

3. The extent of the protection conferred by the patent shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

ARTICLE 9

1. This Convention shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Convention shall enter into force three months after the date of deposit of the eighth instrument of ratification or acceptance.⁽⁹⁾

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of deposit of its instrument of ratification or acceptance.

ARTICLE 10

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any Member of the International Union for the Protection of Industrial Property which is not a Member of the Council of Europe to accede thereto.

2. Such accession shall be effected by depositing with the Secretary-General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

ARTICLE 11

1. Any Contracting Party may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by notification addressed to the Secretary-General of the Council of Europe, extend this

⁽⁹⁾ The Convention entered into force on 1 August 1980.

Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 13 of this Convention.

ARTICLE 12

1. Notwithstanding anything in this Convention, each Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, temporarily reserve, for the limited period stated below, the right:

- (a) not to provide for the grant of patents in respect of food and pharmaceutical products, as such, and agricultural or horticultural processes other than those to which paragraph (b) of Article 2 applies;
- (b) to grant valid patents for inventions disclosed within the six months preceding the filing of the application, either, apart from the case referred to in paragraph 4 (b) of Article 4, by the inventor himself, or, apart from the case referred to in paragraph 4 (a) of Article 4, by a third party as a result of information derived from the inventor.

2. The limited period referred to in paragraph 1 of this Article shall be ten years in the case of sub-paragraph (a) and five years in the case of sub-paragraph (b). It shall start from the entry into force of this Convention for the Contracting Party considered.

3. Any Contracting Party which makes a reservation under this Article shall withdraw the said reservation as soon as circumstances permit. Such withdrawal shall be made by notification addressed to the Secretary-General of the Council of Europe and shall take effect one month from the date of receipt of such notification.

ARTICLE 13

1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary-General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary-General of such notification.

ARTICLE 14

The Secretary-General of the Council of Europe shall notify the member States of the Council, any State which has acceded to this Convention and the Director of the International Bureau for the Protection of Industrial Property of:

- (a) any signature;
- (b) any deposit of an instrument of ratification, acceptance or accession;

- (c) any date of entry into force of this Convention;
- (d) any declaration and notification received in pursuance of the provisions of paragraphs 2 and 3 of Article 11;
- (e) any reservation made in pursuance of the provisions of paragraph 1 of Article 12;
- (f) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 12;
- (g) any notification received in pursuance of the provisions of paragraph 2 of Article 13 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 27th day of November 1963 in English and in French⁽¹⁰⁾, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory and acceding States and to the Director of the International Bureau for the Protection of Industrial Property.

SIGNATURES

<i>State</i>	<i>Date of signature</i>	<i>Date of deposit of ratification or acceptance (A)</i>
Belgium	20 Dec. 1963	
Denmark	27 Nov. 1963	27 Feb. 1980*
France*... ..		
Germany, Federal Republic of†		30 Apr. 1980
Ireland, Republic of	11 Mar. 1964	25 Jan. 1968
Italy*	27 Nov. 1963	
Liechtenstein	6 Nov. 1979	6 Nov. 1979
Luxembourg	21 Jan. 1966	14 Sept. 1977
Netherlands	13 Dec. 1963	
Sweden	27 Nov. 1963	{ 3 Mar. 1978 9 Nov. 1977* 16 Nov. 1977
Switzerland*		
United Kingdom		

* For declarations and reservations see page 8.

† Applies to Berlin (West).

⁽¹⁰⁾ The French language text is included in European Treaty Series No. 47, published by the Council of Europe and available through Agency Section, Her Majesty's Stationery Office, P.O. Box 569, London, SE1 9NY (Tel. 01-928 6977, ext. 410).

DECLARATIONS AND RESERVATIONS

FRANCE

On signing the Convention, the Government of the French Republic made the following declaration:

“ que son Gouvernement fait usage de la réserve prévue à l'alinéa (b) du paragraphe 1er de l'article 12 de la Convention.”

[Translation]

that the Government avails itself of the reservation provided for in Article 12, paragraph 1 (b), of the Convention

On ratifying the Convention, the Government of the French Republic made the following declarations:

1. Le Gouvernement français retire la réserve faite au moment de la signature en vertu de l'article 12 de la Convention.

2. Se référant à l'article 11 de la Convention, le Gouvernement français déclare que celle-ci est applicable au territoire de la République française, y compris les départements et territoires d'outre-mer.”

[Translations]

1. The French Government withdraws the reservation made at the time of signature under Article 12 of the Convention.

2. With reference to Article 11 of the Convention, the French Government declares that the Convention applies to the territory of the French Republic, including the overseas departments and territories.

ITALY

On signing the Convention, the Government of the Italian Republic made the following reservation:

“ Le Gouvernement italien conformément à l'article 12, paragraphe 1er alinéa (a), se réserve la faculté de ne pas prévoir l'octroi de brevets pour les produits alimentaires et pharmaceutiques en tant que tels, ainsi que pour les procédés agricoles ou horticoles autres que ceux auxquels s'applique l'article 2, lettre (b).”

[Translation]

The Italian Government, in accordance with Article 12, paragraph 1 (a), reserves the right not to provide for the grant of patents in respect of food and pharmaceutical products, as such, and agricultural or horticultural processes other than those to which Article 2, paragraph (b), applies

SWITZERLAND

On signing the Convention, the Government of the Swiss Confederation made the following reservation:

“ In view of the present state of her legislation and in accordance with the right conferred by Article 12, paragraph 1 (a), of the Convention, Switzerland intends to reserve, for the limited period referred to in the aforesaid Article 12, the question of the grant of patents in respect of food and pharmaceutical products, as such, and agricultural or horticultural processes other than those to which Article 2, paragraph (b), applies ”

On ratifying the Convention, the Government of the Swiss Confederation withdrew the reservation made on signing.