



National Group:

Title: Questionnaire Apotex Inc. v Sanofi-Aventis
Proposed AIPPI intervention – Supreme Court of Canada appeal

Contributors:

Date:

Questions

A. Utility or industrial applicability requirement

1. Does your national law have a utility or industrial applicability requirement for patentability?

[Please just answer 'yes' or 'no'. If 'no', you do not need to answer the remaining questions.]

-Yes.

2. Please briefly describe the utility or industrial applicability requirement, including whether it is based on:
 - (a) statute;
 - (b) jurisprudence; or
 - (c) both.

-The industrial applicability requirement is based on a) a statute, The Patents Act (550/1967), which reads as follows:

*Chapter 1 - General Provisions
Section 1*

*Anyone who has made an invention which is **susceptible of industrial application**, or his successor in title, shall be entitled, on application, to a patent and thereby to the exclusive right to exploit the invention commercially, in accordance with this Act.*

According to the preparation documents, the term “industrial” should be given a wide meaning, and it holds the same content as the term in Paris Convention Article 1 Section 3.

3. What must be disclosed in the patent specification to satisfy the utility or industrial applicability requirement? In particular, must the patent specification disclose:
 - (a) the utility or industrial applicability;

- (b) a basis (eg test data) to prove or demonstrate that the utility or industrial applicability is achieved; and/or
- (c) a basis (eg test data) and/or a line of reasoning from which the utility or industrial applicability may be predicted?

a) In the patent application, the applicant must specify the invention and describe the technique upon which the invention is based, i.e. the state of the art. If the invention in itself does not disclose how it can be exploited industrially, it must be stated in the description.

b) no

c) The patent application must disclose how the invention differs from the earlier known state of the art. This can be done with drawings, mathematical or chemical formulae or by written explanation. Biological matter must be specified by taxonomical name and if the invention consists of a sequence with at least ten nucleoids or four amino acids, a sequence register must be included in the explanation of the patent application.

4. Is the basis for any disclosure required in the patent specification:

- (a) statute;
- (b) jurisprudence; or
- (c) both?

c)

[Please just answer (a), (b) or (c)]

B. Prosecution

5. Is it necessary to demonstrate utility or industrial applicability during prosecution?

[Please just answer 'yes' or 'no'. If 'no', you do not need to answer questions 6-8 but please answer question 9.]

Yes

6. Is the requirement to demonstrate utility or industrial application during prosecution based on:

- (a) statute
- (b) jurisprudence; or
- (c) both?

[Please just answer (a), (b) or (c)]

a)

7. Is there a material date by which the utility or industrial applicability be demonstrated?

No.

8. What evidence is required to demonstrate utility or industrial applicability? For example:
- (a) can post filing evidence be used; and/or
 - (b) can the applicant rely upon the utility or industrial applicability being soundly predicted as opposed to demonstrated?

No evidence on this issue is required during the prosecution of a patent application.

C. Litigation

9. Is lack of utility or industrial applicability a basis for a validity attack in litigation?

[Please just answer 'yes' or 'no'. If 'no', you do not need to answer questions 10-12]

Yes. If the patented invention does not fulfill the requirements of the law, i.e. when it lacks industrial applicability, the court must declare the patent invalid in a relevant action. The principle of free evaluation of evidence is applied by Finnish courts.

10. Is such attack permitted by reason of:

- (a) statute;
- (b) jurisprudence; or
- (c) both?

a)

[Please just answer (a), (b) or (c)]

11. Is there a material date by which the utility or industrial applicability must be demonstrated?

If the patented invention does not fulfill the requirements of the law, i.e. when it lacks industrial applicability, the court must declare the patent invalid in a relevant action.

12. What evidence may the patentee adduce in response? For example:

- (a) can post filing evidence be used; and/or
- (b) can the patentee rely upon the utility or industrial applicability being soundly predicted as opposed to demonstrated?

The principle of free evaluation of evidence is applicable.