

National Group: Greece

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

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Questions

A. Utility or industrial applicability requirement

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

Yes

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

2. Please briefly describe the utility or industrial applicability requirement, including whether it is based on:

According to the law (Art. 19 par. 1 of Law 1733/1987) “the utility model shall be granted for each novel and industrially applicable three-dimensional object with definite shape and form, such as a tool, an instrument, a device an apparatus or parts thereof, proposed as novel and industrially applicable and capable of giving a solution to a technical problem”.

According to Art. 5 par. 2 g of Ministerial Decision No. 15928/EFA/1253, the description of the invention must explicitly clarify the way in which the invention can be applied in industry.

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

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

(a)

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

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

B. Prosecution

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

No

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

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)]

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

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?

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

10. Is such attack permitted by reason of:

(a)

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

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

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

The industrial applicability must be demonstrated at the Court hearing.

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

- (a) can post filing evidence be used; and/or

The patentee may file any evidence which is suitable to prove the industrial applicability of the Patent. Therefore, post filing evidence may be used.

- (b) can the patentee rely upon the utility or industrial applicability being soundly predicted as opposed to demonstrated?

It is usually sufficient that the industrial applicability is thoroughly predicted by the patentee, however, if further evidence is necessary depends on the facts of the case. If the opponent demonstrates a lack of industrial applicability, the patentee will have to demonstrate the opposite, the existence of industrial applicability.