

**National Group:** Turkey

**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, industrial applicability requirement.

*[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:
  - (a) statute; ✓
  - (b) jurisprudence; or
  - (c) both.

According to Decree Law Pertaining to the Protection of Patent Rights No:551 (hereinafter referred to as “**Decree-Law No.551**”) Article 5 an invention shall be applicable in industry in order to be patentable. Article 10 explains the meaning of applicability in industry as “susceptible to be produced or used in any given field of industry”.

*“Patentable Inventions*

*Article 5 :*

*Inventions which are novel, which surpass the State-of-the-Art and which are applicable in industry shall be protected by patents.”*

*“Applicability in Industry*

*Article 10 :*

*An invention shall be regarded as being applicable in industry where it is susceptible to be produced or used in any given field of industry, including agriculture.”*

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?

There is no provision for this in Turkish Patent Law. In practice, it is not obligatory to disclose the industrial applicability in the patent specification. On the other hand it is obligatory to disclose the invention sufficiently to enable the person skilled in the technical field of the subject matter to implement the invention. Thereby, examiners could decide whether the invention is applicable in industry or not.

*“Article 46 :*

*The description must be written in a sufficiently explicit and comprehensive manner so as to enable a person skilled in the technical field of the subject matter to implement the invention.(...)“*

4. Is the basis for any disclosure required in the patent specification:
- (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. But if the examiner suspects the applicability of the invention in industry then the applicant may demonstrate during the prosecution.

*[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?

Yes.

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

10. Is such attack permitted by reason of:

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

Decree Law No:551 Article 129 indicates that if the invention does not meet the patentability requirements, one of which is industrial applicability, then the patent shall be declared invalid.

*Invalidity  
Article 129 :*

*A patent shall be declared invalid by the court in following situations :*

*a) where evidence is brought in that the subject matter of the invention does not meet the patentability requirements as specified under Articles No. 5 to 10 of this present Decree Law;*

*b) where evidence is brought in that the subject matter of the invention has not been described in a sufficiently explicit and comprehensive manner so as to enable a person skilled in the concerned technical field to implement same;*

*c) where evidence is brought in that the subject matter of the patent exceeds the scope of the application or is based on a divisional application filed in compliance with Article 45 or on an application filed in compliance with Article 12 and exceeds the scope of same;*

*d) where evidence is brought in that the holder of the patent does not have the right to a patent in accordance with Article 11.“*

*„Article 5 :  
Inventions which are novel, which surpass the State-of-the-Art and which are applicable in industry shall be protected by patents.“*

*„Article 10 :  
An invention shall be regarded as being applicable in industry where it is susceptible to be produced or used in any given field of industry, including agriculture.“*

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

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

No.

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?

No statute or jurisprudence.