



National Group: Venezuela

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

Contributors: Maria Milagros Nebreda

Date: May 30, 2014

Questions

A. Utility or industrial applicability requirement

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

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 Venezuelan patent statute establishes in article 14 the utility requirement as follow:

The following are patentable: 1) Any new, definite and useful product; 8) Any other invention or discovery suitable for industrial application

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?

The answer is (a)

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

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

The answer is (a)

B. Prosecution

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

No

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

10. Is such attack permitted by reason of:

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

The answer is (a)

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?

The answer is (a) and/or (b)