

Attempts or animals;
plants or animals
other



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Attempts are being made from time to time by international associations for the protection of industrial property to introduce more and more uniformity and: harmonization among national patent systems. The International Conventions for The Protection of Industrial Property (Paris Convention) and GATT and TRIPS agreements are examples of attempts at harmonization of the law of patents and other forms of intellectual property. TRIPS/GATT – Article 27(1): Patentable subject matter: Invention, whether products or process, in all fields of technology, provided: ‘ they are new’, ‘ involve an inventive step,’ ‘ capable of industrial application Subject to Arts. 65(4) & 70(8) & (3) of this Article, patents rights shall be available & enjoyable without discrimination as to the place of invention, the field of technology & whether products are imported or locally produced. Exclusion from patentability: Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not Members may also exclude from patentability Diagnostic, therapeutic and surgical methods for the treatment of humans or animals; Plants or animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system by any combination thereof. The provisions of this sub-paragraph shall be reviewed 4 years after the entry into force of the Agreement Establishing the WTO. This provision is

made merely because the exploitation is prohibited by domestic law. Rights conferred (Art. 28) -1: A patent shall confer on its owner the following exclusive rights: (a) where the subject-matter of patent is a product, to prevent third parties not having his consent from the acts of making, using, offering of sale, selling, or importing for these purposes that product; (b) Where the subject-matter of a patent is a process, to prevent third parties not having his consent from the act of using, the process, & from the acts of using, offering for sale, or importing for these purposes at least the product obtained directly by that process. 2. Patent owners shall also have the right to assign, or transfer by succession, the patent & to conclude licensing contracts. Exceptions to Rights conferred (Art.

30): Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties. Term of Protection (Art. 33): The term of protection available shall not end before the exploitation of period of twenty years counted from the filing date. Conditions on Patent Applicants Art. 29: Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a Person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date, or, where priority is claimed, at the priority date of the application. Members may require an applicant for a patent to provide

Information concerning his corresponding foreign applications and grants.

Process Patents: Burden of Proof (Art.

34): Defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process: (a) If the product obtained by the patented process is new; (b) If there is a substantial likelihood that the identical product was made by the process & the owner of the patent has been unable through reasonable efforts to determine the process actually used? Any Member shall be free to provide that the burden of proof indicated in para 1 shall be on the alleged infringer only if the condition referred to in sub-para (b) is fulfilled. In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing & business secrets shall be taken into account. Other use without authorization of the Right-holder Art. 31: Where the law of a Member allows for other use of the subject-matter of a patent without the authorization of the right-holder, including use by the govt, of third parties authorized by the govt.

, the following provisions shall be respected: (a) Authorisation of such use shall be considered on its individual merits; (b) Such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorisation from the right-holder on reasonably commercial terms and conditions, and that such efforts have not been successful within a reasonable period of time; (c) The scope and duration of such use shall be

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limited to the purpose for which it was authorized; (d) Such use shall be non-exclusive; (e) Such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use; (f) Any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use; (g) Authorisation of such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and unlikely to recur; (h) The right-holder shall be paid adequate remuneration; (i) The legal validity of any decision relating to authorization of such use shall be subject to judicial review; (j) Any decision relating to remuneration is subject to judicial review; (k) (b) & (f) need not be applied if such use is permitted to remedy anti-competitive practice; (l) Where such use is authorized to permit the exploitation of a patent which cannot be exploited without infringing another patent, additional conditions shall apply: (i) The invention claimed in the second patent shall involve technical advance of considerable economic significance to the first one; (ii) The owner of the first patent shall be entitled to a cross- license on reasonable terms; (iii) The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Patent Cooperation Treaty, 1970: An inventor of member country can simultaneously seek patent protection in all or any of the member countries, without having to file a separate application in the countries of interest, by designating them in the PCT application.

Exclusion from patentability: Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or

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Term of Protection (Art. 33): The term of protection available shall not end before the exploitation of period of twenty years counted from the filing date. Conditions on Patent Applicants Art. 29 -1: Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be ; arrived out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date, or, where priority is claimed, at the priority date of the application. 2.

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