

SIPO hosted a Presentation Given by the European Patent Office Delegation

State Intellectual Property Office hosted a presentation given by the European Patent Office delegation on Monday 11th October 2010, intended for the stakeholders of pharmaceutical industry, attorneys at law and SIPO employees, covering the following subjects:

- Amendments to the Implementing Regulations to the European Patent Convention aimed at improving the quality of incoming patent applications and streamlining the grant procedure (see EPO OJ No 5/2009, pages 296-299 and No 11/2009)
- Amendments to the Implementing Regulations to the European Patent Convention for filing divisional applications from 1st April 2010 (Rule 36 paragraphs 1 and 2 EPC)
- New: EPO procedure concerning patent claims referring to the first and second medicinal use (see Article 53 sub-paragraph (c) EPC and EPO Manual C-IV, 4.8)
- New: EPO inventive step evaluation; problem solving approach (see EPO Manual C-IV, 11.5)
- Enlarged Board of Appeals: new petitions for review: pharmacy: G0002/08 and G0001/07

1. G0002/08 Enlarged Board of Appeal to the EPO decided:

Where it is already known to use a medicament to treat an illness, Article 54 paragraph (5) EPC does not exclude that this medicament be patented for use in a different treatment by therapy of the same illness.

Such patenting is also not excluded where a dosage regime is the only feature claimed which is not comprised in the state of the art.

Where the subject matter of a claim is rendered novel only by a new therapeutic use of a medicament, such claim may no longer have the format of a so called Swiss-type claim as instituted by decision G 5/83.

A time-limit of three months after publication of the present decision in the Official Journal of the European Patent Office is set in order that future applicants might comply with this new situation.

2. G0001/07 Method of treating by surgery

A claim which comprises a method containing or encompassing at least one characteristic representing a physical intervention, or an intervention which comprises a method of treating the human or animal body by surgery, is excluded from patentability under Article 53 subparagraph (c) EPC.