

AIPPI – ASSOCIATION INTERNATIONALE POUR LA PROTECTION DE LA PROPRIÉTÉ INTELLECTUELLE

SPECIAL COMMITTEE Q 132 – ANSWER'S OF THE BRAZILIAN GROUP

1. Is the criterion of technical character or technical content specifically provided for in your national law?

No.

2. Does this criterion also apply to the effect that an invention must have?

No.

3. If the answer(s) above are "yes", then what is the definition of "technical character, content or effect" that applies in your country?

The answers are "no".

4. Does Case Law or Doctrine define "technical character, content or effect" in your country?

There is no case law nor an established doctrinaire opinion on the matter.

5. Is such a definition useful, according to your group, in defining the patentability of an invention?

The definition would be marginally useful, since the existence of a technical content may help in establishing the industrial applicability of an invention.

Remarks.

The previous Brazilian law did refer to the need of a "new or different technical effect", whenever a given invention resulted from the "combination of processes, means or organs previously known, or from a simple change in form, proportions, dimensions or materials". The new law, however, simply requires industrial applicability, novelty and inventive activity (non-obviousness). It is believed that these three requirements are, in most cases, sufficient to assess the patentability of a given invention.

It is also to be noted, however, that Normative Act 127, which regulates the Brazilian Industrial Property Law in what concerns patent matters refers to the technical aspects of an invention in some of its items:

"15.1.2 Patent Specification:

The patent specification shall:

- c) specify the technical field to which the invention refers;
- d) describe the state of the art as may be considered useful for understanding, search and examination of the invention, citing, whenever possible, the documents reflecting the same, pointing out the existing technical problems;
- f) point out, clearly, the novelty and bring to evidence the technical effect achieved;"

"15.1.3.2.1 Independent claims

a) Are those that, the unity of the invention being preserved, are intended to protect the essential and specific technical characteristics of the invention in its integral concept, each category of claims including at least one independent claim."

However, although these provisions are presently enforced by the Brazilian Patent Office they have never been examined by the Brazilian Courts and, for this reason, their legal impact on the patentability of inventions has not yet been established.

In the past, upon replying to an inquiry submitted by the WIPO as to the requirement of "industrial applicability" our group already noticed that it actually seems to unfold into multiple requirements. As generally interpreted, this requisite would seem to imply in that an invention must: (i) be feasible, i.e., it can be reduced to practice, (ii) have a known utility, otherwise it would not have a practical application, and (iii) be of technical or technological nature, otherwise it would not relate to industry. This suggests that "technical content" is a requirement which is implicit in the requirement of "industrial applicability".

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