



Regional Seminar for Certain Latin American and Caribbean Countries on the Implementation and Use of Several Patent-Related Flexibilities

Topic 7: Flexibilities Related to the Definition of Patentable Subject Matter

**Bogota, Colombia
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REGIONAL SEMINAR FOR CERTAIN LATIN
AMERICAN AND CARIBBEAN COUNTRIES ON THE
IMPLEMENTATION AND USE OF SEVERAL
PATENT-RELATED FLEXIBILITIES

Flexibilities Related to the Definition
of Patentable Subject Matter

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Law 9.279, Industrial Property Law (LPI) May 14, 1996

244 articles

Title I: Patents

Title II: Industrial Designs

Title III: Marks

Title IV: Geographical Indications

Title V: Crimes Against Industrial Property

Title VI: Transfer of Technology and Franchising

Title VII: General Provisions

Title VIII: Transitory Provisions

TRIPS

ARTICLE 27.1

Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application

ARTICLE 27.3(a)

Members may exclude from patentability diagnostic, therapeutic and surgical methods for the treatment of humans or animals

ARTICLE 30

Members may provide limited exceptions to the exclusive rights conferred by a patent

Law 9.279

ARTICLE 10

The following are not considered to be inventions or utility models:

- I. discoveries, scientific theories, and mathematical methods;
- II. purely abstract conceptions;
- III. commercial, accounting, financial, educational, advertising, raffling, and inspection schemes, plans, principles or methods;
- IV. literary, architectural, artistic and scientific works, or any aesthetic creation;
- V. computer programs *per se*;
- VI. presentation of information;
- VII. rules of games;

Law 9.279

ARTICLE 10

The following are not considered to be inventions or utility models:

VIII. Surgical techniques and methods, as well as therapeutic or diagnostic methods, for application to human or animal body;

IX. All or part of natural living beings and biological materials found in nature, even if isolated therefrom, including the genome or germoplasm of any natural living being, and natural biological processes.

Law 9.279

ORIGINAL CLAIM

A method for treating disease X by administering compound Y

Not allowed: article 10 item VIII, LPI

AMENDED CLAIM

Use of compound Y in the manufacturing of a medicament for the treatment of disease X

Law 9.279

ARTICLE 32

In order to better clarify or define a patent application, the applicant may make changes until the time of the request for examination, provided these are limited to the subject matter initially disclosed in the application

Law 9.279

ARTICLE 18

The following are not patentable:

- I. anything contrary to morals, standards of respectability and public security, order and health;
- II. substances, materials, mixtures, elements or products of any kind, as well as the modification of their physical chemical properties and the respective processes for obtainment or modification, when resulting from the transformation of the atomic nucleus; and

Law 9.279

ARTICLE 18

The following are not patentable:

III. all or part of living beings, except transgenic microorganisms that satisfy the three requirements of patentability – novelty, inventive step and industrial application – provided for in Article 8 and which are not mere discoveries.

Sole Paragraph: For the purpose of this Law, transgenic microorganism are organisms, except for all or part of plants or animals, that express, by means of direct human intervention in their genetic composition, a characteristic normally not attainable by the species under natural conditions.

Law 9.279

ARTICLE 42

A patent confers on its titleholder the right to prevent a third party from, without his consent, producing, using, offering for sale, selling or importing for these proposes:

- I. a product that is the object of the patent;
- II. A process or a product directly obtained by a patented process;

Law 9.279

ARTICLE 43

The provisions of the previous Article do not apply:

I. To acts carried out by unauthorized third parties, **privately and without commercial purposes**, provided these acts do not prejudice the economic interests of the patentholder;

II. To acts carried out by unauthorized third parties for **experimental purposes**, in connexion with scientific or technological studies or researches;

III. To the **preparation of a medicine in accordance with a medical prescription for individual cases**, carried out by a qualified professional, as well as to the medicine so prepared;

Law 9.279

ARTICLE 43

The provisions of the previous Article do not apply:

- IV. To a product manufactured in accordance with a process or product patent that has **been introduced onto the domestic market directly by the patentholder or with his consent;**
- V. To third parties who, in the case of patent related to living material, use the patented product, without economic intend, as **an initial source of variation or propagation to obtain other products;** and
- VI. To third parties who, in case of patents related to living material, use, place in circulation, or market a **patented product that has been legally introduced into commerce by the patenholder or the holder of a licence,** provided that the patented product is not used for commercial multiplication or propagation of the living material in question.

Thank you!

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