

DRAFT SUBSTANTIVE PATENT LAW TREATY

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**NEW STYLE**

**DRAFT *5bis***

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PART I: GENERAL

*Article 1*

*Abbreviated Expressions*

For the purposes of this Treaty, unless expressly stated otherwise:

- (i) --
- (ii) “filing date” means the date of filing or, where priority is claimed, the priority date, unless stated otherwise;
- (iii) except where the context indicates otherwise, words in the singular include the plural, and *vice versa*, and masculine personal pronouns include the feminine;

*Article 2*

*Entitlement to a Patent*

[reserved]

PART II: APPLICATION AND EXAMINATION OF CLAIMS

*Article 3*

*Contents of Application*

An application shall contain

- (i) a request,
- (ii) a description,
- (iii) one or more claims,
- (iv) one or more drawings, where required, and
- (v) an abstract.

*Article 4*

*Prior Art*

(1) [*Definition of Prior Art*] Subject to paragraphs (2) and (3), the prior art shall consist of all information which, before the filing date of the claim, has been made available to the public anywhere in the world, as prescribed in the Regulations.

(2) [*Prior Art Effect of Earlier Applications*] [reserved]

(3) [*Grace Period*] The prior art shall not include information made available to the public during the 12 months preceding the filing date, where that information was made available as prescribed in the Regulations.

*Article 5*

*Contents, and Order of Contents, of Description*

The description part of the application shall have the contents, and the contents shall be presented in the order, as prescribed in the Regulations.

*Article 6*

*Contents, Presentation and Interpretation of Claims*

(1) [*Contents of Claims*] (a) The matter for which protection is sought, and the extent of that protection, shall be defined by the claims, as prescribed in the Regulations.

(b) The claims, both individually and in their totality, shall be clear and concise, as prescribed in the Regulations.

(2) [*Relation of the Claims with the Description*] The claims shall be supported by the description and the drawings, as prescribed in the Regulations.

(3) [*Manner of Presentation of Claims*] The claims shall be presented in the manner prescribed in the Regulations.

(4) [*Interpretation of Claim*] For the purposes of examination, and of rights under a published application, each claim shall be interpreted in light of the description and drawings [and prior art?], as prescribed in the Regulations.

(5) [*Scope of claim not to exceed scope of disclosure*] The scope of the claim shall not exceed the scope of the information disclosed in the application. However, the claim shall not be limited to what is expressly disclosed in the application.

#### *Article 7*

##### *Unity of Invention*

The claims in the application shall relate to one invention only, or to a group of inventions so linked as to form a single general inventive concept, in accordance with the requirements prescribed in the Regulations.

#### *Article 8*

##### *Adequate Disclosure of Claimed Invention*

The disclosure of information concerning a claimed invention shall be adequate if, taking into account the description, claims and drawings contained in the application on the date of filing of the application, it provides information which is sufficient to allow the invention to be made and used by a person skilled in the art, as prescribed in the Regulations.

*Article 9*

*Patentable Subject Matter*

[reserved]

*Article 10*

*Industrial Applicability/Utility*

A claimed invention must -----, as prescribed in the Regulations.

*Article 11*

*Novelty*

Every [element] [limitation] of the claimed invention must not be found in a single item of prior art, as prescribed in the Regulations.

*Article 12*

*Inventive Step/Non-Obviousness*

The differences between the claimed invention and the prior art must not, at the filing date of the claim, have been obvious to a person skilled in the art, as prescribed in the Regulations.

*Article 13*

*Patentability of Claim*

(1) [*Determination of Patentability of Claim*] A claim which

(i) meets the requirements in Articles 6, 7, 9 to 12, and

(ii) is in an application which meets the requirements of the Patent Law

Treaty, as implemented in the applicable law, and of Articles 5 and 8 herein, shall be patentable.

(2) [*Prohibition of Other Requirements*] No requirement of patentability additional to or different from those provided for in paragraphs (1) [and (2)] may be imposed.



PART III: AMENDMENTS

*Article 14*

*Amendment or Correction of Application*

(1) [*Amendments or Corrections Following Office Findings*] Wherever the Office finds that the application does not comply with any requirements applicable to it, it shall give the applicant at least one opportunity to amend or correct the application or to comply with the said requirements.

(2) [*Amendments or Corrections on Applicant's Initiative*] The applicant shall have the right, on his own initiative, to amend or correct the application or to comply with a requirement applicable to the application up to the time when the application is in order for grant; however, any Contracting Party which provides for substantive examination may provide that the applicant shall have the right to amend or correct, on his own initiative, the description, the claims and any drawings, only up to the time allowed for the reply to the first substantive communication from the Office.

(3) [*Limitation of Amendments or Corrections*] (a) No amendment or correction, other than the correction of an obvious mistake or of a clerical error within the meaning of subparagraph (b), shall be permitted where the amendment or correction would result in the disclosure of the invention contained in the amended or corrected application going beyond the disclosure of the invention contained in the application as filed.

(b) For the purposes of subparagraph (a), a mistake shall be considered obvious, and an error shall be considered clerical, where what is corrected is obviously wrong, and the correction is obvious, to a person skilled in the art.

PART IV: REMEDIES AGAINST REJECTION/REFUSAL OF APPLICATION

*Article 15*

*Observations and Review*

(1) [*Opportunity to Make Observations, Amendments or Corrections in Case of Intended Rejection or Refusal*] An application may not be rejected or refused on the grounds of lack of patentability, either totally or in part, without the applicant being given the opportunity to make observations on the intended rejection or refusal, and to make amendments and corrections where permitted under the applicable law, within a reasonable time limit.

(2) [*Review After Rejection or Refusal*] The rejection or refusal of an application by the examining authority on the grounds of lack of patentability of the invention under Articles [...] shall be subject to judicial review by a judicial or quasi-judicial authority.

[(3) [*Validity of Patent Not Affected by Lack of Unity of Invention*] The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention shall not be a ground for the invalidation or revocation of the patent. ]

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