

No. 20401

MULTILATERAL

Convention on the unification of certain points of substantive law on patents for invention. Concluded at Strasbourg on 27 November 1963

Authentic texts: English and French.

Registered by the Secretary-General of the Council of Europe, acting on behalf of the Parties, on 25 September 1981.

MULTILATÉRAL

Convention sur l'unification de certains éléments du droit des brevets d'invention. Conclue à Strasbourg le 27 novembre 1963

Textes authentiques : anglais et français.

Enregistrée par le Secrétaire général du Conseil de l'Europe, agissant au nom des Parties, le 25 septembre 1981.

CONVENTION¹ ON THE UNIFICATION OF CERTAIN POINTS OF SUBSTANTIVE LAW ON PATENTS FOR INVENTION

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose, among others, of facilitating their economic and social progress by agreements and common action in economic, social, cultural, scientific, legal and administrative matters,

Considering that the unification of certain points of substantive law on patents for invention is likely to assist industry and inventors, to promote technical progress and contribute to the creation of an international patent,

Having regard to article 15 of the Convention for the Protection of Industrial Property signed at Paris on 20th March 1883, revised at Brussels on 14th December 1900, at Washington on 2nd June 1911, at The Hague on 6th November 1925,² at London on 2nd June 1934³ and at Lisbon on 31st October 1958,⁴

Have agreed as follows:

Article 1. In the Contracting States, patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step. An invention which does not comply with these conditions shall not be the subject of a valid patent. A patent declared invalid because the invention does not comply with these conditions shall be considered invalid *ab initio*.

¹ Came into force on 1 August 1980, i.e., three months after the date of deposit with the Secretary-General of the Council of Europe of the eighth instrument of ratification or acceptance, in accordance with article 9 (2). Instruments of ratification or acceptance were deposited as follows:

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
France*	27 February 1980
(With a declaration that the Convention applies to overseas departments and territories.)	
Germany, Federal Republic of	30 April 1980
(With a declaration of application to Berlin (West).)	
Ireland	25 January 1968
Liechtenstein	6 November 1979
Luxembourg	14 September 1977
Sweden	3 March 1978
Switzerland*	9 November 1977
United Kingdom of Great Britain and Northern Ireland	16 November 1977

Subsequently the Convention came into force for the following State three months after the date of deposit of its instrument of ratification or acceptance with the Secretary-General of the Council of Europe, in accordance with article 9 (3):

<i>State</i>	<i>Date of deposit of the instrument of ratification</i>
Italy	17 February 1981
(With effect from 18 May 1981.)	

* See p. 381 of this volume for the texts of the declarations made upon ratification.

² League of Nations, *Treaty Series*, vol. LXXIV, p. 289.

³ *Ibid.*, vol. CXCII, p. 17.

⁴ United Nations, *Treaty Series*, vol. 828, p. 107.

Article 2. The Contracting States shall not be bound to provide for the grant of patents in respect of:

- (a) Inventions the publication or exploitation of which would be contrary to *ordre public* or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by a law or regulation;
- (b) Plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to micro-biological processes and the products thereof.

Article 3. An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry including agriculture.

Article 4. 1. An invention shall be considered to be new if it does not form part of the state of the art.

2. Subject to the provisions of paragraph 4 of this article, the state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of the patent application or of a foreign application, the priority of which is validly claimed.

3. Any Contracting State may consider the contents of applications for patents made, or of patents granted, in that State, which have been officially published on or after the date referred to in paragraph 2 of this article, as comprised in the state of the art, to the extent to which such contents have an earlier priority date.

4. A patent shall not be refused or held invalid by virtue only of the fact that the invention was made public, within six months preceding the filing of the application, if the disclosure was due to, or in consequence of:

- (a) An evident abuse in relation to the applicant or his legal predecessor, or
- (b) The fact that the applicant or his legal predecessor has displayed the invention at official, or officially recognised, international exhibitions falling within the terms of the Convention on international exhibitions signed at Paris on 22nd November 1928¹ and amended on 10th May 1948.²

Article 5. An invention shall be considered as involving an inventive step if it is not obvious having regard to the state of the art. However, for the purposes of considering whether or not an invention involves an inventive step, the law of any Contracting State may, either generally or in relation to particular classes of patents or patent applications, for example patents of addition, provide that the state of the art shall not include all or any of the patents or patent applications mentioned in paragraph 3 of article 4.

Article 6. Any Contracting State which does not apply the provisions of paragraph 3 of article 4 shall nevertheless provide that no invention shall be validly protected in so far as it includes matter which is or has been validly protected by a patent in that State which, though not comprised in the state of the art, has, in respect of that matter, an earlier priority date.

Article 7. Any group of Contracting States who provide for a common patent application may be regarded as a single State for the purposes of paragraph 3 of article 4, or of article 6.

¹ League of Nations, *Treaty Series*, vol. CXI, p. 343.

² United Nations, *Treaty Series*, vol. 289, p. 111.

Article 8. 1. The patent application shall contain a description of the invention with the necessary drawings referred to therein and one or more claims defining the protection applied for.

2. The description must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

3. The extent of the protection conferred by the patent shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

Article 9. 1. This Convention shall be open for signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary-General of the Council of Europe.

2. This Convention shall enter into force three months after the date of deposit of the eighth instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of deposit of its instrument of ratification or acceptance.

Article 10. 1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any Member of the International Union for the Protection of Industrial Property which is not a Member of the Council of Europe to accede thereto.

2. Such accession shall be effected by depositing with the Secretary-General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 11. 1. Any Contracting Party may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by notification addressed to the Secretary-General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in article 13 of this Convention.

Article 12. 1. Notwithstanding anything in this Convention, each Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, temporarily reserve, for the limited period stated below, the right:

- (a) Not to provide for the grant of patents in respect of food and pharmaceutical products, as such, and agricultural or horticultural processes other than those to which paragraph (b) of article 2 applies;
- (b) To grant valid patents for inventions disclosed within the six months preceding the filing of the application, either, apart from the case referred to in paragraph 4 (b) of article 4, by the inventor himself, or, apart from the case referred to in

paragraph 4 (a) of article 4, by a third party as a result of information derived from the inventor.

2. The limited period referred to in paragraph 1 of this article shall be ten years in the case of sub-paragraph (a) and five years in the case of sub-paragraph (b). It shall start from the entry into force of this Convention for the Contracting Party considered.

3. Any Contracting Party which makes a reservation under this article shall withdraw the said reservation as soon as circumstances permit. Such withdrawal shall be made by notification addressed to the Secretary-General of the Council of Europe and shall take effect one month from the date of receipt of such notification.

Article 13. 1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary-General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary-General of such notification.

Article 14. The Secretary-General of the Council of Europe shall notify the member States of the Council, any State which has acceded to this Convention and the Director of the International Bureau for the Protection of Industrial Property of:

- (a) Any signature;
- (b) Any deposit of an instrument of ratification, acceptance or accession;
- (c) Any date of entry into force of this Convention;
- (d) Any declaration and notification received in pursuance of the provisions of paragraphs 2 and 3 of article 11;
- (e) Any reservation made in pursuance of the provisions of paragraph 1 of article 12;
- (f) The withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of article 12;
- (g) Any notification received in pursuance of the provisions of paragraph 2 of article 13 and the date on which denunciation takes effect.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, this 27th day of November 1963 in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatory and acceding States and to the Director of the International Bureau for the Protection of Industrial Property.

For the Government
of the Republic of Austria:

For the Government
of the Kingdom of Belgium:

Strasbourg, le 20 décembre 1963

R. COENE

For the Government
of the Republic of Cyprus:

For the Government
of the Kingdom of Denmark:

MOGENS WARBERG

For the Government
of the French Republic:

At the time of signature, the Representative of France hereby declares that his Government avails itself of the reservation provided for in article 12, paragraph 1 (b), of the Convention.

CHARLES BONFILS

For the Government
of the Federal Republic of Germany:

FELICIAN PRILL

EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet, ont signé la présente Convention.

FAIT à Strasbourg, le 27 novembre 1963, en français et en anglais, les deux textes faisant également foi, en un seul exemplaire qui sera déposé dans les archives du Conseil de l'Europe. Le Secrétaire Général du Conseil de l'Europe en communiquera copie certifiée conforme à chacun des Etats signataires et adhérents ainsi qu'au Directeur du Bureau international pour la Protection de la Propriété Industrielle.

Pour le Gouvernement
de la République d'Autriche :

Pour le Gouvernement
du Royaume de Belgique :

Pour le Gouvernement
de la République de Chypre :

Pour le Gouvernement
du Royaume de Danemark :

Pour le Gouvernement
de la République française :

Au moment de la signature, le Représentant de la France déclare que son Gouvernement fait usage de la réserve prévue à l'alinéa b du paragraphe 1 de l'article 12 de la Convention.

Pour le Gouvernement
de la République fédérale d'Allemagne :

For the Government
of the Kingdom of Greece:

Pour le Gouvernement
du Royaume de Grèce :

For the Government
of the Icelandic Republic:

Pour le Gouvernement
de la République islandaise :

For the Government
of Ireland:

Pour le Gouvernement
d'Irlande :

Strasbourg, 11th March 1964

B. DURNIN

For the Government
of the Italian Republic:

Pour le Gouvernement
de la République italienne :

The Italian Government in accordance with article 12, paragraph 1 (*a*), reserves the right not to provide for the grant of patents in respect of food and pharmaceutical products, as such, and agricultural or horticultural processes other than those to which article 2, paragraph (*b*), applies.

Le Gouvernement italien, conformément à l'article 12, paragraphe 1, alinéa *a*, se réserve la faculté de ne pas prévoir l'octroi de brevets pour les produits alimentaires et pharmaceutiques en tant que tels, ainsi que pour les procédés agricoles ou horticoles autre que ceux auxquels s'applique l'article 2, lettre *b*.

ALESSANDRO MARIENI

For the Government
of the Grand Duchy
of Luxembourg:

Pour le Gouvernement
du Grand Duché
de Luxembourg :

Strasbourg, le 21 janvier 1966

JEAN WAGNER

For the Government
of the Kingdom of the Netherlands:

Pour le Gouvernement
du Royaume des Pays-Bas :

Paris, le 13 décembre 1963

J.M.A.H. LUNS

For the Government
of the Kingdom of Norway:

Pour le Gouvernement
du Royaume de Norvège :

For the Government
of the Kingdom of Sweden:

Pour le Gouvernement
du Royaume de Suède :

K. G. LAGERFELT

For the Government
of the Swiss Confederation:

Pour le Gouvernement
de la Confédération suisse :

In view of the present state of her legislation and in accordance with the right conferred by article 12, paragraph 1 (*a*), of the Convention, Switzerland intends to reserve, for the limited period referred to in the aforesaid article 12, the question of the grant of patents in respect of food and pharmaceutical products, as such, and agricultural or horticultural processes other than those to which article 2, paragraph (*b*), applies.

En raison de l'état actuel de sa législation et conformément à la faculté que lui donnent les dispositions de l'article 12, paragraphe 1, alinéa *a*, de la Convention, la Suisse entend réserver, pendant la période transitoire prévue par l'article 12 précité, la question de l'octroi de brevets pour les produits alimentaires et pharmaceutiques en tant que tels, ainsi que pour les procédés agricoles ou horticoles autres que ceux auxquels s'applique l'article 2, lettre *b*.

H. VOIRIER

For the Government
of the Turkish Republic:

Pour le Gouvernement
de la République turque :

For the Government
of the United Kingdom of Great Britain
and Northern Ireland:

Pour le Gouvernement
du Royaume-Uni de Grande-Bretagne
et d'Irlande du Nord :

I. F. PORTER

For the Government
of the Principality of Liechtenstein :

Pour le Gouvernement
de la Principauté de Liechtenstein :

Strasbourg, le 6 novembre 1979

NIKOLAUS VON LIECHTENSTEIN

DECLARATIONS MADE
UPON RATIFICATION*FRANCE*

[TRANSLATION — TRADUCTION]

The French Government withdraws the reservation made at the time of signature under article 12 of the Convention.

SWITZERLAND

[TRANSLATION — TRADUCTION]

When signing the Convention of 27 November 1963 on the Unification of Certain Points of Substantive Law on Patents for Invention, reservations were made by Switzerland as provided for in article 12.

When depositing the instrument of ratification with you today, I notify, on behalf of my Government, that Switzerland does not maintain the said reservations.

DÉCLARATIONS FAITES
LORS DE LA RATIFICATION*FRANCE*

«Le Gouvernement français retire la réserve faite au moment de la signature en vertu de l'article 12 de la Convention.»

SUISSE

«Lors de la signature de la Convention du 27 novembre 1963 sur l'unification de certains éléments du droit des brevets d'invention, la Suisse avait fait des réserves, prévues par l'article 12.

En déposant aujourd'hui auprès de vous l'instrument de ratification, je vous notifie, au nom de mon Gouvernement, que la Suisse ne maintient pas lesdites réserves.»
