Patents Registry

Intellectual Property Department

Hong Kong SAR Government

Patents Examination Guidelines

Section 3: Industrial application

Meaning of industrial application

3.1. The third condition for patentability of an invention is that the invention is susceptible of industrial application (section 9A(1)(c) of the Ordinance), i.e. the invention can be made or used in any kind of industry, including agriculture (section 9D of the Ordinance).

3.2. A useful guidance on the meaning of the term "industry" is given by Kitchin J in *Eli Lilly & Co v Human Genome Sciences Inc.* [2008] RPC 29:

"The notion of industry must be construed broadly. It includes all manufacturing, extracting and processing activities of enterprises that are carried out continuously, independently and for commercial gain (BDPI Phosphatase / Max-Planck). However, it need not necessarily be conducted for profit (Chiron) and a product which is shown to be useful to cure a rare or orphan disease may be considered capable of industrial application even if it is not intended for use in any trade at all (Hematopoietic cytokine receptor / ZymoGenetics)."

Accordingly, the word 'industry' should be understood in its broadest sense to include any useful and practical trade or manufacture.

3.3. While a method for the treatment of the human or animal body by surgery or therapy, or a diagnostic method practised on the human or animal body is not regarded as susceptible of industrial application and is therefore excluded from patentability, such exclusion does not apply to a product, and in particular a substance or composition, for use in any such method (section 9A(4) of the Ordinance).

3.4. The general principles relating to industrial applicability were laid down by the English Supreme Court in *Human Genome Sciences v Eli Lilly* [2012] RPC 6 as follows:

(a) The patent must disclose "a practical application" and "some profitable use" for the claimed substance, so that the ensuing monopoly "can be expected [to lead to] some … commercial benefit";

(b) A "concrete benefit", namely the invention's "use … in industrial practice" must be "derivable directly from the description", coupled with common general knowledge;

(c) A merely "speculative" use will not suffice, so "a vague and speculative indication of possible objectives that might or might not be achievable" will not do; and

(d) The patent and common general knowledge must enable the skilled person "to reproduce" or "exploit" the claimed invention without "undue burden", or having to carry out "a research programme."

3.5. For instance, inventions which claim to operate in a manner which is clearly contrary to well-established physical laws, such as perpetual motion machines, are regarded as not susceptible of industrial application.