



EXCO/DE03/RES/B

Revalidation Patents

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession of more than 70 countries and especially of all European Community Member States, assembled at its Executive Committee on June 2 held in Berlin from June 2 to June 6, 2003, passed the following Resolution:

Considering that investments in developing countries may be dependent on the availability of adequate patent protection for the potential investors, and that in many cases such protection is not available for lack of absolute novelty of the invention resulting from the prior publication or the granting of patents to the inventor for the same invention in other countries;

Recognising that so-called revalidation patents provide an exception to overcome the absolute novelty impediment referred to above, and also constitute a vehicle for the transfer of technology to the developing countries;

Noting that the possibility of obtaining revalidation patents is contemplated in the 1889 Montevideo Treaty on Patents adhered to by Argentina, Bolivia, Paraguay, Peru and Uruguay; and that article 1(4) of the Paris Convention for the Protection of Industrial Property provides that “the term ‘patents’ shall include the various kinds of patents recognized by the laws of the countries of the Union, such as patents of importation,” and furthermore that such provision of the Paris Convention (1967) is ratified by article 2.1 of the Treaty on Trade-Related Aspects of Intellectual Property Rights (TRIPS);

Noting that revalidation patents, rather than contradicting the provisions and terms set forth in the Patent Cooperation Treaty (PCT), supplement them by affording the possibility for protection beyond the PCT rules;

Recognising that since TRIPS does not make it mandatory to afford protection for revalidation patents, those member countries that do so may freely regulate them in accordance with their own national interests by requiring local industrial exploitation within a reasonable term.

Recognising that the examination made by national patent offices to determine the patentability of an invention is facilitated in revalidation patent applications, as a result of prior examinations made in other jurisdictions; and

Stressing that, in strict compliance with article 4*bis*(1) of the Paris Convention, the autonomy of the local authorities to grant patents valid for the respective territory shall be preserved, therefore

FICPI Resolves :

to recommend to those national governments who may obtain benefits to their economies derived from the so-called revalidation patents to consider the introduction or maintenance of suitable legislation to regulate them in accordance with their own national interests, including the requirement of immediate publication of the revalidation application for the protection of third party interests.