

## **TRIPS—Article 27—Patentable Subject Matter**

1. Subject to the provisions of paragraphs 2 and 3, **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. Subject to [the transitional provisions relating to developing countries and patent protection for pharmaceutical and agricultural products], patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

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2. Members **may exclude from patentability** inventions, the prevention within their territory of the commercial exploitation of which is **necessary to protect *ordre public* or morality**, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
3. Members **may also exclude from patentability**:
  - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
  - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

### **Problem 3–9**

You are a member of a WTO panel that is being asked to review the law of Country B, which categorically excludes both (i) business methods and (ii) computer programs from patentability.

Are these exclusions in violation of TRIPs Article 27?

## EPC—Article 52—Patentable Inventions

- (1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.
- (2) The following in particular shall not be regarded as inventions within the meaning of ¶ 1:
  - (a) discoveries, scientific theories and mathematical methods;
  - (b) aesthetic creations;
  - (c) schemes, rules and **methods** for performing mental acts, playing games or **doing business**, and **programs for computers**;
  - (d) presentations of information.
- (3) The provisions of ¶ 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities **as such**.
- (4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of ¶ 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

### **Problem 3–11**

You are a patent examiner in the United States. Evaluate the following inventions; do they have sufficient utility? Would they satisfy the industrial application requirement in the U.K.?

- (1) a commercial process for making crustless peanut butter jelly sandwiches by precutting the crust from bread;
- (2) garbage bags made with a pumpkin face on the outside for decorative purposes in order to resolve the problem of unsightly garbage bags near the side of the street; and
- (3) a juice dispenser that simulates the dispensing of fresh juice from a visible glass bowl, when in actuality the juice is dispensed from a container hidden from view.