

# **Patent Analysis**

Part 2: EPC - European Patent Convention

Disclaimer
This presentation is
intended for
general discussion
general discussion
purposes only and
purposes be taken
should not be taken
as a legal advice.

Prof. Dr. Volker Lohweg Innovation and Development Strategies (IDS) International Master Information Technology / Master Mechatronische Systeme



## **EPC – European Patent Convention**

Article 52(1) EPC

#### **Patentable Inventions**

are new

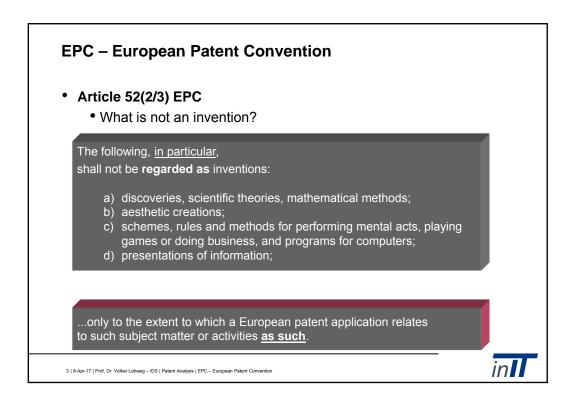
European patents shall be granted for any inventions, in all fields of technology, provided that they

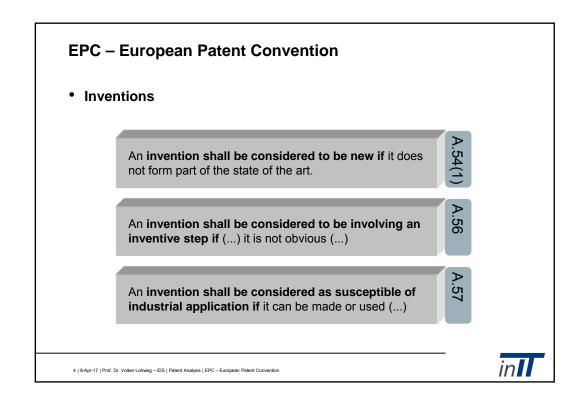
- involve an inventive step and
- $\rightarrow$  A.56
- are susceptible of industrial application
- → A.57

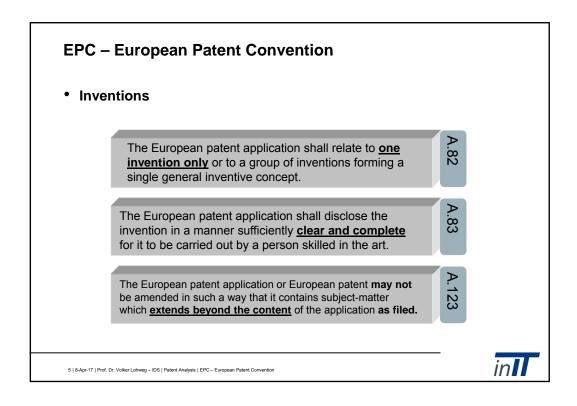
 $\rightarrow$  A.52(2)(3)

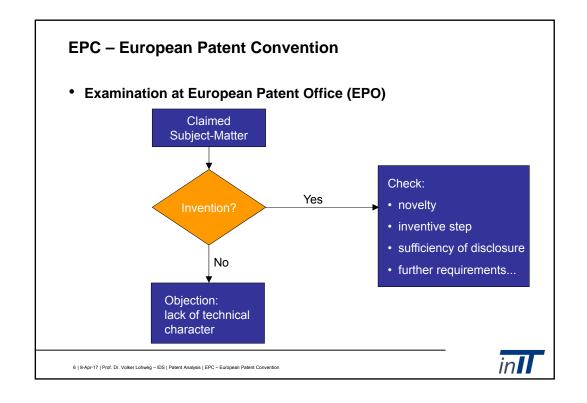
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# **EPC – European Patent Convention**

Inventions

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



The concept of "novelty" in Article 54(1) EPC is only defined for "inventions". It does not apply to the exceptions enumerated in Article 52(2) EPC.

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## **EPC – European Patent Convention**

Inventions

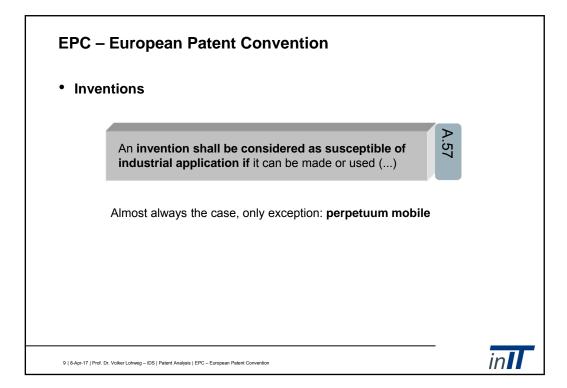
An invention shall be considered to be involving an inventive step if (...) it is not obvious (...)

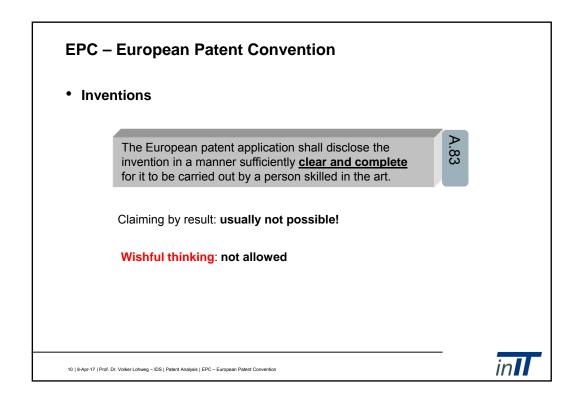


Would the skilled person aware of the prior art at the date of filing have been prompted to arrive to the claimed invention in an obvious manner?

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#### **EPC – European Patent Convention**

#### Inventions

The European patent application or European patent **may not** be amended in such a way that it contains subject-matter which <u>extends beyond the content</u> of the application **as filed.** 



Article 123 EPC is a cornerstone of the EPC to ensure the fairness in the fundamental contract for the public.

The underlying idea of Art. 123(2) is that an applicant shall not be allowed to improve his position after the specific date of assertion of right (ie. the filing date), which would give him an unwarranted advantage and damage the legal security of third parties.

What is forbidden?

Filing information which is not directly and unambiguously (effortless) derivable from the original application documents.

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## **EPC – European Patent Convention**

- Inventions what is necessary?
- Patent can only be granted if ALL requirements of the EPC are met.
  - · claims need to involve an inventive step; Article 56 EPC
  - sufficiency of disclosure; Article 83 EPC
  - no subject-matter may be added; Article 123(2) EPC

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## **EPC – European Patent Convention**

• Inventions – what is not an invention?

So what's the difference? CD: 700 MB Opera: 2 CDs

DVD: 4.7 GB Opera: 1 DVD

What's the effect thereof? Less to ship

The claimed subject-matter is **NOT INVENTIVE**.

Only one of the obvious possibilities offered to the skilled person.

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## **EPC – European Patent Convention**

• Inventions - some numbers

Rank	Country	% of World Market	PCT Nat. Phase Cost (US\$)	Translation Cost (%)
1	USA	45.83	3,287	0
2	EPO (+ Extension States)	25.05	13,623	0
3	Japan	12.35	17,382	66
4	Canada	1.87	2,440	0
5	Mexico	1.76	7,351	57

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