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1. General

An invention can be patented only if it is new. An invention is considered to be new if it does not form part of the state of the art. The purpose of Art. 54(1) EPC is to prevent the state of the art being patented again (**T 12/81**, OJ 1982, 296; **T 198/84**, OJ 1985, 209).

The first step in deciding whether an invention is new is to define the prior art, the relevant part of that art, and the content of that relevant art. The next is to compare the invention with the prior art thus defined, and see whether the invention differs from it. If it does, the invention is novel.

As part of the EPC 2000 revision, several amendments were made to Art. 54 EPC. Art. 54(1) and (2) EPC remained unchanged. In Art. 54 (3) EPC 1973 a reference to Art. 93 EPC was removed. Art. 54(4) EPC 1973 was deleted, so that any European application falling under Art. 54(3) EPC constitutes prior art with effect for all the EPC contracting states at the time of its publication. The amendment to Art. 54(5) EPC 1973 (now Art. 54(4) EPC) took account of the deletion of Art. 54(4) EPC 1973 and the incorporation of Art. 52(4) EPC 1973 into Art. 53(c) EPC (exceptions to patentability). New Art. 54(5) EPC now eliminates any legal uncertainty on the patentability of further medical uses. It unambiguously permits purpose-related product protection for each further new medical use of a substance or composition already known as a medicine (see OJ SE 4/2007).

2. State of the art

2.1. General

Under Art. 54(2) EPC, the state of the art comprises everything made available to the public by means of a written or oral description, by use, or in any other way, **before** the filing or priority date of the European patent application.