

## E. The requirement of industrial application under Article 57 EPC

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### 1. Notion of "industrial application"

Art. 57 EPC provides that: "An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture". It thus defines the third criterion for patent grant referred to in Art. 52(1) EPC, namely "industrial application", making it clear that the possibility of making or using the invention in any kind of industry is sufficient (T 144/83) and that agriculture too is a kind of industry for the purposes of the EPC (T 116/85, OJ 1989, 13). Both products and processes (T 208/84) are susceptible of industrial application. Claims directed to substances or compositions for use in methods for treatment of the human or animal body by therapy are directed to inventions which are susceptible of industrial application (G 5/83, OJ 1985, 64).

In T 80/96 (OJ 2000, 50), the board found that the use of a substance to make a new pharmaceutical product without delimitation to an indication did not contravene the requirements of Art. 57 EPC 1973 in conjunction with Art. 52(1) EPC 1973.

Regarding the amendments to Art. 52(1) EPC in the course of the revision of the EPC, see chapter I.A.1. "Patent protection for technical inventions".

#### 1.1. Invention and industrial application

The requirement of industrial application must be satisfied in addition to the other patentability criteria. Art. 57 EPC excludes only a few inventions from patentability that are not already excluded by Art. 52(2) EPC, or by Art. 53 EPC. In particular the work of medical practitioners, previously excluded from patentability under Art. 52(4) EPC 1973 as lacking industrial application, is now covered in Art. 53(c) EPC. Industrial application is also lacking if the product or process is contrary to the laws of physics (T 541/96), such as for example a perpetual motion machine (Guidelines G-III, 3 – March 2022 version).

While the technical character of an invention and its susceptibility of industrial application are two different patentability requirements under the EPC, they are often discussed together.

In T 953/94 the board stated that, as the Convention showed (Art. 52(1) EPC 1973), the requirement (defined in Art. 52(2) and (3) EPC 1973) of claimed subject-matter being an