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PATENTABILITY OF BIOTECHNOLOGICAL INVENTIONS AT THE EUROPEAN PATENT OFFICE

New rules concerning the patentability of biotechnological inventions at the European Patent Office are to come into force on 1 September 1999. The rules mirror the European Union Biotechnology Directive (which is not, however, binding on the EPO) and are intended to ease the patenting of plants and animals. The rules will be retrospective. The main features of the rules are:

- The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.
- Plants or animals are in principle patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.
- A microbiological or other technical process, or a product obtained by means of such a process other than a plant or animal variety, is potentially patentable.
- The following are not patentable: processes for cloning human beings; processes for modifying the human germline; uses of human embryos for industrial or commercial purposes; genetically modifying animals if likely to cause them suffering without any substantial medical benefit to man or animal; and the human body and the mere discovery of one of its elements.

It should be noted that the rules may be overturned by the EPO Enlarged Board of Appeal in the pending *Novartis* case (G01/98).

Recommendation

We suggest that applications that have been held in abeyance by the examiners, pending the clarification of the position, are revived where speedy prosecution is desired.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem.
Please note that all our Newsletters can be found on our website at www.eric-potter.com.

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