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Biopatent Law: European vs. US Patent Law

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Preface

Patents protecting biotechnological invention become ever more important. Because Biotechnology has many differences with respect to other technologies, lessons learned in other fields of technology cannot simply be transferred to adopt a suitable strategy for dealing with Biotechnology inventions.

In this issue, legal aspects of biotech patents will be discussed. This involves questions of biopatent prosecution, including novelty, inventive step, written disclosure and sufficiency of enablement, as well as questions of law enforcement of biotech patents. Another issue are particular aspects of US patent law, which can have tremendous differences compared to European law.

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Patentability Requirements of Biotech Patents

Ulrich Storz

Abstract This chapter discusses patentability requirements in the two major patent jurisdictions, namely novelty, non-obviousness/inventive step, enablement/written description, best mode, and sufficiency of disclosure. Differences between Europe and the United States are highlighted, and practical implications are discussed with respect to the biopatent field.

Keywords Novelty · Obviousness · Enablement · Written description · Best mode · Industrial applicability · Inventive step · Sufficiency of disclosure · Biotech

1 Introduction

As discussed earlier in this book series, the allowance of a patent is subject to substantial examination. During this process, a number of tests is carried out, part of which are similar in the major patent jurisdictions, while others differ from one another substantially.

In the US patent system, the United States Code, Section 35 (USC 35) is decisive, whereas in the European patent system, the European Patent Convention (EPC) sets the standards. The following list gives an overview of the patentability requirements under USC 35 and EPC.

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