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Deadline for the End of Swiss-type Claims at the EPO

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Our Life Sciences Bulletin dated March 2010 discussed the "G2/08" decision by the European Patent Office ("EPO") in which it said that Swiss-type claims would no longer be permitted. As discussed below, the date from which this change in practice will take place is now known.

The previous Bulletin also discussed a number of important EPC rule changes that came into effect on April 1, 2010. Readers are referred back to the earlier Bulletin for the detail of those changes.

G2/08 Decision

"Swiss form" claims in patents are claims to the use of a known compound for preparing a medicament for a new therapeutic indication (i.e. second medical uses). They have been permissible at the EPO since the decision in EISAI (G5/83). The EPC 2000 amendments to the European Patent Convention codified EPO case law allowing second medical use claims but without need for the convoluted wording associated with Swiss form claims^[1]. The amendments entered into force on December 13, 2007 and, in its G2/08 decision of February 19, 2010, the Enlarged Board of Appeal at the EPO held that, in light of those amendments, the Swiss claim format should no longer be used for second medical use claims.

Deadline

The Enlarged Board added that its decision should not be retroactive instead setting a timeframe of three (3) months from publication of its decision in the EPO Official Journal for compliance by future applications. Publication finally took place on October 28, 2010. Therefore, only currently pending patent applications and those filed up until **January 28, 2011**, can still use Swiss-form claims and arguably should use them in parallel with claims in EPC 2000 compliant format as there may be a difference in scope between the two forms of claims.

[1] Swiss-type claims are in the form "*Use of substance X in the manufacture of a medicament for the treatment of condition Y*" whereas EPC 2000 claims can be phrased as just "*Substance X for use in treatment of condition Y*".

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