



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

Resolution of the Executive Committee, Goodwood Park, England 2 to 7 September 2001

“Prior Art Effect of Prior Applications”

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee held in Goodwood Park, England from 2 to 7 September 2001, passed the following Resolution:

NOTING the ongoing discussions of WIPO’s Standing Committee on the Law of Patents in connection with a draft Substantive Patent Law Treaty

IN PARTICULAR NOTING the proposals within those discussions for a provision that published patent applications shall constitute prior art as of their filing dates for the purposes of novelty (“prior applications”)

ALSO NOTING the possibility that such prior applications may constitute prior art **WITH GLOBAL EFFECT AND RECALLING** that Article 11(3) of the Patent Cooperation Treaty 1970 (as amended) provides that an international application shall have the effect of a regular national application in each designated state as of its international filing date

APPRECIATING that the underlying purpose of the “whole contents” treatment of prior applications as prior art in first-to-file patent systems with early publication is to avoid patents being granted to different applicants in respect of the same invention in the same jurisdiction

BELIEVING that it is economically undesirable to deny the grants of parallel patents for the same invention to different applicants in different jurisdictions

AND OBSERVING that before publication of a prior application a different applicant cannot have gained knowledge of the invention from the prior application

RESOLVES that the prior art effect of a prior application from its filing date should be limited to the jurisdiction in which the prior application was made

AND that an international patent application should not have prior art effect as a prior application in a designated state unless the requirements of Articles 22(1) or 39(1)(a) PCT for that designated state have been completed.