

11th Federal Act on Supplementary Protection Certificates (1996 Protection Certificates Act)

The National Council has adopted the following Act:

Subject-matter

1. Protection certificates which supplement patents valid in Austria shall be granted by the Austrian Patent Office subject to the regulations of the European Community governing the creation of supplementary protection certificates.

Application

2. (1) Application for a supplementary protection certificate shall be made in writing to the Austrian Patent Office. A filing fee of ATS 3,000.— shall be paid for each application.

(2) If the application fails to meet the prescribed requirements, the applicant shall be requested to repair the defects within a reasonable period. If the applicant fails to repair the defects within the period granted, the application shall be rejected.

Grant

3. (1) The supplementary protection certificate shall be granted without any prior check whether the Austrian Patent Office has already granted a certificate for the product or whether the submitted authorisation is the first authorisation to place the product on the market in Austria.

(2) Licences, rights of prior use and intervening rights to the basic patent shall also apply to the supplementary protection certificate, except when otherwise agreed or decided.

Annual fees

4. (1) Annual fees shall be paid for each supplementary protection certificate depending on the period of protection requested. The annuity shall be:

for the first year.....	ATS 28,000.-
for the second year	ATS 32,000.-
for the third year.....	ATS 38,000.-
for the fourth year	ATS 40,000.-
for the fifth year	ATS 44,000.-

(2) The annuities shall be due and payable for each following year on the last day of that month which bears the same name as the month in which the certificate became effective. The annuities may be paid three months before the due date, and they shall be paid six months after the due date at the latest. Any payment after the due date shall entail a late fee of 20 per cent of the annuity in addition to the annuity.

(3) In the event that the protection certificate is granted with legal effect only after the day of effectiveness, the annuities which have since fallen due shall be paid within six months of service of the decision of grant without any late fee.

(4) The annuities may be paid by any person interested in the protection certificate.

(5) All annuities paid, but not yet due, shall be refunded if the protection certificate expires or is nullified.

Competence

5. (1) Except when otherwise provided, the Austrian Patent Office shall be competent to pass decisions and take any other action relating to supplementary protection certificates. At the Patent Office, competence shall depend on the assignments in patent matters, the same divisions being competent for the proceedings for the grant of supplementary protection certificates as those for the proceedings for granting patents.

(2) The decision to nullify a protection certificate because of expiry of the basic patent prior to the end of the maximum statutory period or because the basic patent has been fully nullified shall be taken by the nullification department upon application or *ex officio* by a legally qualified member without instituting a hearing.

Register of protection certificates

6. (1) The Patent Office shall keep a register of protection certificates; entries shall include the register number; the name and address of the holder of the protection certificate and, where appropriate, his/her representative; the designation of the product; the number and date of the first authorisation to place the product on the market in the European Economic Area; the commencement and termination of the term of the protection certificate; and the number and title of the basic patent.

(2) The register entry shall also include data on expiry, withdrawal, nullification, adjudication, dependence statements and assignments of protection certificates, naming as the inventor, granting of licences, liens and other rights *in ram* with regard to the protection certificate, rights of prior use, intervening rights, reinstatement of the former position, notices of assessment, annotations of disputes and references to judgments given under Section 7, applying *mutatis mutandis* **Para 2 of Section 156** of the 1970 Patent Act, Federal Gazette no. 259, and on expiry, withdrawal, nullification and adjudication of the basic patent.

(3) The register of protection certificates shall be open for Inspection to all interested parties. A certified excerpt shall be made on request.

Supplementary application of the Patents Act

7. Supplementary to the provisions of Council regulations of the European Community concerning the creation of supplementary protection certificates and of this Federal Act, Sections 8 to 11, **14 to 27, 30 to 45, 46 (2) and (3), 47, 48 (2) and (3), 48 to 57, 57b to 61, 62 (1), (2) and (7), 63, 64, 66 to 79, 80 (2), 81 to 86, 90, 92, 112 to 165, 168, 169 and 172a to 173a** of the 1970 Patents Act, Federal Gazette no. 259, shall apply *mutatis mutandis* to applications for supplementary protection certificates and granted supplementary protection certificates and proceedings relating to such protection certificates; the procedural fee set forth in **Section 132 (1) (b)** of the 1970 Patents Act shall be equal to the filing fee pursuant to Section 2 (1).

Publications

8. References concerning supplementary protection certificates made under the provisions of Council regulations of the European Community concerning the creation of supplementary protection certificates or under Section 7 in combination with the provisions of the 1970 Patents Act, Federal Gazette no. 259, as set forth in Section 7, shall be published in the Patent Gazette.

Concluding and transitional provisions

9. The provisions of federal laws cited in this Federal Act shall apply as amended from time to time.

10. Unless otherwise provided for in Section 7 in connection with **Section 173** of the 1970 Patents Act, Federal Gazette no. 259, the Federal Minister of Economic Affairs shall be entrusted with the execution of this Federal Act.

11. (1) The Protection Certificates Act, Federal Gazette no. 635/1994, shall be repealed upon the entering into force of this Federal Act.

(2) Protection certificates which became effective prior to the entering into force of this Federal Act shall continue to be governed by Section 2 of the Protection Certificates Act, Federal Gazette no. 635/1994.

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