

Long title

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modification

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I. GENERAL PROVISIONS**Patentable inventions**

Section 1. (1) For inventions in all fields of technology, if they are new (Section 3), do not result in an obvious way for the skilled person from the state of the art and are commercially applicable, patents are granted on request.

(2) Inventions that meet the requirements of Paragraph 1 can also be patented if they are a product that consists of or contains biological material or a process with which biological material is produced, processed or used for Subject matter where biological material is material that contains genetic information and can self-

reproduce or be reproduced in a biological system. These patentable inventions also include

1. biological material that is isolated or produced from its natural environment with the help of a technical process, even if it was already present in nature;
2. an isolated component of the human body or a component obtained in some other way by a technical process, including the sequence or partial sequence of a gene, even if the structure of this component is identical to the structure of a natural component.

(3) In particular, the following are not regarded as inventions:

1. Discoveries as well as scientific theories and mathematical methods;
2. the human body in the individual phases of its formation and development;
3. the mere discovery of a part of the human body, including the sequence or partial sequence of a gene;
4. aesthetic creations;
5. Plans, rules, and procedures for performing intellectual activities, playing games, or doing business activities and programs for data processing systems;
6. the reproduction of information.

(4) Paragraph 3 only precludes the patenting of the objects or activities named therein insofar as protection is sought for them as such.

Exceptions to patentability

Section 2. (1) Patents are not granted for: 1. Inventions, the exploitation of which offends against public order or morality would; such a violation cannot be derived solely from the fact that the exploitation of the invention is prohibited by law or administrative regulations; In this sense, the following are deemed to be non-patentable:

- a) Processes for cloning human beings;
- b) Method of altering the genetic identity of the germline of the human living being;
- c) the use of human embryos;
- d) the production and utilization of hybrid living beings, consisting of germ cells, totipotent cells or cell nuclei of humans and animals arise;
- (e) methods of altering the genetic identity of animals which are capable of causing suffering in these animals without any substantial medical benefit to humans or the animal, as well as animals produced using such methods;

2. Methods for the surgical or therapeutic treatment of the human or animal body and diagnostic methods which are carried out on the human or animal body; this does not

apply to products, in particular substances or mixtures of substances, for use in one of these processes.

(2) Patents are not granted for plant varieties or animal breeds or for essentially biological processes for the breeding of plants or animals and for plants or animals obtained exclusively through such processes. The term plant variety is defined by Article 5 of Regulation (EC) No. 2100/94 on Community Plant Variety Rights, OJ No. L 227 of September 1, 1994 p. 1, as amended by Regulation (EC) No. 2506 / 95, OJ No. L 258 of October 28, 1995 p. 3. A method of growing plants or animals is essentially biological if it relies entirely on natural phenomena such as crossing or selection. Inventions the subject of which are plants or animals can be patented, if the implementation of the invention is not technically restricted to a particular plant or animal breed. Sentence 1 part 2, according to which patents are not granted for essentially biological processes for the breeding of plants or animals, does not affect the patentability of inventions which have a microbiological or other technical process or a product obtained by these processes as their object, whereby a microbiological Procedure is any procedure in which microbiological material is used, an intervention in microbiological material is carried out or microbiological material is produced.

(3) When applying Paragraph 1, Item 1, lit. a to c the relevant provisions of the "Fortpflanzungsmedizingesetz", Federal Law Gazette No. 275/1992, in the version effective on the date of entering-into-force of this law have to be taken into account.

Novelty

Section 3. (1) An invention is considered new if it does not belong to the state of the art. The state of the art is everything that has been made available to the public prior to the priority date of the application through written or oral description, through use or in any other way.

(2) The state of the art also includes the content of earlier

1. patent applications based on this Federal Act,
2. utility model applications based on the Utility Model Act, Federal Law Gazette No. 211/1994,
3. international applications within the meaning of Section 1 no. 4 of Federal Law Gazette No. 52/1979, if the requirements according to Section 16 (2) of the Patent Contracts Introductory Act are met,
4. European patent applications within the meaning of Section 1 no. 4 of the Introductory Act for Patent Contracts, and
5. European patent applications within the meaning of Section 1 no. 4 of the Introductory Law on Patent Contracts, if the European patent application is the result of an international application, but only if the requirements of Article 153 (5) of the European Patent Convention, Federal Law Gazette No. 350/1979, are met,

in the version originally filed, the content of which was officially published on or after the priority date of the more recent application. When assessing the question of whether the invention does not result in an obvious manner from the prior art for the person skilled in the art, such earlier priority applications are not taken into account.

(3) The patentability of substances or mixtures of substances belonging to the state of the art is not excluded by Paragraphs 1 and 2, provided that they are intended for use in a procedure pursuant to Section 2, Paragraph 1, item 2 and their application in one this method does not belong to the state of the art. Neither is the patentability of the named substances or mixtures of substances for specific use in one of the named processes excluded by Paragraphs 1 and 2 if this application is not part of the state of the art.

(4) For the application of Paragraphs 1 and 2, a disclosure of the invention that was made no earlier than six months before the filing of the application and that goes back directly or indirectly is not taken into account

1. to an obvious abuse to the detriment of the applicant or his legal predecessor or
2. that the applicant or his legal predecessor has exhibited the invention at official or officially recognized exhibitions within the meaning of the Convention on International Exhibitions, Federal Law Gazette No. 445/1980.

(5) Para. 4 no.2 shall only apply if the applicant states when submitting the application that the invention has been displayed at the exhibition and submits a confirmation of this from the exhibition management within four months of the submission. The day of the exhibition opening and, if the first disclosure was not made at the same time, the day of the exhibition must also be stated. The confirmation must be accompanied by a description of the invention, which is certified by the exhibition management.

Claim to a patent

Section 4. (1) Only the inventor or his legal successor is entitled to the grant of the patent. Unless proven otherwise, the first applicant is deemed to be the inventor.

(2) If the improvement or other further training of an invention already protected by a patent or for which a patent has been applied for and leading to this is registered by the owner of the parent patent or his legal successor, the latter is free to choose either an independent one for the improvement or other further training Patent or an additional patent dependent on the parent patent.

(Note: Paragraph 3 repealed by Federal Law Gazette I No. 149/2004)

Section 5. (1) However, the first applicant is not entitled to the grant of the patent if he is not the inventor or his legal successor or if the essential content of his application is the descriptions, drawings, models, equipment or facilities of another or one of them used procedure is taken without his consent.

(2) If the invention has been taken one after the other by one owner of the invention from the other without consent, in the event of a dispute the former owner of the invention takes precedence over the later one.

Employee inventions

Section 6. (1) Employees are also entitled to the grant of a patent (Section 4) for inventions made by them during the existence of the employment relationship, if not by contract (Section 7 Paragraph 1) or on the basis of Section 7 Paragraph 1) 2 something else is determined.

(2) Employees and workers of all kinds are deemed to be employees.

Section 7. (1) Agreements between employers and employees, according to which future inventions of the employee should belong to the employer or the employer should be granted a right to use such inventions, only have legal effect if the invention is a service invention (Paragraph 3) is. In order to be valid, the agreement must be in writing, which is also sufficient if a collective agreement (Section 2 (1) of the Labor Constitution Act, Federal Law Gazette No. 22/1974) is available.

(2) If the employment relationship is under public law, the employer may, without the need for an agreement with the employee, claim his or her service inventions in full or a right to use such inventions; the right of use is also effective against third parties. In these cases, the provisions of the following paragraph and Sections 8 to 17 and Section 19 apply accordingly.

(3) A service invention is the invention of an employee if its subject matter falls within the field of work of the company in which the employee is active and if

- a) either the activity that led to the invention is part of the employee's official duties or
- b) if the employee received the suggestion for the invention through his work in the company or
- c) the creation of the invention has been significantly facilitated by using the entrepreneur's experience or aids.

Section 8. (1) In any case, the employee is entitled to appropriate special remuneration for the transfer of an invention made by him to the employer and for the granting of a right of use with regard to such an invention.

(2) However, if the employee is expressly employed as an inventor in the employer's company and is actually predominantly engaged in it and if the inventor activity incumbent on him has led to the invention, he is only entitled to special remuneration insofar as he does not already have it Due to the employment relationship with regard to the higher remuneration due to his inventor activity, an appropriate remuneration for the invention is located.

Section 9. When calculating the remuneration (Section 8), particular consideration must be given to the circumstances of the case

- a) the economic importance of the invention for the company;
- b) to any other exploitation of the invention in Austria or abroad;
- c) on the company's share, suggestions, experiences, preparatory work or resources of the employer or official instructions on the creation of the invention.

Section 10. (1) The remuneration can be changed retrospectively at the request of one of the parties involved at their reasonable discretion if there has been a significant change in the circumstances that are decisive for the appropriateness of the remuneration. Under no circumstances are benefits to be reimbursed that the employee has received on the basis of the earlier stipulation. Likewise, services that have already been carried out or become due due to the earlier stipulation are not to be supplemented retrospectively, unless the remuneration consists of a one-off service.

(2) The employee is entitled to a change in remuneration even in the event that the employer transfers the invention to a third party if the proceeds obtained by the employer in this transfer are conspicuously disproportionate to those granted to the employee remuneration is available or if the employer remains involved in the exploitation of the invention and thereby achieves an income that is noticeably disproportionate to the remuneration granted to the employee.

(3) The application (Paragraphs 1 and 2) can only be submitted one year after the remuneration was last determined.

Section 11. (1) If the extent of the remuneration (Sections 8 to 10) is made dependent on the use of the invention by the employer and the employer fails to use the invention to an extent appropriate to its economic importance for the company, so the remuneration is to be calculated as if the employer had used the invention to the extent appropriate to its economic significance for the company.

(2) The remuneration is to be calculated in the same way if the employer has transferred the invention to a third party or has otherwise disposed of it, unless the employee has consented to such a transfer or disposition and the employee does not prove that this transfer or disposition was only made in appearance.

(3) The employer shall be released from the obligation to pay the remuneration stipulated in Paragraph 1 if he undertakes to grant a third party to be designated by the employee the right to use the invention. The third party to whom the right of use is granted has to pay the employer a fee for his share of the invention, which is to be determined taking into account the provisions of Section 9 lit. In view of this remuneration, changes can be requested retrospectively in accordance with Section 10.

(4) The claim (paragraphs 1 and 2) is excluded if the employer, taking into account the circumstances of the case, cannot be expected to use the invention at all or not to a greater extent than it took place or, if a Transfer or any other disposition would have been omitted, could be expected. However, if the employer benefits from the invention without exercising it, the employee is entitled to appropriate remuneration.

Section 12. (1) If there is an agreement according to which future inventions of the employee should belong to the employer (Section 7), the employee has every invention that he makes, with the exception of those that are obviously not covered by the agreement, to the employer to be communicated immediately. The employer must explain to the employee within four months of the day on which he received this notification whether he is making use of the invention as a service invention on the basis of the existing agreement.

(2) If the employee fails to provide this notification, he shall be liable to the employer, without prejudice to the claim to the invention to which he is entitled, for compensation for the damage, which also includes the lost profit. If the employer fails to make a declaration or makes a negative declaration, the invention remains with the employee.

Section 13. (1) The employer and the employee are obliged to keep the inventions secret, which are the subject of the notification and declaration provided for in Section 12 (1).

(2) The employee's duty of confidentiality expires

a) if the employer has failed to make the declaration provided for in Section 12 (1) or if he has made a negative statement within the deadline;

b) if the employer has claimed the invention for himself in good time (Section 12 (1)) and has given up secrecy.

(3) The expiry of the confidentiality obligation according to the above provision does not affect the confidentiality obligation, insofar as it is otherwise incumbent on the employee.

(4) The employer's duty of confidentiality expires if he has made a timely claim against the invention (Section 12 (1)) and the employee has not raised an objection.

(5) The duty of confidentiality does not prevent the employer and the employee from filing a patent application or taking the otherwise necessary steps in order to safeguard their rights with regard to the invention.

(6) The employer or the employee who violates the confidentiality obligation is obliged to compensate the other party for the damage, which also includes the lost profit.

Section 14. If the employer has paid the employee for a service invention and it then emerges that not this employee, but another employee of the same employer has made the invention or that another employee of the same employer has made the invention has contributed to the invention, the employer can offset the remuneration paid to the unauthorized person in full or in the proportion corresponding to the share of the entitled person in the invention, if he has made in good faith and the invention also according to the legal relationship with the entitled person belongs to the employer.

Section 15. (1) If the employer has made agreements with the employee regarding a service invention, he can nevertheless declare at any time to waive his rights to the invention in whole or in part. In such a case, the employee can demand that the employer's rights to the invention, insofar as the waiver extends, be transferred to him.

(2) If the employer waives his rights to the invention entirely, the obligation to pay the remuneration ceases at the time the declaration of waiver is made. In the event of a partial waiver, the employer can demand a corresponding reduction in remuneration, provided that the rights transferred to the employee can be used separately.

(3) The obligation to pay remuneration for the period up to the submission of the waiver remains unaffected.

Section 16. The rights of the employer and the employee based on the provisions of Sections 6 to 15 are not affected by the termination of the employment relationship.

Section 17. The rights to which the employee is entitled based on the provisions of Sections 6 to 16 can neither be canceled nor limited by agreement.

Section 19. Claims by employers and employees according to the provisions of Sections 7 to 15 expire after three years.

Entitlement to the designation of the inventor

Section 20. (1) The inventor is entitled to be named as the inventor.

(2) The claim cannot be transferred and does not pass to the heirs. A waiver of the claim has no legal effect.

(3) Upon request, the inventor can be named in the publication of the application, in the announcement of the publication, in the announcement of the grant of a patent, in the patent specification, in the patent certificate and by entry in the patent register. If the announcement of the grant of a patent has already taken place and the patent certificate has already been issued, a special certificate of naming the inventor must be issued upon request and a special announcement published in the patent gazette. The naming of the inventor must also be included in the priority documents to be issued by the patent office.

(4) The request can be made by the inventor as well as the applicant or the patent proprietor. If several persons are authorized to submit the application, if the application is not submitted jointly by all authorized persons, the applicant must provide evidence of the consent of the other authorized persons. If someone other than the one previously named as the inventor is to be named as the inventor alongside or in his place, the consent of the previously named inventor must also be proven.

(5) If the applicant, the patent owner or the person already named as the inventor refuses to give their consent, the Patent Office shall, upon request, decide on the right to be named as the inventor.

(6) The application (Paragraph 5) will be negotiated in accordance with the procedural rules for the contestation dispute. The granting of the patent is not postponed by the pending proceedings on such a request. On the basis of the final decision in favor of the application, the person entitled must proceed according to Paragraph 3.

Representative

Section 21. (1) Anyone who acts as a representative before the Patent Office must have his place of residence or his branch in Austria; however, the professional regulations apply to lawyers, patent attorneys and notaries. The representative must demonstrate his authorization by means of a written power of attorney, which must be submitted in the original or in a duly certified copy. If several persons are authorized, each of them is also authorized to represent the company alone.

(2) If a lawyer, patent attorney or notary intervenes, the appeal to the authorization granted to him replaces its documentary evidence.

(3) If a representative intervenes without a power of attorney or, in the case of Paragraph 2, without invoking the authorization granted to him, the procedural act undertaken by him is only effective on the condition that he does a reasonable period of time submits proper power of attorney or invokes the power of attorney granted to him.

(4) Anyone who has neither domicile nor branch office in Austria can only assert rights under this Federal Act before the Patent Office if they are represented by a party representative listed in Section 77. If the place of residence or branch is in the EEA or in the Swiss Confederation, however, the appointment of an authorized recipient resident in Switzerland is sufficient for the assertion of rights under this federal act. The requirement of the main residence in Austria does not apply to citizens of EEA contracting states, if service is ensured by international treaties with the contracting state of the domicile of the authorized recipient or in another way.

(5) In addition to Section 83c JN, the place where

1. the representative has his or her domestic place of residence shall apply has a place of business, or

2. the authorized recipient is domiciled in Austria, or

3. in the absence of a representative with a domicile or a branch in Austria or an authorized recipient with domestic domicile the place where the patent office has its seat,

for matters relating to the patent as the domicile or branch of a patent holder who has neither domicile nor branch in Austria.

(6) The authorization granted to a lawyer, patent attorney or notary to represent before the Patent Office authorizes him by law to assert all rights under this Federal Act before the Patent Office and - insofar as he is legally authorized to do so - to the appellate authorities, in particular to file patents and registrations to restrict or withdraw, to raise objections, to waive patents, to introduce and withdraw applications to be dealt with by the Invalidity Department, as well as to withdraw legal remedies, to conclude settlements, to accept notifications of all kinds as well as official fees and the proceedings and representation costs to be reimbursed by the opponent, as well as a deputy order.

(7) The authorization pursuant to Paragraph 6 can be limited to a specific property right and to representation in a specific procedure. However, it is not canceled either by the death of the principal or by a change in his or her ability to act.

(8) If a representative who is not a lawyer, patent attorney or notary should also be authorized to waive a granted patent in whole or in part, he must be expressly authorized to do so.

Effect of the patent

Section 22. (1) The patent entitles the patent proprietor to exclude others from producing the subject matter of the invention operationally, placing it on the market, selling it or using it, or importing it or owning it for the stated purposes. The effect of

the patent does not extend to studies and experiments as well as the practical requirements resulting therefrom, insofar as they are necessary for obtaining a pharmaceutical approval, authorization or registration for placing on the market.

(2) If the patent has been granted for a process, the effect also extends to the products directly manufactured by this process.

(3) The patent also has the effect that any third party is prohibited from offering or supplying means relating to an essential element of the invention for the use of the invention to persons other than those authorized to use the invention without the consent of the patent owner if the third party knows or it is obvious from the circumstances that these means are suitable and intended to be used for the use of the invention.

(4) Paragraph 3 does not apply if these means are generally commercially available products, unless the third party deliberately causes the person to be supplied to act in a manner prohibited under Paragraph 1.

(5) Persons who do not carry out the actions mentioned in Paragraph 1 on an operational basis are not deemed to be persons within the meaning of Paragraph 3 who are authorized to use the invention.

Section 22a. (1) The scope of protection of the published application and the patent is determined by the claims. However, the description and the drawings are to be used to interpret the claims. The Protocol on the Interpretation of Article 69 of the European Patent Convention shall apply *mutatis mutandis*.

(2) For the period up to the grant of the patent, the scope of protection of the application is determined by the patent claims last filed, which are contained in the publication pursuant to Section 101. However, the patent in its granted version or as amended in opposition or revocation proceedings retrospectively determines the scope of protection of the application, unless its scope is extended.

Section 22b. (1) The protection of a patent for biological material that is endowed with certain properties on the basis of the invention includes any biological material that is obtained from this biological material by generative or vegetative propagation in the same or different form and is endowed with the same properties.

(2) The protection of a patent for a process which enables the production of a biological material endowed with certain properties on the basis of the invention includes the biological material directly obtained with this process and any other biological material endowed with the same properties, which is generative or vegetative Propagation is obtained in the same or different form from the directly obtained biological material.

(3) The protection granted by a patent for a product that consists of or contains genetic information extends, subject to Section 1 (3) subparagraphs 2 and 3, to every material in which this product is incorporated and in which contains the genetic information and fulfills its function.

Section 22c. (1) The protection provided in Section 22b does not extend to biological material obtained through generative or vegetative propagation of biological material that has been placed on the market in the European Economic Area by the patent holder or with his consent, if the generative or vegetative propagation is necessarily the result of the use for which the biological material was placed on the market, provided that the material so obtained is not subsequently used for other generative or vegetative propagation.

(2) Notwithstanding Section 22b, the sale or other marketing of plant propagation material by the patent holder or with his consent to a farmer for agricultural cultivation includes his authorization to use his harvested material for generative or vegetative propagation by himself on his own farm, the extent and modalities of this derogation correspond to those of Article 14 of Regulation (EC) No. 2100/94.

(3) Notwithstanding Section 22b, the sale or other marketing of breeding cattle or animal reproductive material by the patent holder or with his consent to a farmer includes his authorization to use the protected cattle for agricultural purposes. This authorization also extends to the surrender of livestock or other animal reproductive material for the continuation of its agricultural activity, but not to the sale with the aim of or in the context of commercial livestock breeding. Appropriate compensation is payable for this authority.

(4) Section 22b does not apply to biological material that was accidentally or technically unavoidable obtained in agriculture. A farmer can therefore not be claimed if he has not grown seeds or seedlings that are subject to patent protection.

Section 23. (1) The patent does not come into effect against anyone who at the time of filing the application was already using the invention in good faith in Austria or who had organized the events necessary for such use (previous users).

(2) The previous user is authorized to use the invention for the needs of his own business in his own or third-party workshops.

(3) This authorization can only be inherited or sold together with the company.

(4) The previous user can demand that his authorization is recognized by the patent owner by issuing a certificate. If this recognition is refused, the patent office must, upon application, decide on the claim made in the procedure provided for the contestation process. The recognized authorization must be entered in the patent register at the request of the person entitled.

Section 26. The effect of a patent does not extend to vehicles and to equipment on vehicles which are only temporarily brought into Austria due to their use in traffic.

Relationship between several patent holders

Section 27. (1) The patent applied for by several persons as partners in the same invention is granted to them without specifying the parts.

(2) The legal relationship between the partners in a patent is based on civil law.

(3) In case of doubt, the right to allow third parties to use the invention is only available to the totality of the partners; However, everyone is authorized to prosecute interventions in the patent.

Duration of the patent

Section 28. (1) The maximum duration of the patent is 20 years from the filing date.

(2) Additional patents come to an end with the parent patent. An additional patent can, however, be maintained as an independent patent if the parent patent is revoked, withdrawn, declared void or waived. With regard to the duration, the due date and the extent of the annual fees, the additional patent that has become independent takes the place of the master patent.

Binding of the patent owner to the legal regulations

Section 30. A patent does not exempt from compliance with the legal provisions. (*Federal Law Gazette No. 78/1969, Art. IZ 5*)

Section 31. (1) The patent proprietor can exercise the invention commercially from the date of the announcement of the grant of the patent in the scope of protection resulting from the patent specification, without being bound by the regulations for obtaining a trade license. The preferential treatment includes the manufacture, the placing on the market and the offering for sale of the subject matter of the invention. If the subject of the invention is a process, the benefit also extends to its use.

(2) In the case of a majority of patent holders, this preferential treatment only applies to those to whom the patent is entitled to at least a quarter.

(3) If the benefit is claimed by a person at a point in time when the patent is not available to more than four people, it is assumed that this person fulfills the requirement of Paragraph 2, as long as the opposite is not proven. Section 27 (2) is not affected by this.

(4) If the patent is legally revoked, declared null and void or revoked, the invention may from this point on be exercised commercially only on the basis of the trade license required for the activity in question. The same applies if the patent has only been partially revoked, declared null and void or revoked, for any commercial exercise that is no longer covered by the scope of protection of the patent. However, if the patent expires (Section 46) or is withdrawn (Section 47), the preferential treatment in accordance with Paragraph 1 continues to exist if it was already claimed when the patent was expired or when it was withdrawn.

Section 32. (1) Anyone wishing to avail themselves of the preferential treatment of Section 31 (1) must notify the district administrative authority in whose sphere of activity the exercise is to take place at the latest when the invention begins to be exercised.

(2) In the notification, the patent proprietor must indicate his place of residence and nationality as well as the location of the exercise. The notification must be

accompanied by the patent specification and an extract from the register that is no more than one month old (Section 80 (6)).

(3) The district administrative authority must be notified of the revocation, annulment or deprivation of a patent for an invention, the exercise of which has been notified in accordance with Paragraph 1, within one month of the decision becoming final. If the patent is only partially revoked, declared null and void or revoked, a certified copy of the award of this decision must also be submitted.

(4) Whoever is exercising the invention at the time of the events mentioned in Paragraph 3 is obliged to notify pursuant to Paragraph 3.

(5) Persons who set up a business that has benefited from Section 31 must notify the responsible district administrative authority of this within one month.

(6) Anyone who does not submit reports in accordance with Paragraphs 1, 3 or 5 in time is committing an administrative offense and is to be punished by the district administrative authority with a fine of up to EUR 1,090.

Transmission

Section 33. (1) The right from the application for a patent and the patent law pass to the heirs; a right of reversal does not apply to these rights.

(2) Both rights can be transferred to others in their entirety or in part by means of a legal transaction, judicial decision or testamentary disposition.

(3) If the right from the application for a patent is transferred, the patent is granted to the legal successor of the applicant if it is granted. The provisions of Section 43 Paragraphs 5 to 7 apply accordingly.

Liens

Section 34. A patent right can form the subject of a lien.

Voluntary Licenses

Section 35. The patent owner is entitled to allow third parties to use the invention for the entire area of validity of the patent or for part of it, with or without the exclusion of other authorized users (license).

Compulsory licenses

Section 36. (1) If a patented invention cannot be exploited without infringing an invention patented with better seniority (older patent), the owner of the younger patent is entitled to a non-exclusive license to the older patent, if the one with the younger one Patent-protected invention represents an important technical advance of considerable economic importance compared to the invention protected by the earlier patent. If a license is granted, the owner of the older patent is also entitled to a non-exclusive license for the younger patent.

(2) If a plant breeder cannot obtain or exploit a plant variety right without infringing an invention that has been patented with better seniority (earlier patent), he is entitled to a non-exclusive license to the patent, provided that the plant variety represents a significant technical advance of considerable economic interest compared to the

patented invention and insofar as this license is required for the exploitation of the plant variety to be protected.

(3) If the holder of a patent for a biotechnological invention is granted a non-exclusive license for a plant variety protected by a plant variety right granted with a higher priority (older plant variety right) because he cannot exploit the biotechnological invention without violating an earlier plant variety right, then the owner of the older plant variety right is entitled to a non-exclusive license to the younger patent for the exploitation of the protected invention.

(4) If a patented invention is not exercised in Austria to an appropriate extent, whereby the exercise can also be carried out by import, and the patent holder has not done everything necessary for such exercise, everyone is entitled to a non-exclusive license for his operation the patent, unless the patent owner can prove that the practice of the invention in Austria is not reasonable or not to a greater extent than has been done because of the difficulties opposing the practice.

(5) If the granting of a license to a patented invention is necessary in the public interest, everyone has the right to a non-exclusive license to the invention for his business. The federal administration's claim in this regard, however, is not tied to any company.

Section 37. (1) If the person entitled to grant a license in accordance with Section 36 refuses to grant it, although the license applicant has endeavored to obtain approval within a reasonable period of time under reasonable customary business conditions, the patent office shall, at the request of the license applicant, decide on the challenge of Procedure prescribed by patents. In the case of the granting of a license, an appropriate remuneration is to be determined, taking into account the economic value of the license. Any necessary security as well as the other conditions of use are to be determined taking into account the nature of the invention and the circumstances of the case. The scope and duration of the license in accordance with Section 36 are primarily permitted for supplying the domestic market and are to be limited to the purpose who made it necessary. In the case of semiconductor technology, the license can only be granted for public, non-commercial use or to put an end to an anti-competitive practice determined in a court or administrative proceeding.

(2) The granting of a license in accordance with Section 36 (4) can only be applied for four years after the application or three years after the announcement of the grant of the patent for which the license is sought; the deadline which expires last is decisive.

(3) In the case of Section 36 (5), in the event of a national emergency or other circumstances of extreme urgency, the requirement to obtain the consent of the person entitled to grant a license can be waived. In this case, a provisional authorization to use the invention must be granted by way of an interim decision.

(4) A license granted in accordance with Paragraph 1 is subject to adequate protection of the legitimate interests of the authorized persons upon request and if and to the extent that the circumstances that led to it cease to exist and are unlikely

to recur. The patent office decides on this application in the procedure prescribed for the challenge of patents.

(5) In proceedings on the granting or revocation of licenses in accordance with Section 36 (2) and (3), each senate of the nullity department must have a member who, on the proposal of the Federal Minister for Agriculture, Forestry, Environment and Water Management, has been appointed by the Federal Minister for Transport, Innovation and Technology has been appointed.

License transfer

Section 38. Licenses pursuant to Sections 35 and 36 Paragraphs 2 to 5 as well as on the more recent patent pursuant to Section 36 Paragraph 1 can only be transferred among the living without the consent of the patent holder together with the licensed part of the company or business operations and are subject to death because of this, it is only transferred to the legal successor if the part of the company or business operations entitled to the license is continued by them. A license granted to the older patent in accordance with Section 36 (1) is not transferable unless it is transferred together with the newer patent.

Entry in the patent register

Section 43. (1) Patent law (Section 33), lien and other real rights to patent rights are acquired upon entry in the patent register and become effective against third parties.

(2) The provisions of civil law remain authoritative for the time at which the license rights are acquired. The license rights towards third parties only become effective when they are entered in the patent register.

(3) The order of precedence for the aforementioned rights is determined by the order in which the entries are submitted to the Patent Office, provided that the entry leads to entry.

(4) Entries received at the same time enjoy the same ranking.

(5) The entries in the patent register according to Paragraphs 1 and 2 as well as the entry of the expiry of the rights to patent rights entered in the patent register are made upon a written application by one of the parties or upon a court request.

(6) A copy of the document on the basis of which the entry is to be made must be submitted with the application for registration. If the original of the document is not a public document, it must be signed with the certified signature of the person disposing of his rights. In the case of the transfer of the patent right, a corresponding declaration of the parties or their representatives for the transfer can be submitted instead of the document.

(7) The form and content of the application for registration, the certificate and the declarations are subject to examination by the Patent Office. If justified doubts arise, the patent office can request originals or certified copies or other documents.

Charges

Section 44. Anyone who acquires a patent assumes the liability thereon, which can be seen from the patent register at the time the application for registration is submitted to the patent office or which are duly registered for registration.

Dispute Notes

Section 45. (1) Disputes pending in court on the affiliation of patents, on liens or other rights in rem to patents, as well as the procedures on naming the inventor (Section 20 (5) and (6)), the existence of a prior user right (Section 23) and granting Compulsory licenses (Section 36), an objection (Section 102), furthermore because of withdrawal (Section 47), declaration of invalidity (Section 48), revocation (Section 49) and declaration of dependency (Section 50) must be noted in the patent register upon request (note in dispute).

(2) The notice of dispute has the effect that the decision expresses its full effectiveness also against those persons who only obtained entries in the patent register after the date of receipt of the request for a notice of dispute at the patent office.

Expiry

Section 46. (1) The patent expires 1. if the annual fees are paid on time, at the latest when the maximum duration is reached; 2. if the annual fee due has not been paid in due time; 3. if the patent holder surrenders the patent.

(2) If the waiver only affects individual parts of the patent, the patent shall remain in effect with regard to the remaining parts, provided that they can still form the subject matter of an independent patent.

(3) In the case of para. 1 no. 1, the expiry applies to the achievement of the maximum period, in the case of para. 1 no. 2 with the expiry of the last year of validity and in the case of para. 1 no.3 with the notification of the waiver to the patent office the following day.

Withdrawal

Section 47. (1) The patent can be withdrawn in whole or in part if the granting of compulsory licenses (Section 36 (4)) has not been sufficient to ensure that the invention can be exercised in Austria to an appropriate extent. The withdrawal becomes effective when the decision becomes final.

(2) The withdrawal can only be pronounced two years after the legally binding issue of a compulsory license. It is excluded if the patent proprietor shows that, because of the difficulties opposing the exercise of the invention, he cannot reasonably be expected to exercise the invention at all or to a greater extent than it took place in Austria or to have it exercised.

(Note: Paragraph 3 repealed by Federal Law Gazette No. 181/1996)

Annulment

Section 48. (1) The patent is declared null and void if

1. the subject matter of the patent does not correspond to Sections 1 to 3,

2. the patent does not disclose the invention so clearly and completely that a person skilled in the art can perform,

3. the subject matter of the patent extends beyond the content of the application originally filed,

4. the biological material deposited in accordance with Section 87a para. 2 no. 1 is not permanently either with the original depository agency within the meaning of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Proceedings of April 28, 1977, Federal Law Gazette No. 104/1984, (Budapest Treaty) or at another depository agency to which it is referred according to this contract has been forwarded, was accessible, unless the patent proprietor proves,

a) that he has deposited the biological material again and the deposit according to Art. 4 of this contract is to be treated as if it had been made on the date of the original deposit, or

b) that he was prevented from such a new filing by an unforeseen or unavoidable event and that he has made up for it within two months after the hindrance no longer exists.

(2) If the grounds for invalidity apply only partially, the invalidity is declared by a corresponding limitation of the patent.

(3) In the cases of Paragraph 1 Nos. 1 to 3, the legally binding declaration of nullity takes effect on the filing date, in the case of Paragraph 1 Nos. 4 on the date on which the depository first established that it is unable to do so To submit samples of the biological material. If the subject-matter of the patent was not patentable according to Section 3 (2), the license rights legally ordered by the later applicant and honestly acquired by third parties, which have been entered in the patent register for a year and are not affected by any legally justified notice of dispute, remain from this retroactive effect (Section 45), unaffected, without prejudice to the resulting claims for compensation against the later applicant.

Deprivation

Section 49. (1) The patent is withdrawn from the patent proprietor if evidence is provided that

1. that the patent proprietor was not entitled to the grant of the patent (Section 4 (1), Sections 6 and 7);

2. that the essential content of the application was taken from the descriptions, drawings, models, equipment or facilities of another person or from a method used by him without his consent.

(2) If one of these prerequisites (para. 1 subparagraphs 1 and 2) only partially applies, the patent will only be partially revoked from the patent proprietor.

(3) In the first case, the claim to the revocation of the patent is only available to the person who is entitled to the grant of the patent, in the second case only to the impaired party and expires against the bona fide patent owner within three years from the date of his entry in the patent register.

(4) The reciprocal compensation and recovery claims arising from the withdrawal are to be assessed according to civil law and asserted in civil law.

(5) Instead of revocation, the transfer of the patent can be requested. If the right to transfer only applies to a portion, then the patent is to be transferred proportionally. If no transfer is requested and the patent is revoked in its entirety, the patent protection ends when the decision making the revocation becomes final. If the transfer of the patent is requested, the patent owner can only waive the patent with the consent of the applicant until the decision becomes final.

(6) The license rights lawfully ordered by the previous patent owner, honestly acquired by third parties and entered in the patent register for a year remain, provided they have not been affected by a legally justified dispute (Section 45), without prejudice to the resulting claims against the previous patent owner, in the event of such a patent transfer, it is also upheld vis-à-vis the new patent holder.

(7) The request for revocation or transfer can also be made prior to the granting of the patent with regard to the patent application, whereby paragraphs 1 to 5 are to be applied mutatis mutandis. The application is to be negotiated in accordance with the procedural rules for the revocation of a patent. If the transfer of the patent application is requested, the application process must be suspended until the final decision on the application has been made and can only be continued beforehand with the consent of the applicant.

Declaration of dependency

Section 50. The owner of an earlier patent or a utility model with an earlier priority within the meaning of the Utility Model Act can apply to the Patent Office for a decision that the commercial use of a patented invention requires the full or partial use of his invention. The patent office has to decide on such an application in the procedure provided for the challenge process.

Right of retaliation

Section 51. A right of retaliation can be exercised by ordinance of the Federal Government against nationals of a foreign state who grant no or incomplete protection to inventions by Austrian citizens.

Deadlines

Section 52. (1) If the duration of a period is not set by a law or an ordinance, the authority shall set it with due regard to the requirements and the nature of the individual case, unless the President of the Patent Office provides provisions on the extent of Deadlines (Section 99, Paragraph 6, third sentence).

(2) The deadlines set by a law or an ordinance cannot be extended, unless expressly stated otherwise. The deadlines set by the authority can be extended.

Section 53. (1) The course of a period begins with the event determined by the law or the ordinance, according to which the beginning of the period should be based, or, unless otherwise specified when setting the period, with the delivery of the resolution setting the deadline or the order to the party setting it, or, if the resolution or the order was not served but announced, with the promulgation.

(2) When calculating a deadline that is determined by days, the day on which the event, delivery or announcement falls, according to which the beginning of the deadline is to be based, is not included.

(3) Deadlines determined by weeks, months or years end at the end of the day of the last week or the last month, which by its name or number corresponds to the day on which the period began. If this day is missing in the last month, the period ends at the end of the last day of this month.

Section 54. (1) The beginning and the running of a period are not hindered by Sundays and public holidays.

(2) If the end of a period falls on a Sunday or a public holiday or on a working day on which the entry point of the Patent Office is closed, the next working day is to be regarded as the last day of the period.

(3) The days of the post run are not included in the deadline for entries that have been posted in Austria. This does not apply in those cases in which the date on which the application was received by the Patent Office is decisive (Section 102 (1) and Section 129 (3)).

Section 55. If the time limits to which several persons involved in one and the same matter are entitled to carry out the same action expire at different times, the action can be carried out by each of these persons as long as one of them still has the time limit for this action is open.

Section 56. If an entry comprises several industrial property rights (patents, trademarks, designs) or registrations of such rights, the submission of separate entries for each (*note: correct: each*) or individual of these rights (registrations) can be arranged by setting a deadline become. The separate submissions submitted in good time are deemed to have been submitted on the day the original submission was received. Section 163 (4) remains unaffected.

II. PATENT AUTHORITIES AND PATENT BODIES

Area of activity of the Patent Office

Section 57. (1) For the granting of patents, the revocation, the withdrawal, the declaration of invalidity, the withdrawal, the declaration of dependency, the decision on the naming as inventor (Section 20), on the existence of the prior user right (Section 23) The patent office is responsible for granting licenses (Section 36), requests for a declaration (Section 163) as well as services and information in the field of industrial property protection (Sections 57a, 57b) and all entries in the patent register.

(2) In the interests of international cooperation in the field of industrial property protection, it can be agreed that the Patent Office shall provide technical or legal assistance to states or international governmental or non-governmental organizations dealing with tasks in the above-mentioned field free of charge or against reasonable reimbursement of costs. Free of charge may only be agreed if the aid is in the public interest, is provided for purposes of development aid or only incurs negligible costs.

Service and information services of the Patent Office

Section 57a. Upon request, the patent office has written 1. research into the state of the art with regard to a specific technical problem and 2. expert opinion as to whether an invention that is patentable according to Sections 1 to 3 is compared to the one dated applicant announced or the state of the art to be researched by the patent office is available.

Section 57b. The patent office has to expand its service and information services and in particular to make its documentation accessible for the purpose of making it easier to access and to provide the public with improved information in all relevant areas. Section 81 (4) first sentence is to be applied mutatis mutandis.

Organization, seat and composition of the patent office

Section 58. (1) The Patent Office is a federal authority which is established as a subordinate service authority to the Federal Minister for Transport, Innovation and Technology and which has its seat in Vienna. The activities of the patent office must be consistent with the obligations of objectivity and equal treatment resulting from its public law position as a federal authority.

(2) The Patent Office consists of a President, a Vice-President responsible for the legal area and a Vice-President responsible for the technical area as well as the legally qualified and technical members and other employees required to fulfill its tasks.

(3) The President is responsible for managing the Patent Office, irrespective of the Vice Presidents' area responsibility.

(4) The legally qualified members must have completed their university studies in law. The technical members must have completed a university degree in a field of technology or natural sciences. The relevant service regulations also apply to the appointment of members.

(5) The vice presidents should have the formal qualifications provided for members of the patent office (the technical vice president as a technical member, the legally qualified vice president as a legally qualified member) or equivalent knowledge.

Institutions of the Patent Office

Section 60. (1) The Patent Office has the departments intended to fulfill its tasks and the other organizational units required.

(2) The number of departments and organizational units, their area of responsibility and their staffing is to be determined by the President according to the respective requirements.

(3) Without prejudice to the tasks assigned to these departments and organizational units in other legal provisions, the following are responsible:

1. the technical departments for the procedure for the grant of patents, the opposition procedure, the procedures for the waiver and the reimbursement of written searches and opinions;
2. the legal department for the procedure in matters relating to the transfer of the right from the application, to other legal dispositions of such a right, to granted patents or to requests for restitution to the previous status, unless the technical department or the Cancellation Department is responsible;
3. the Invalidity Department for the procedure on applications for withdrawal, declaration of invalidity, withdrawal, declaration of dependency, to be named as the inventor according to Section 20 (5), for recognition of the prior user right, for declaratory applications and for applications for compulsory licenses.

(Note: Z 4 repealed by Federal Law Gazette I No. 126/2013)

Section 61. (1) The President shall subdivide the entire field of technology into patent classes and, if necessary, subdivide these further; he has to assign the individual patent classes or subdivisions to the technical departments according to the respective requirements.

(2) Technical members are to be appointed to the technical departments and legally qualified members to the legal departments. Legally qualified and technical members are to be appointed as members of the Invalidity Department. The members of the technical departments and the legal departments can also be appointed to the nullity department at the same time.

(3) The President shall appoint the required number of chairmen from the members of the Invalidity Department and a board of directors from the members of the other departments to manage and monitor the course of business as well as to make provisions for their deputies.

(4) Each technical department is to be assigned a legally qualified member to participate in its collegial decisions or to make statements (Section 62, Paragraph 4). The same legally qualified member can also be assigned to several technical departments.

(5) The division of responsibilities in the technical departments and the legal departments is determined by the board of directors of the respective department.

(6) In the nullity department, the individual business cases are to be assigned to the chairman by the president. In doing so, consideration must be given to the burden and, in the case of the technical chairperson, to the subject area to be considered in the individual case.

Decision-making in the departments

Section 62. (1) The technical member (examiner) who is responsible for the division of responsibilities is entrusted with the resolutions and orders within the sphere of

activity of the technical departments, unless otherwise stipulated in Paragraphs 3 and 4.

(2) The member who is assigned to the technical department (Section 61 (4)), in whose patent classes or subdivisions the patent in question or in the patent classes or subdivisions thereof, is responsible for passing resolutions and for all dispositions in matters of patent protection that fall within the scope of the legal department the relevant registration belongs (Section 61 (1)). If such matters concern a number of patents (patent applications), the member who, in accordance with Section 61(5), is responsible for the patent or patent application mentioned first in the relevant request shall be responsible.

(3) The technical department has to decide on the complete or partial rejection of a registration according to Section 100 paragraph 1 and on the objection by three members, among whom there must be two technical members. The head of the department and the examiner must belong to the Senate. The head of department chairs.

(4) The legally qualified member assigned to the technical department must participate in the decision-making process in accordance with Paragraph 3 as voting leader, or the examiner, if he is solely entitled to the decision-making process (Paragraph 1), must obtain the statement of the legally qualified member beforehand, provided that

1. a decision is to be made on patentability from the point of view of industrial applicability or on the basis of Section 2,
2. to decide on priority rights (Sections 93 to 95), the legal requirements of which are doubtful or disputed,
3. Witnesses or experts are questioned or an inspection is to be carried out, 4. A decision is to be made on a regulatory or willful penalty.

(5) If, at a meeting of the Technical Department consisting of three technical members, the majority is of the opinion that a decision is also to be taken on one of the questions to be dealt with in para. 4, the legally qualified member assigned to the Technical Department shall participate in the decision-making process instead of a technical member.

(6) Insofar as the composition of the Senate is not determined by Paragraphs 3 to 5, it is the responsibility of the Board of Directors of the Technical Department. In doing so, he has to take into account the subject area in question.

(7) Before deciding on matters that fall within the sphere of activity of the legal department (Section 60, Paragraph 3, Item 2) and in which technical questions may be of importance, the legally qualified member must obtain the statement of the competent technical member.

(8) The member decides on claims according to the Fee Claims Act 1975, Federal Law Gazette No. 136, in the case of a Senate the chairman.

Section 62a. (1) By ordinance of the President, employees who are not members of the Patent Office may be authorized to deal with matters relating to applications and granted patents, which are to be specified in a specific manner, provided this is expedient because of the simplicity of the processing and the training of the authorized employees Provides a guarantee for proper execution. You are bound by the instructions of the member responsible after the allocation of responsibilities. This can at any time reserve the right to do things or draw them to itself.

(2) The resolutions of the employees authorized according to Paragraph 1 can be challenged like those of the responsible member.

Section 63. (1) The Invalidity Division makes its final decisions with the inclusion of the chairman through two legally qualified and three technical members.

(2) The presence of three members is sufficient for interim decisions in the nullity division. Decisions terminating the proceedings without the requirement of a decision on the matter itself as well as resolutions on claims under the Fee Claims Act are made by the chairman.

Section 64. (1) A simple majority of votes is sufficient for decisions in the Senate. In a tie vote, the chairman decides.

(2) The decisions of the Patent Office are to be given reasons. If an application is granted in full in the unilateral procedure before a technical department or the legal department, the justification can be omitted. All transactions are to be made in writing and sent to all involved ex officio or sent by telegraph, telex or fax. Written copies can be transmitted by means of automated data transmission or in any other technically possible manner if

1. the party has submitted entries in the same permissible manner and has not expressly objected to this type of transmission to the authority, or

2. the party has expressly consented to this type of transmission.

(3) A completion is approved by the signature of the approver. This can, however, be dispensed with if it is ensured that the person who issued the approval can be identified in another way.

(4) The form and type of transactions as well as the copies are regulated by ordinance of the President of the Patent Office.

(5) Written copies that are generated automatically or that are transmitted by telegraph, telex, fax, automated data transmission or in any other technically possible manner require neither a signature nor an authentication.

Section 65. (1) The preparatory decisions of the technical department are to be made by the examiner. If it is not just a matter of correcting external deficiencies in entries or correcting the description provided, a record of the interrogation of parties, witnesses or experts must always be recorded.

(2) Resolutions are made on the basis of a written application. Changes decided in the meeting are to be implemented in the draft of the proposal. If the resolution deviates significantly from the proposal, the draft is to be rewritten in agreement with the member whose proposal was raised.

(3) Each member of the Senate can change his position up to the end of the meeting. If this means that the resolution passed no longer has a majority of votes, a new vote must be taken.

(4) If there is no unanimity in the Senate about the verdict or the reasoning for the resolution, minutes must be taken in which the views of the Senate members and the proportion of votes are to be made clear. Otherwise, a voting note is sufficient, which must be signed by all members of the Senate.

Section 66. The senates of the nullity division are to be composed by the chairperson on a case-by-case basis. In doing so, consideration must be given to the burden and, in the case of the technical members, to the subject area to be considered in the individual case.

Official dress

Section 67. (1) During all oral hearings, the members of the Invalidity Division must wear official dress. The more detailed provisions on the nature and wearing of the official dress are made by ordinance of the President of the Patent Office.

(2) The party representatives listed in Section 77 are entitled to wear their official dress if they intervene in oral negotiations with the Invalidity Department.

Course of business

Section 68. The course of business is to be regulated in more detail, taking into account an orderly and rapid process and taking into account the tasks incumbent on the Patent Office, by ordinance of the President of the Patent Office. It must also be determined how submissions can be submitted directly to the patent office and when they are deemed to have been received by the patent office. The entries must be marked with the date they were received.

Section 69. An ordinary legal remedy is only permissible against the decisions of the President to which he is called under this Federal Act if this is expressly provided for in this Federal Act. Section 2 (2) of the Service Law Procedure Act 1984, Federal Law Gazette No. 29, is not affected by this.

Grounds for exclusion

Section 76. (1) Members of the Patent Office are excluded from participation:

1. In matters in which they are themselves a party or in respect of which they are one of the parties are in a relationship with a jointly entitled, jointly obliged or subject to recourse;

2. in matters of their spouses or registered partners or such persons who are with are directly related or related by marriage to them or with whom they are related up to the fourth degree on the sidelines or are related by marriage to the second degree;

3. in matters of their choice or foster parents, choice or foster children, their ward or foster family members;

4. in matters in which they represent or have represented one of the parties or in relation to which they have experienced or are in prospect of material advantage or damage;

5. if there are other important reasons that are likely to cast doubt on your complete impartiality.

(2) A member of the Patent Office who considers himself excluded from participating in a decision (Paragraph 1) must notify the head of the department or the chairman, stating the reasons. If he considers the reason for exclusion to be given, he has to make the necessary decisions regarding the appointment of a substitute member. If the board of directors or the chairman is affected by the reason for exclusion, the notification must be sent to the President of the Patent Office.

(3) If one of the parties asserts a reason for exclusion in proceedings before the Patent Office, the procedure referred to in Paragraph 2 shall apply.

Party representatives

Section 77. Only lawyers, patent attorneys and notaries as well as the financial procuratorate are authorized to represent parties professionally before the Patent Office.

Prohibition of angle writing

Section 78. (1) Anyone who works in the field of protection of inventions without being authorized to professionally represent parties in such matters in Austria

1. drafts documents or drawings for use by domestic or foreign authorities,
2. provides information,
3. represents parties before domestic authorities or
4. offers one of the activities mentioned under items 1 to 3,

is guilty of angle writing and shall be punished by the district administrative authority with a fine of up to € 4,360.

(2) The representation of a legal person by employees of another legal person that is economically connected to it is not considered to be a scribble. With the exception of natural persons, other legal entities are treated the same as legal persons.

(3) The special provisions on the treatment of angle recorders in the ordinary courts remain unaffected.

Patent gazette

Section 79. (1) The Patent Office shall publish a periodically published official patent gazette in which the notices provided for in this Federal Act and the ordinances to be

issued by the President of the Patent Office are to be published. Unless expressly stated otherwise, these ordinances come into force on the day after the issue of the patent gazette containing the pronouncement.

(2) The establishment and publication of this gazette is regulated by the President by ordinance.

Patent register, patent specifications

Section 80. (1) A patent register is to be kept at the Patent Office. It must contain the number, the title, the filing date and, if applicable, the priority of the granted patents as well as the name and the registered office or place of residence of the patent proprietors and their representatives. The beginning, the expiration, the revocation, the withdrawal, the declaration of invalidity, the withdrawal, the declaration of dependency, the naming as inventor, the self-declaration of an additional patent and the transfer of patents, liens and other real rights to patents, license rights, the employer's right of use, previous user rights, reinstatement in the previous status, determination decisions and disputes as well as information according to Section 156 para. 2 must also be entered in the register.

(2) The descriptions and drawings belonging to the existing patents as well as the applications and documents on which the entries in the register are based are kept by the Patent Office during the validity of the patent.

(3) Anyone is free to inspect the patent register.

(4) The Patent Office shall publish the descriptions, patent claims, drawings and summaries of the granted patents, insofar as they are free to inspect, in a patent specification. In the patent specification, the citations must be indicated which the patent office has taken into account for the assessment of the patentability of the invention applied for.

(5) Public law institutions can request a copy of all patent specifications issued from the time the request was received free of charge if these are made available to the public.

(6) Upon request, the Patent Office will issue certified copies of the entries in the register.

File inspection and data protection

Section 81. (1) Those involved in a procedure are entitled to inspect the files relating to the procedure.

(2) Anyone may inspect files relating to published patent applications and patents granted thereon.

(3) Files relating to unpublished patent applications may only be viewed by third parties with the consent of the applicant. Consent is not required for those against whom the applicant referred to his patent application. After a separate application has been published, anyone can inspect the files of the earlier application without the consent of the applicant.

(4) Files relating to research and expert opinions in accordance with Section 57a may only be viewed by third parties with the consent of the applicant. The person to whom the applicant has referred to such a search or such an expert opinion does not require consent.

(5) The right to inspect files also includes the right to make copies. These are to be certified by the patent office upon request.

(6) Information and official confirmations about when, under which title, by whom and, if applicable, by which representative an application was filed, which file number it bears, which patent class it belongs to, which priority is claimed, which file number bears the priority application, whether an independent patent or an additional patent is to be obtained, if necessary who is named as the inventor, whether the application is still being processed and whether and to whom the rights have been transferred from it, are to be granted to everyone.

(7) Consultation minutes and only parts of the files relating to the internal course of business are excluded from inspection. Upon request, if there is a business or trade secret or any other reason worthy of consideration, parts of the files can also be excluded from inspection, the disclosure of which is not necessary for the information of the public.

(8) Insofar as personal data are processed in the register or in publicly accessible electronic information services of the Patent Office, do not exist

1. The right to information in accordance with Article 15 (1) (c) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data, on the free movement of data and on the repeal of Directive 95/46 / EC (General Data Protection Regulation) , OJ No. L 119 of 04.05.2016 p. 1, in the version of the correction OJ No. L 314 of 22.11.2016 p. 72, (hereinafter: GDPR),

2. the notification obligation according to Art. 19 second sentence GDPR and

3. the right to restriction of processing according to Art. 18 and the right to object in accordance with Art. 21 GDPR, whereby the data subjects must be informed of this in a suitable manner.

The right to receive a copy of this data according to Art. 15 Para. 3 GDPR is fulfilled by the fact that the person concerned can inspect the patent register or the publicly accessible electronic information services of the patent office.

Samples of deposited biological material

Section 81a. (1) Before the date of publication of the application, every person who has the right to inspect files according to Section 81 (3) is entitled to a sample of a biological material deposited in accordance with Section 87a (2) no.1. Every person who makes a request has this right from the day the application is published. Subject to Paragraphs 2 and 3, access is established by handing over a sample of the stored biological material to the applicant or an independent expert.

(2) The surrender will only take place if the applicant undertakes, for the duration of the patent's effect or until the application has been withdrawn or rejected,

1. not to make a sample of the deposited biological material or any material derived from it accessible to third parties and

2. not to use a sample of the deposited material or a material derived from it for purposes other than experimental purposes, unless the applicant or the proprietor of the patent expressly waives such an obligation.

(3) Until the technical preparations for the publication of the application have been completed, the applicant can request that the access specified in Paragraph 1

1. until the patent is granted or

2. in the case of withdrawal or rejection of the application for a period of twenty years from the filing date is only produced by handing over a sample to an independent expert.

(4) The following can be named as an expert within the meaning of Paragraph 3

1. Any natural person, provided the applicant can prove that the nomination has been approved of the applicant takes place,

2. any natural person who is recognized by the President of the Patent Office as an expert and is entered in the register of experts kept by the Patent Office.

With the appointment a declaration of the expert is to be submitted, in which he enters into the obligations towards the applicant according to paragraph 2.

Ordinary and malicious punishments

Section 82. (1) The leader of a hearing, an interrogation, an inspection or the taking of evidence must ensure that order is maintained and that decency is maintained.

(2) Persons who disrupt the official act or who violate decency through improper behavior are to be admonished. If the admonition remains unsuccessful, they can be withdrawn from the floor after the previous threat, their removal ordered and the appointment of a representative or a fine of up to 726 euros imposed on them.

(3) The same administrative penalties can be imposed on persons who use offensive spelling in their written submissions.

(4) The head of the official act is entitled to take measures in accordance with Paragraph 2. In proceedings before the Invalidity Department, the Senate has to decide on the removal of a person involved in a hearing or the imposition of a fine during a hearing. Administrative penalties according to Paragraph 3 are to be imposed by the Senate in proceedings in which the decision belongs to a Senate.

(5) Public bodies and authorized representatives who are authorized to professionally represent parties are not subject to a disciplinary law and not to impose a fine, but to report to the disciplinary authority.

(6) The imposition of a fine does not exclude criminal prosecution for the same act.

Section 83. A willful penalty of up to 726 euros can be imposed on persons who apparently deliberately make use of the activities of the patent office or who provide incorrect information with the intention of delaying the matter. In proceedings in which the decision belongs to a Senate, the Senate has to decide on willful penalties.

Section 84. (1) The administrative and willful penalties accrue to the federal government. The provisions of the Administrative Criminal Law 1991, Federal Law Gazette No. 52, on the execution of sentences are to be applied mutatis mutandis.

(2) The body responsible for imposing administrative fines is that which carries out the disrupted official act or before which decency is violated by improper behavior or to which submissions (Section 82 (3)) are directed. The body responsible for the imposition of willful punishment is the one whose activity is deliberately used or before which incorrect information is given with the intention of delaying the matter.

(3) An appeal is permitted against a resolution by the Technical Department, the Legal Department or the Invalidity Department imposing a regulatory or willful penalty. The appeal is to be filed within two weeks and has no suspensive effect. No appeal is permitted against the decision of the second instance.

Delivery

Section 85. Unless otherwise provided in Section 86, the delivery of documents from the Patent Office shall be carried out in accordance with the Service Act, Federal Law Gazette No. 200/1982.

Section 86. If an attachment is submitted jointly by several people who do not all live in Austria, then in case of doubt the person living in Austria who is named in the first place is deemed to be the joint authorized recipient.

III. PROCEEDINGS

A. Grant of Patents

Patent application

Section 87. (1) The application for an invention in order to obtain a patent must be submitted in writing to the Patent Office.

(2) The day on which the application is received by the Patent Office is deemed to be the day of filing.

Disclosure

Section 87a. (1) The invention is to be disclosed so clearly and completely in the patent application that it can be carried out by a person skilled in the art.

(2) If an invention relates to biological material which is not available to the public and which cannot be described in the application in such a way that a person skilled in the art can carry out the invention accordingly, or if the invention includes the use of such material, the invention is only valid then as disclosed in accordance with paragraph 1 if

1. the biological material has been deposited with a depository within the meaning of the Budapest Treaty on the filing date at the latest,

2. the application contains the relevant information known to the applicant regarding the characteristics of the deposited biological material and

3. the depository and the filing number of the deposit are given in the application.

(3) The information mentioned in Paragraph 2 No. 3 can be submitted either

1. within sixteen months of the filing date or, if priority is required has been taken after the priority date, or

2. by the date of filing a request for early publication of the application or

3. within one month after the Patent Office has informed the applicant that a right to there is an inspection of files in accordance with Section 81 (3),

whichever period expires first is decisive.

Unity

Section 88. The application may only contain a single invention or a group of inventions which are interrelated in such a way that they realize a single general inventive idea.

Registration requirements

Section 89. (1) The registration must contain:

1. the name and seat or place of residence of the applicant and, if applicable, his Representative;

2. the application for a patent;

3. a short, appropriate description of the invention to be patented (Titel)

4. a description of the invention;

5. one or more patent claims (Section 91 Paragraph 1);

6. the drawings necessary to understand the invention;

7. a summary (Section 91 (2)).

(2) The parts of the registration mentioned in Paragraph 1 Z 4 to 7 must be submitted in two copies. They can also be in English or in French.

Section 89a. The commercial applicability of a sequence or partial sequence of a gene must be specifically described in the application.

Section 91. (1) The claims must specify precisely and in a differentiating manner what protection is sought for. They must be supported by the description.

(2) The abstract must contain a short version of the disclosure contained in the application. It is used exclusively for technical information and cannot be used for other purposes, in particular not to determine the area of protection.

(3) The description, claims, drawings and abstract may be changed until the decision to grant has been adopted (Section 101c (1)). Insofar as the amendments affect the essence of the invention, they are to be excluded from the application and, if the applicant wishes to obtain protection for them as well, to be registered separately (Section 99 (5)).

Section 91a. If parts of the application are written in English or French (Section 89 (2)), the applicant must be requested to submit a translation into German within the period provided for in Section 99 (2) within the framework of the legality check, enclosing a preliminary search result. This translation is to be used as the basis for the registration process; their correctness is not checked in the registration process.

Section 92. The form and content of the application and the form in which the application and the patent specification are to be published are to be regulated in more detail by means of an ordinance by the President of the Patent Office. The greatest possible expediency and simplicity as well as the requirements of the publications must be taken into account.

Division of registration

Section 92a. The applicant or owner of a granted patent or the respective legal successor may during the entire application process and until a period has expired

1. two months after the decision rejecting the patent application has become final, or
2. Six months after the announcement of the grant of the patent in accordance with Section 101c (2), if no opposition was filed, or
3. two months after the decision on an objection raised in good time becomes final

submit a separate application (divisional application). The filing date of this divisional application is the day on which the original application was filed with the Patent Office if the applicant claims this date as the filing date in the divisional application and the divisional application does not go beyond the content of the earlier application as originally filed.

Conversion of the registration

Section 92b. The applicant can apply for the conversion of the application into a utility model application within the meaning of the Utility Model Act until the decision to grant (Section 101c (1)) or the rejection decision (Section 100) has been drafted. The filing date for this utility model application is the day on which the patent application was submitted to the patent office. The conversion of a patent application is not permitted if it is a utility model application converted in accordance with Section 21 of the Utility Model Act.

Priority

Section 93. (1) On the day of the proper filing of a patent application, the applicant acquires the right of priority for his invention.

(2) From this day onwards, it has priority over any identical invention registered later.

(3) If there are deficiencies in the application, their timely elimination (Section 99) goes back to the day of the first submission, provided that the elimination of the deficiencies did not affect the essence of the invention.

Section 93a. Within a period of twelve months after the filing date of an earlier patent or utility model application for a later patent application relating to the same invention, the applicant is entitled to the priority of the earlier patent or utility model application (internal priority). The requirements and the effects of this priority right correspond to those of Article 4 of the Paris Convention for the Protection of Industrial Property, Federal Law Gazette No. 399/1973.

Section 93b. Within a period of twelve months from the filing date of an earlier patent or utility model application filed with a filing office not covered by an intergovernmental agreement on the recognition of priority, the applicant shall be entitled to the right of priority of the earlier patent or utility model application for a later patent application in Austria relating to the same invention, if a corresponding reciprocity with this filing office has been established by a notice to be published in the Federal Law Gazette by the Federal Minister for Transport, Innovation and Technology. The requirements and the effects of this priority right correspond to those of Article 4 of the Paris Convention for the Protection of Industrial Property, Federal Law Gazette No. 399/1973.

Section 94. Separate priorities for individual parts of the subject of the registration (partial priorities) can only be claimed on the basis of Sections 93a or 93b or international agreements. Such partial priorities are also permissible if the date on which the application is received by the patent office remains decisive for the priority of a feature of the subject matter of the application. Several priorities can also be claimed for one patent claim.

Section 95. (1) The priority rights granted on the basis of Sections 93a or 93b or by intergovernmental agreements are expressly to be claimed. The date of the registration, the priority of which is claimed, and the country in which this registration was made must be specified (declaration of priority). The file number of this application must also be given.

(2) The declaration of priority must be submitted within two months of the receipt of the application at the Patent Office. Correction of the declaration of priority can be requested within this period.

(3) If the acquisition or maintenance of the property right depends on whether the priority was rightly claimed, the right of priority must be proven. The President of the Patent Office's ordinance shall determine which documents are required in the proceedings before the Patent Office for this proof (priority documents) and when these documents are to be presented.

(4) If the declaration of priority is not submitted in time, the priority documents are not submitted in time or if the file number of the application whose priority is claimed is not disclosed in due time upon official request, the priority is determined on the day of the application in Austria.

Legality check

Section 99. (1) Every application is to be checked by the patent office by the technical department for legality, although a check is not carried out to determine whether the applicant is entitled to the grant of the patent. The financial profitability of the invention cannot be assessed.

(2) If the registration does not meet the prescribed formal requirements, the applicant must be requested to remedy the deficiencies within a certain period of time.

(3) If the examination reveals, if necessary after the examination of experts, that a patentable invention does not exist, the applicant shall be notified of this after any examination by the examiner, stating the reasons, with the request to make a statement within a certain period of time.

(4) If the examination reveals that the registration is inconsistent (Section 88), the applicant must be instructed to establish uniformity within a certain period. In this case, at the request of the applicant, it must be determined by resolution that the registration is inconsistent. If such a decision becomes final, the applicant must be given a further deadline to establish uniformity.

(5) If the registration has been amended in an inadmissible manner (Section 91 (3)), the applicant must be requested to eliminate the inadmissible amendments within a certain period of time. For the part to be eliminated, a separate application can be submitted during the period specified in Section 92a, the filing date being the day on which the patent office was notified of the amendments in the proceedings relating to the original application.

(6) The deadlines set out in Paragraphs 2 to 5 can be extended upon request. The President of the Patent Office can draw up guidelines on the principles of examination and the procedure to be followed by the technical department. In particular, he can determine the extent of the officially set deadlines. In doing so, attention should be paid to the most efficient and precise examination possible, as well as a uniform treatment of the registrations by the technical department.

Rejection of registration

Section 100. (1) If the examination in accordance with Section 99 reveals that the grant of a patent is inadmissible, the application must be rejected. If these prerequisites only partially apply, only the corresponding part of the application must be rejected.

(2) In any case, the application must be rejected in its entirety if one of the deadlines granted in accordance with Section 99 lapses unused and no response has been received by the time the rejection decision has been made.

Publication of the application

Section 101. (1) Subject to Section 101a, the application must be published immediately after the expiry of eighteen months after the application date or, if priority has been claimed, after the priority date. However, at the applicant's request, it can be published before this period has expired.

(2) The publication of the application shall contain the description, the claims, the drawings and the abstract, each as originally filed, and, as an annex, a search report if it is available before the technical preparations for publication are completed. The search report shall indicate the documents identified by the Patent Office at the time of preparation of the report which may be taken into consideration for the assessment of patentability. The search report shall be based on the patent claims as originally filed, and Section 22a (1), second and third sentences, shall apply mutatis mutandis. If the search report has not been published with the application, it shall be published separately, unless the application has been withdrawn or refused before completion of the technical preparations for such separate publication.

(3) If the patent claims have been changed before the technical preparations for the publication of the application have been completed, the patent claims filed last shall also be included in the publication.

(4) In the patent gazette, reference must be made to the publication of the application, stating the name and seat or place of residence of the applicant, a short, appropriate description of the subject matter of the invention (title) and the date of the application (announcement of the application).

(5) From the date of its publication in the patent gazette (para. 4), the application gives the applicant a claim to reasonable remuneration against the person who has used the subject matter of the application without authorization. Section 154 shall apply mutatis mutandis, provided that this claim does not expire one year after the announcement of the grant (Section 101c (2)).

Section 101a. (1) If the decision by which the patent was granted becomes legally binding before the deadline specified in Section 101 (1) has expired, the application must be published at the same time as the patent specification (Section 80 (4)). In this case, no search report will be published.

(2) The application shall not be published if it has been withdrawn or rejected before the technical preparations for publication have been completed. If the rejection decision is not legally binding, the application must be published even after the deadline specified in Section 101 (1) has expired.

(3) If a utility model application is converted into a patent application in accordance with Section 21 of the Utility Model Act and publication can no longer be made within the period specified in Section 101 (1), the application must be published after this period has expired.

(4) If a separate application can no longer be published within the deadline specified in Section 101 (1), the application must also be published after this deadline has expired.

Third party objections

Section 101b. (1) After the application has been published, any third party may raise objections to the patentability of the invention applied for. The objections must be justified. The third party has no party status and no claim to reimbursement of costs in proceedings before the patent office.

(2) The objections are communicated to the applicant, who can comment on them.

Grant of the patent

Section 101c. (1) If there are no concerns about the grant and the publication fee for the patent specification has been paid, the Technical Department shall decide to grant the patent.

(2) The grant of the patent is to be published in the patent gazette. At the same time, the patent specification must be published (Section 80 (4)), the patent entered in the patent register and the patent certificate drawn up for the patent holder. With the announcement in the patent gazette, the legal effects of the patent take effect.

Notice of withdrawal or rejection of registration

Section 101d. (1) If the application is withdrawn after publication or if the patent application is rejected, this must also be announced in the patent gazette.

(2) With the announcement of the withdrawal or the rejection of the application, the effects of the temporary protection (Section 101 (5)) are deemed not to have occurred.

Objection

Section 102. (1) Within four months from the date of the announcement of the grant of the patent (Section 101c (2)), an objection can be raised against the grant of a patent. The objection must be received by the patent office no later than the last day of the deadline.

(2) The objection must be submitted in writing in duplicate. It can only be based on the following allegations based on certain facts:

1. that the subject matter of the patent does not correspond to Sections 1 to 3;
2. that the patent does not disclose the invention so clearly and completely that a person skilled in the art would disclose it can perform;
3. that the subject of the patent on the content of the application in its original the filing date of the filing date;
4. that the biological material deposited in accordance with Section 87a para. 2 no. 1 is not always with the original depository within the meaning of the Budapest Treaty or at another depository to which it has been forwarded under this contract, unless the patent holder can prove
 - a) that he has deposited the biological material again and the deposit pursuant to Art 4 this contract is to be treated as if it had been made on the date of the original deposit, or
 - b) that he was prevented from such a new filing by an unforeseen or unavoidable event and that he has made up for it within two months after the hindrance no longer exists.

(3) A copy of the objection shall be sent to the patent proprietor within a two-month period, which can be extended for reasonable reasons, so that he can submit his written statement.

Opposition proceedings

Section 103. (1) As soon as the statement has been made or the deadline for making it has expired, the speaker entrusted with the matter will meet with any further exchange of correspondence that may be necessary, for questioning the parties involved, for obtaining the evidence offered by the parties, for taking evidence as well. In general, for the purpose of clarifying the true facts as reliably as possible, the corresponding dispositions.

(2) If he considers this to be necessary in individual cases to decide on the objection, the chairman may, upon request or ex officio, call an oral hearing. The hearing is public. Section 119 (2) shall apply.

(3) The chairman has to open the hearing and to convince himself of the identity of those appearing as well as to check their party status and any power of representation. He has to conduct the negotiation without admitting digressions or expansiveness in such a way that the parties have the right to be heard.

(4) The chairman shall determine the order in which the parties are to be heard, the evidence to be taken and the results of evidence or investigations taken earlier to be presented and discussed. The chairman or members of the Senate appointed by him have to discuss the matter with the parties factually and legally.

(5) Minutes of the oral hearing are to be recorded by a secretary. In addition to the information on the place, time and subject of the hearing, this must contain the names of the members of the Senate, the secretary, the parties, their representatives, the witnesses who were heard and the experts, and a summary of the content and course of the hearing. The minutes are to be signed by the chairman and the secretary. Instead of the involvement of a secretary, the chairman can use a sound carrier, whereby the information mentioned in sentence 2 must always be included in the minutes. A written transfer must be made of the recording on the sound carrier. These minutes are only to be signed by the chairman.

(6) The Fee Claims Act 1975 shall apply.

Evaluation of evidence and decision

Section 104. (1) The technical department must take a decision on the basis of free assessment of the facts and evidence available.

(2) Consultation and coordination of the technical department take place in a closed meeting. Settings can be decided in writing by circular, unless a member objects. Section 117 first sentence is to be applied accordingly.

(3) The speaker has to draft the decision on the basis of the resolutions passed. If his opinion remains in the minority, he has to rework the draft in agreement with the member whose motion was raised for resolution. The chairman can, however, entrust another member of the Senate with the elaboration of the draft or individual parts of it.

(4) The patent is to be revoked if the opposition is successful. If the opposition is partially successful, only the relevant part of the patent needs to be revoked. In all other cases, the objection must be dismissed.

Costs

Section 105. The parties have to bear the costs of the opposition proceedings themselves.

Announcement of the decision on the objection

Section 107. The complete or partial revocation of a patent is to be published in the patent gazette. If the patent is only partially revoked, the patent office must publish the changes.

Effects of withdrawal

Section 108. The effects of the application and the patent are deemed not to have occurred from the start to the extent that the patent is legally revoked.

B. Research and expert opinion

Requirements and handling of applications

Section 111a. (1) A request for research in accordance with Section 57a no. 1 may only deal with a single specific technical problem. In the application, you can also request that the research be based on a previous day. An exact and clear description and, if necessary, a concise summary of the specific technical problem and drawings must be attached to the application.

(2) A description of the invention, claims and, if necessary, drawings must be attached to the application for the submission of an expert opinion according to Section 57a Z 2. Section 91 (1) shall apply mutatis mutandis. If the applicant does not state which state of the art the expert opinion is to be based on, the expert opinion shall be based on the state of the art known to the patent office on the day the application was received. In the application, it can also be requested that the report be set to an earlier date.

(3) The requests for research or for the submission of an expert opinion according to Section 57a including enclosures (paragraphs 1 and 2) must be submitted in writing in duplicate. The description, claims and abstract can also be in English or French, but the Patent Office is entitled to request a German translation.

(4) The technical member responsible according to the division of responsibilities (Section 61) is appointed to deal with the applications. If the applicant expressly requests this, the research or the report must be in English. A copy of the enclosures provided by the applicant (Paragraphs 1 and 2) must be attached to the completion.

(5) If the application or an attachment is defective, the applicant must be requested to remedy the deficiency within a certain period of time. If the deficiency is not remedied, the application must be rejected with a resolution. The decision can be appealed against.

C. Challenge of Patents Application

Section 112. (1) The initiation of proceedings for the withdrawal, annulment or withdrawal of patents takes place only upon application. The patent office is, however, entitled to take it back or to continue proceedings initiated in the event of an ex officio withdrawal of the application for annulment.

(2) The applicant who is not domiciled in a country in which the decision ordering the applicant to reimburse the costs would be enforced shall, at his request, provide security for the costs of the proceedings. This request must be made within 14 days after delivery of the request, otherwise the claim to security is lost.

(3) The amount of the security is determined by the Patent Office at its own discretion. The applicant is given a deadline within which the security must be provided. If the security is not provided before the deadline has expired, the application is deemed to be withdrawn.

Immediate rejection

Section 113. (1) Applications for the withdrawal, declaration of invalidity or withdrawal of a patent that are apparently not based on a legal reason, as well as submissions that do not contain a specific request or which the applicant is not entitled to submit (Sections 49 and 50), are to be rejected by the Invalidity Department stating the reasons without further proceedings.

(2) Applications due to lack of competence of the Invalidity Department, due to a decided matter or due to pending disputes are also to be rejected without further proceedings, stating the reasons.

(3) Such resolutions are to be regarded as final decisions. (*Federal Law Gazette No. 78/1969, Art. IZ 33*)

Form and content of the application

Section 114. (1) The application must contain a concise description of the dispute and, in addition to the specific request, the description of the evidence to be asserted.

(2) The application, including enclosures, must be submitted to the Patent Office in duplicate if it is directed against one patent holder only.

(3) If the application is directed against several patent holders, in addition to the copy intended for the Patent Office, a copy of the application including copies of the enclosures must be submitted for each of the opponents.

Side intervention

Section 114a. (1) Anyone who has a legal interest in one person prevailing in proceedings pending before the Invalidity Department between other persons can join this party in the proceedings (secondary intervention). The intervener has, even if the requirements of Section 20 of the Code of Civil Procedure (ZPO), RGBI. No. 113/1895, not available, the position of a comrade in the dispute (Section 14 ZPO).

(2) For the rest, Sections 18 to 20 ZPO apply accordingly.

Procedure for contestation requests

Section 115. (1) The chairman has to appoint a technical and a legally qualified member as speakers.

(2) If the application has been found to be suitable for initiating the procedure, the legally qualified speaker must send a copy including copies of the enclosures to the respondent with the request, within a period of at least two months, the extension of which the speaker must approve if there are reasonable reasons to submit his reply in writing in duplicate.

(3) After delivery in accordance with Paragraph 2, Section 112 ZPO shall apply mutatis mutandis to lawyers and patent attorneys alike.

(4) The provisions of Sections 168 and 169 ZPO apply accordingly.

Interruption due to opposition proceedings

Section 115a. Pending proceedings for a patent revocation must be suspended ex officio if opposition proceedings are pending or are being made pending. The interrupted procedure is to be continued after final conclusion of the opposition procedure on request or ex officio if the patent has not been revoked. If the patent has been revoked, the proceedings must be terminated ex officio.

Preliminary proceedings

Section 116. (1) After reimbursement of the counter-notice or after the deadline granted for this has expired without result, the legally qualified speaker must, if necessary, initiate preliminary proceedings (paragraphs 2 and 3) to prepare the oral hearing. The speakers have to maintain agreement in the preliminary proceedings. In the event of differences of opinion, the chairman decides.

(2) In the preliminary proceedings, the entire process material for the oral hearing must be prepared to such an extent that it can, if possible, be carried out without interruption. In particular, if this is not evident from the written pleadings, it must be established by hearing the parties or obtaining their statements which actual allegations are not disputed.

(3) In the preliminary proceedings, evidence must also be taken, such as an inspection, examination of external witnesses and time-consuming investigations by experts, if the taking of evidence in the oral hearing would make it considerably more difficult or delay it or cause disproportionately high costs or if the immediate taking of the evidence is necessary to preserve evidence.

(4) The parties are to be summoned to all taking of evidence in the preliminary proceedings. Your failure to do so does not prevent the taking of evidence.

(5) Section 120 applies to the inclusion of evidence in the preliminary proceedings. Evidence by questioning the parties is not permitted in the preliminary proceedings.

(6) In the preliminary proceedings, the legally qualified consultant has all the powers and duties of a chairman listed in Sections 180 to 185 of the Code of Civil Procedure.

(7) The chairman can order the amendment of the preliminary proceedings with regard to specific facts to be specified.

(8) After receipt of the reply or after the deadline granted for this has expired unsuccessfully and, if applicable, after the preliminary proceedings have been carried out, the referee must submit the files with a written description of the facts as well as all the facts and legal questions essential to the decision and an opinion on them (Referat) to be submitted to the chairman. The legally qualified speaker has to speak about the legal questions and the technical speaker about the technical questions. The chairman can instruct a speaker or another voting leader to complete the presentation.

Termination of the proceedings without a hearing

Section 117. If the patent lapses during the proceedings before the Invalidity Division, the proceedings are to be discontinued with a resolution, unless the applicant insists on the implementation with a prima facie legal interest. In the cases of Section 46 (1) (2) and (3), the applicant is generally entitled to reimbursement of costs, whereas the opponent only has the right to do so if his behavior did not give rise to the application and the patent expires during the period for the reimbursement of the counter-notice is. The hiring decision also shows the reimbursement of costs (Section 122 (1)). This decision is to be regarded as the final decision.

Announcement of the oral hearing

Section 118. (1) The oral hearing is to be advertised by the chairman. At the latest with the announcement of the negotiation, the applicant must be sent the counter-notice.

(2) The hearing can be rescheduled for important reasons by the chairman on application or ex officio.

(3) The parties or their representatives as well as the witnesses and experts to be heard during the hearing are to be summoned to the hearing.

(4) The absence of the parties or their representatives does not stand in the way of the negotiation and decision.

(5) If an adjournment is requested at the oral hearing, the Senate shall decide on this.

Oral hearing

Section 119. (1) The oral hearing is to be conducted and carried out in accordance with the applicable provisions of Sections 171 to 203 of the ZPO. The chairman or members of the Senate appointed by him have to discuss the matter with the parties factually and legally.

(2) Except in the cases mentioned in Section 172 of the Code of Civil Procedure, the public of the hearing can also apply to part of the proceedings or to the entire hearing excluded if an important federal interest or a business or trade secret of one of the parties or a witness would be endangered by the public.

(3) The members of the Patent Office as well as the federal employees of the higher service of the Federal Ministry for Transport, Innovation and Technology are allowed access despite the exclusion of the public.

Evidence and taking of evidence

Section 120. (1) Unless otherwise stipulated by this Act, the evidence procedure shall be carried out in analogous application of the provisions of Sections 266 to 383 of the Code of Civil Procedure.

(2) The testimony submitted by the witnesses before the Patent Office and the testimony given on oath by the parties before the Patent Office are equivalent to a court testimony.

(3) The above principles on the evidence procedure apply to both the preliminary proceedings and the hearing.

(4) The Fee Claims Act 1975 shall apply.

(5) The administrative and willful penalties to be imposed in accordance with Sections 313, 326, 333 and 354 of the Code of Civil Procedure may not exceed 726 euros. If evidence is taken during an oral hearing, the administrative and willful penalties are to be imposed by the Senate and, in the preliminary proceedings, by the legally qualified speaker (Section 116 (1)). Section 84 (1) and (3) apply.

Advice and coordination

Section 121. Consultation and coordination of the nullity department take place in a closed meeting. Settings can be decided in writing by circular, unless a member objects.

Litigation costs

Section 122. (1) Subject to Paragraph 2 and Section 117, a decision is to be made on the reimbursement of the costs of proceedings and representation in accordance with Sections 40 to 55 of the German Code of Civil Procedure (ZPO).

(2) Anyone who withdraws an application must reimburse the respondent for the costs.

Content of the decision

Section 123. The execution of the decision must contain

1. the designation of the department and the names of the members who participated in the decision have contributed;
2. the designation of the parties, their representatives and authorized representatives as well as their party status;
3. the decision;
4. the facts of the decision, consisting of a concise presentation of the oral negotiation of the resulting facts, highlighting the main motions submitted by the parties;

5. the reasons for the decision;
6. the instructions on legal remedies.

Announcement of the decision

Section 124. (1) The announcement of the decision with the essential reasons for the decision must, if possible, be made orally immediately after the end of the oral hearing.

(2) In all cases, however, the decision, including the full reasons for the decision, must be sent to the parties in writing as soon as possible.

Keeping the minutes

Section 125. (1) A record of all evidence in the preliminary proceedings and of the oral hearing is to be recorded by a secretary. In addition to the information on the place, time and subject of the hearing, this must contain the names of the members of the Senate, the secretary, the parties, their representatives, the witnesses who were heard and the experts, and a summary of the content and course of the hearing. The minutes are to be signed by the chairman and the secretary. Instead of the involvement of a secretary, the chairman can use a sound carrier, whereby the information mentioned in sentence 2 is always included in the minutes are to be included. A written transfer must be made of the recording on the sound carrier. These minutes are only to be signed by the chairman.

(2) Separate minutes are to be kept of the closed meeting (Section 121), from which the result of the discussion and vote can be seen. These minutes are to be signed by the chairman and the secretary.

Legal assistance

Section 126. The courts and the patent office are obliged to give each other mutual legal assistance.

Retrial

Section 127. (1) If a patent has been fully or partially revoked, withdrawn, declared null and void or revoked or a request aimed at this has been rejected in whole or in part, the closed procedure can be resumed at the request of a party,

1. if a document on which the decision is based is falsely drawn up or falsified;
2. if a witness or an expert is guilty of a false testimony or the opponent is guilty of a false oath when he was questioned and the decision is based on this testimony;
3. if the decision was obtained through a fraudulent act to be prosecuted by the representative of the party, its opponent or his representative;
4. if a member who participated in the decision or in an earlier decision on which the decision is based is guilty of a breach of his official duty in the dispute to the detriment of the party, which is punishable under the criminal law;

5. if a criminal judgment on which the decision is based has been annulled by another judgment that has become final.

(2) The parties in dispute can only request resumption of proceedings within one year after the decision to be remedied becomes final and without prejudice to the rights of third parties that have now been acquired.

(3) In particular, those who have since made use of the invention or who have taken the necessary events for this purpose acquire the authorization to which a previous user of the invention is entitled (Section 23).

(4) The instance (Technical Department, Invalidity Department, Higher Regional Court of Vienna, Supreme Court) that made the contested decision is called to decide on the request for reopening. If the request for reopening is granted by a higher instance, it must determine whether the reopened proceedings are to be carried out in front of it or in front of a lower instance.

(5) The request to resume the proceedings does not have an effect on the execution of the decision.

Section 128. If the registration of the invalidation of a patent in the patent register by the Patent Office is accidentally made, the Patent Office shall, after ascertaining the mistake, order the deletion of this entry and make it known. Rights of third parties that have meanwhile been acquired in good faith are preserved in such a case as in the case of resumption.

Further processing of the registration

Section 128a. If the application has been rejected after a deadline set by the Patent Office has not been missed, the applicant or his legal successor can request further processing of the application. The application must be submitted to the Patent Office within two months of the notification of the rejection decision. The omitted act must be made up for within this period. The application is only to be granted if the further processing fee is paid. When the application for further processing is granted, the rejection decision becomes invalid.

Reinstatement in the previous state

Section 129. (1) Anyone who was prevented by an unforeseen or unavoidable event from complying with a deadline, the failure of which, according to a provision relating to the protection of the invention, results in a legal disadvantage automatically arising from this provision, has the right to be restored to the previous status. Failure due to an inferior degree of oversight does not prevent reinstatement.

(2) Reinstatement in the previous status does not take place due to failure to meet the deadline for the application for reinstatement (Section 131, Paragraph 1), the deadline for appealing against the decision regarding such an application and the deadline for the objection (Section 102, Paragraph 1). 1).

(3) In the deadline for submitting a declaration of priority, for its correction or for the submission of the priority documents (Section 95 Paragraphs 2 and 3), reinstatement in the previous status is only permissible if the application, regardless of the

requirements for the application pursuant to Section 131 applicable deadlines, no later than the day before the announcement of the grant of the patent (Section 101c Paragraph 2) is received by the Patent Office. When the reinstatement is approved, any decision to grant (Section 101c (1)) or rejection decision (Section 100) that has already been issued shall cease to be in force.

Section 130. (1) The department in which the omitted act was to be carried out decides on the application. If an action was missed in a technical department, the legally qualified member assigned to this department decides on the application.

(2) In the sphere of activity of the Invalidity Department of the Patent Office, the chairman is called to make a decision. An appeal to the Higher Regional Court of Vienna is admissible against this decision.

Section 131. (1) The request for restitution is to be submitted within two months after the day on which the obstacle no longer exists, but in any case no later than twelve months after the day on which the deadline has expired. (*Federal Law Gazette No. 210/1951, Art. IZ 12*)

(2) The applicant must state the circumstances used to justify the application and, if they are not evident to the authority, make them credible. The omitted act must be made up at the same time as the application.

(3) A copy of the application and its enclosures must be submitted for every opponent of the applicant who may be involved in the matter.

Section 133. (1) If the application or the subsequent action is defective, the applicant must be requested before the decision is made to remedy the deficiency within a certain period of time.

(2) If the property right is entered in a public register, the application and the manner in which it was dealt with must be entered in the register.

(3) The authorization of the re-establishment is to be announced in the patent gazette, provided that through the approval of the re-establishment a property right, about the loss of which an official announcement takes place, is restored.

Section 134. (1) Before the decision is made, any opponent of the applicant who may be involved in the matter must be given the opportunity to make a statement within a certain period of time (Section 131 (3)).

(2) Regardless of whether the application is granted or not, the applicant shall be charged the costs incurred by the opponent in the proceedings relating to the application and representation in these proceedings.

Section 135. By granting the restoration to the previous status, the legal consequences of missing the deadline cease to be in force. To implement the decision, the authority shall make the appropriate dispositions.

Section 136. (1) If a property right has been denied, lapsed, lapsed or otherwise ceased to be in force and if it is restored through the authorization of reinstatement,

its effect does not apply to the person who was in Austria after the expiry of the property right and before the date of the official Announcement of the authorization for reinstatement (Section 133 (3)) or, in the case of Section 133 (2), no later than the day the application is entered in the register, in all other cases no later than the day the application is received by the competent authority Has taken use or has taken the necessary events for such use (interim users). The latter is authorized to use the item for the needs of his own company in his own or third-party workshops. This authorization can only be inherited or sold together with the company. In addition, the rules governing previous users apply.

(2) If, with regard to the restored property right, there is a license agreement concluded during its previous existence and the rights of the licensee is impaired by an intermediate user (paragraph 1), the licensee can demand a reduction in the stipulated fee appropriate to the circumstances of the case or, if for because of this impairment he is no longer interested in further performance of the contract, dissolve the contract. (*Federal Law Gazette No. 78/1969, Art. IZ 42*)

Enforcement

Section 137. (1) Legally binding pronouncements of the patent office are enforcement titles within the meaning of Section 1 of the enforcement order (EO), RGBI. No. 79/1896.

(2) The Patent Office must ex officio carry out the entries and deletions in the registers to be kept by it that are necessary for the implementation of its legally binding decisions and those of the appellate authorities. In the case of collegial decisions, the chairman has to make the necessary decisions.

IV. THE HIGHER REGIONAL COURT VIENNA AND THE HIGHEST COURT AS APPEALING INSTITUTIONS

A. Appeal against the decisions of the Technical Department and the Legal Department of the Patent Office

Appeal

Section 138. (1) The resolutions of the technical department and the legal department can be appealed to the Higher Regional Court of Vienna.

(2) No legal remedy is admissible against the rulings of the speaker preparing a resolution of the technical department or legal department.

Proceedings

Section 139. The provisions of the Extraordinary Disputes Act, Federal Law Gazette I No. 111/2003 apply to the appeal procedure, with the exception of Sections 44, 49 Extracting Act and the following special features:

1. References in the AussStrG to the court of first instance apply as references to the technical department or legal department.

2. The appeal period and the period for responding to the appeal are two months; they are not renewable.

3. New facts or evidence may only be presented to support or refute the facts and evidence presented in good time in the first instance.
4. If an appeal submitted in good time shows deficiencies, the responsible member must set the appellant a deadline for improvement. Appeals submitted belatedly or appeals that are not corrected within the specified period must be rejected by the department in the composition in which the contested decision was issued. Appeals against resolutions of the authorized employee are to be rejected by the responsible member.
5. Resolutions in accordance with Section 50 of the Foreign Trade Act are to be adopted by the department in the composition in which the contested resolution was adopted. If the decision has been made by the authorized employee, the responsible member has to make a decision.
6. Section 51 (1) AusStrG is to be applied with the proviso that the files relating to the matter are to be submitted with an explanatory report, if necessary.
7. The parties have to bear the costs of the proceedings themselves.
8. Appeal decisions of the appeals court are to be served by the appeals court.

Revision appeal

Section 140. (1) A revision appeal is permissible in accordance with Section 62 of the Foreign Trade and Payments Act against a decision of the appeals court issued in the course of the appeal proceedings.

(2) The provisions of the AusStrG apply mutatis mutandis to the revision appeals procedure with the following special features:

1. The revision appeal period and the deadline for responding to an appeal appeal are two months; they are not renewable.
2. The revision appeal and, if applicable, the application for admission are to be submitted to the appeals court; the rejection according to Section 67 AusStrG takes place by the appeals court. Except in the case of Section 68 Para. 4 Z 2 AusStrG, the revision appeal response must also be submitted to the appeals court.
3. The parties have to bear the costs of the proceedings themselves.

B. Appeal against the resolutions and decisions of the Invalidity Department of the Patent Office

Appeal

Section 141. (1) The final decisions of the Invalidity Department of the Patent Office can be appealed to the Higher Regional Court of Vienna.

(2) The provisions of the ZPO apply mutatis mutandis to the appeal procedure, with the exception of Section 461 (2) ZPO and the following special features:

1. References in the ZPO to the court of first instance apply as references to the nullity division.

2. The deadline for appeal and the deadline for responding to the appeal are two months; they are not renewable.
3. If an appeal submitted in good time shows deficiencies, the legally qualified officer of the nullity department must set the appeal applicant a deadline for improvement. If the deficiencies are corrected within the deadline, the appeal is deemed to have been submitted in good time.
4. Appeal decisions of the court of appeal are to be served by the court of appeal.

Appeal

Section 142. (1) No legal remedy is permitted against a preparatory order by the speaker. Subject to Paragraph 2, there is no separate legal remedy against the resolutions of the Invalidity Division made in the course of the preliminary proceedings or the hearing; they can only be challenged with an appeal, provided that they had an influence on the final decision.

(2) An appeal to the Higher Regional Court of Vienna is admissible against interruption resolutions, resolutions rejecting an appeal, resolutions pursuant to Section 130 (2) and resolutions on claims under the Fees Claims Act. Resolutions of the appellate court can be appealed to the Supreme Court in accordance with Section 519 ZPO.

(3) The provisions of the ZPO apply mutatis mutandis to the appeal procedure with the following special features:

1. References in the ZPO to the court of first instance apply as references to the nullity division.
2. Appeals in accordance with Paragraph 2, first sentence, are to be submitted to the Invalidity Department, appeals in accordance with Paragraph 2, second sentence, are to be submitted to the Court of Appeal.
3. If an appeal submitted in good time according to Paragraph 2, first sentence, shows deficiencies, the legally qualified speaker of the nullity department or the chairperson, if he is alone in the decision-making process, must set the appellant a deadline for improvement. If the deficiencies are corrected within the deadline, the appeal is deemed to have been filed on time.
4. Appeal decisions of the appeals court are to be served by the appeals court.

Revision and revision appeal

Section 143. (1) An appeal against judgments of the appellate court is permissible in accordance with Section 502 ZPO;

(2) The provisions of the ZPO apply to the revision procedure with the following special features:

1. The revision deadline and the deadline for the revision response are two months; they are not renewable.

2. The appeal is to be submitted to the court of appeal. The references to the trial court of first instance are deemed to be references to the court of appeal, with the exception of those relating to the remittal to the first instance. Except in the case of Section 507a, Paragraph 3, Item 2 of the Code of Civil Procedure, the revision response must also be submitted to the appellate court.

(3) The provisions of the ZPO apply mutatis mutandis to the revision appeal procedure, with the proviso that the revision appeal must be submitted to the appeals court.

C. Common Provisions

Legal aid

Section 144. Legal aid for an appeal procedure according to this main part is to be applied for at the patent office. The Invalidity Division has to decide on the application for approval of legal aid through a resolution by one of the chairmen. Section 7 (2) Foreign Trade Act, Sections 63, 64, 66 to 73 ZPO and Section 45 RAO, RGBI. No. 96/1868, are to be applied with the proviso that references to the court count as references to the Invalidity Division. Instead of the appointment of a lawyer, the appointment of a patent attorney for the appeal proceedings before the Higher Regional Court of Vienna can also be granted. Appeals against the decision can be filed within two weeks.

Delivery, representation, entry into the proceedings, inspection of files

Section 145. (1) The delivery of documents by the Patent Office in appeal proceedings under this main part takes place in accordance with Sections 85 and 86.

(2) Patent attorneys and notaries are also authorized to represent in proceedings before the Vienna Higher Regional Court. Appeal to the power of attorney replaces its documentary evidence.

(3) In multi-party proceedings, the acquirer of a right in dispute can also enter the proceedings without the consent of the opponent.

(4) Sections 81 and 81a shall apply mutatis mutandis to the inspection of files in appeal proceedings under this main part.

Composition of the Senate

Section 146. (1) Section 8 (2) JN is to be applied with the proviso that the position of lay judge is carried out either by professional lay judges from the trade or by other persons with special expertise, in particular members of the patent office, who are appointed by the Federal Minister of Justice Proposal by the Federal Minister for Transport, Innovation and Technology, each appointed for a five-year term, can be exercised. If members of the patent office or other federal employees are appointed as lay judges, they perform the activity as professional lay judges as an official task and are independent in the exercise of their office and are not bound by any instructions. Sections 19 to 25 JN are to be applied accordingly.

(2) In the case of appeals against a decision based on a decision by the Technical Department or the Invalidity Department, the Supreme Court shall decide in a senate which, in addition to three judges, includes two lay judges according to Paragraph 1.

(3) In proceedings on the granting or revocation of licenses in accordance with Section 36 Paragraphs 2 and 3, Paragraphs 1 and 2 are to be applied with the proviso that the Senate must include a member who has been appointed by the Federal Minister of Justice on the proposal of the Federal Minister of Land and forestry, environment and water management has been appointed.

(4) Unless otherwise stipulated, the provisions applicable to professional lay judges from the state of the art shall apply mutatis mutandis. The chairman has to appoint a member of the Senate as speaker.

V. PATENT INFRINGEMENT AND DISCLOSURE

Injunctive relief

Section 147. A person who has been infringed or has to worry about an infringement of one of the powers conferred on him by a patent may sue for an injunction.

Elimination claim

Section 148. (1) The infringer is obliged to remedy the situation that conflicts with the law.

(2) The injured party can in particular demand that the infringing objects (intervening objects) be destroyed at the infringer's expense and that the tools, devices and other aids (intervening devices) used exclusively or preferably for the production of patent infringing objects are made unusable for this purpose, unless this is done the real rights of third parties are interfered with.

(3) If the objects or means of intervention referred to in Paragraph 2 contain parts whose unchanged existence and their use by the defendant do not violate the plaintiff's right of exclusion, the court must designate these parts in the judgment pronouncing the destruction or rendering useless. In the event of enforcement, these parts are, as far as possible, to be excluded from destruction or rendering unusable if the person obliged pays the associated costs in advance.

(4) If it becomes apparent in the execution proceedings that the rendering of intervention means unusable would require greater costs than their destruction, and these are not made in advance by the obligated party paid, the execution court must, after hearing the parties, order the destruction of these means of intervention.

(5) If the illegal condition can be eliminated in a way other than that described in Paragraph 2, with no or less destruction of value, the injured party can only request measures of this type.

(6) Instead of destroying the objects of intervention or rendering the means of intervention unusable, the injured party can demand that the objects or means of intervention be provided by their owner in return for appropriate compensation not exceeding the production costs.

(7) If necessary, the execution for removal is to call in an expert for the description of the objects to be subjected to the execution.

Publication of judgment

Section 149. (1) If an action is taken for omission or elimination, the court shall grant the successful party, if the party has a legitimate interest in this, the authority upon application to grant the judgment within a period to be determined in accordance with Section 409 (2) of the German Code of Civil Procedure Publish the opponent's costs. The scope and type of publication are to be determined in the judgment.

(2) The publication includes the verdict. At the request of the prevailing party, however, the court can determine a content of the publication that differs from the judgment in terms of scope or wording or that supplements it. This application must be submitted no later than four weeks after the judgment has become final. If the application has only been made after the conclusion of the oral dispute, the court of first instance must decide on this after the judgment has become final.

(3) The trial court of first instance shall, upon application by the prevailing party, fix the costs of the publication of the judgment and charge the opponent to reimburse them.

Claims in money

Section 150. (1) The person injured by the unauthorized use of a patent is entitled to appropriate remuneration from the infringer.

(2) In the case of culpable patent infringement, the infringed party may demand the following instead of the appropriate remuneration (para. 1)

a) compensation for damages including lost profits or

b) surrender of the profit that the infringer has achieved through the patent infringement.

(3) Irrespective of proof of damage, the injured party can request double the fee due to him under Paragraph 1, provided that the patent infringement is based on gross negligence or willful misconduct.

(4) The injured party is also entitled to appropriate compensation for the disadvantages that do not exist in any financial loss and that they suffered as a result of the culpable patent infringement, insofar as this is justified in the particular circumstances of the case.

Accounting

Section 151. The infringer is obliged to submit accounts to the injured party and to have their accuracy checked by an expert. If this results in a higher amount than the invoice, the costs of the examination are to be borne by the infringer.

Information about origin and distribution channel

Section 151a. (1) Anyone who has been infringed in one of the powers to which they are entitled under a patent can request information about the origin and distribution channels of the infringing goods and services, provided that this would not be disproportionate to the gravity of the infringement and would not violate statutory confidentiality obligations; The infringer and the persons who work commercially are obliged to provide the information

1. have had infringing goods in their possession,
2. have used infringing services, or
3. have provided services used for infringing rights.

(2) The obligation to provide information in accordance with Paragraph 1 includes, if appropriate,

1. the names and addresses of the manufacturers, distributors, suppliers and other previous owners of the goods or services as well as the commercial customers and sales outlets for which they were intended,
2. the quantities of goods manufactured, delivered, received or ordered and the prices paid for the goods or services.

Provisional injunctions

Section 151b. (1) With reference to claims for omission, removal, reasonable remuneration, compensation for damages and surrender of the profit under this Act, temporary injunctions can be issued both to secure the claim itself and to secure evidence.

(2) In order to secure claims for appropriate remuneration, compensation for damages and the surrender of profits, temporary injunctions can be issued in the event of commercial infringements if it is probable that the fulfillment of these claims will be jeopardized.

(3) In order to secure injunctive relief and claims for removal, temporary injunctions can be issued, even if the conditions specified in Section 381 of the enforcement order do not apply.

(4) Interim injunctions pursuant to Paragraph 1 are to be issued at the request of the endangered party without hearing the opponent if the delay would probably result in irreparable damage to the endangered party or if there is a risk that evidence will be destroyed.

Entrepreneur liability

Section 152. (1) The owner of a company can be sued for injunctive relief (Section 147) if a patent infringement in the operation of his company has been committed or is threatened by an employee or agent. He is obliged to eliminate (Section 148) if he is the owner of the objects or means of intervention.

(2) If the patent infringement giving rise to a claim to adequate remuneration is committed by an employee or agent in the company, the obligation to pay the remuneration (Section 150 (1)), to issue invoices (Section 151) and to provide information (Section 151a) only the owner of the company, unless he was neither aware of the patent infringement nor obtained an advantage from it.

(3) If a patent infringement is committed in the operation of a company by an employee or agent, the owner of the company shall be liable in accordance with

Section 150 Paragraphs 2 to 4, irrespective of the liability of these persons, if he was or should have known about the patent infringement.

Multiple liability

Section 153. To the extent that the same monetary claim (Section 150) exists against several people, they are jointly and severally liable.

Statute of limitations

Section 154. Section 1489 ABGB applies to all claims in money (Section 150), the right to invoicing (Section 151) and the right to information (Section 151a). The statute of limitations for all of these claims is also interrupted by an action for invoicing or a request for a declaration (Section 163).

Process patents

Section 155. In the case of a patent for a process for the manufacture of a new product, unless the contrary is proven, any product of the same quality is deemed to have been manufactured according to the patented process.

Preliminary questions

Section 156. (1) The validity or effectiveness of a patent on which the infringement action is based can, subject to paragraph 3, be independently assessed by the court as a preliminary question.

(2) The court of first instance shall provide the Patent Office with a copy of each judgment in which the validity or effectiveness of a patent has been assessed, with confirmation of the legal force for connection to the grant files. Such a judgment should be noted in the patent register.

(3) If a judgment depends on whether the patent is null and void (Section 48), the court must first examine this question independently. At the request of the court, the patent office will issue a written opinion as to whether on the basis of the documents submitted in the legal proceedings, it is probable that the patent will be invalidated. If the court considers the nullity of the patent to be probable due to the evidence proceedings, it must interrupt the proceedings. If the defendant does not prove within one month of the delivery of the interruption decision that he has filed an application for nullity with the patent office, that nullity proceedings are already pending between the parties or that he has joined such proceedings as an intervener, the court has the proceedings on request of the plaintiff to continue. In this case, the court has to rule regardless of the nullity objection.

(4) If proceedings relating to an infringement suit pursuant to Paragraph 3 have been interrupted, the defendant may, instead of providing evidence that he has submitted an application for nullity, that nullification proceedings are already pending between the parties in dispute or that he has joined such proceedings as an intervener, provide evidence that he has opposed the patent.

(5) If the court proceedings have been interrupted because of proceedings pending at the patent office, the court shall, after the decision on the preliminary question has become final, continue the proceedings at the request of a party and base it on the preliminary decision.

(6) If the validity or effectiveness of a patent has been assessed differently by the patent office or the appellate authorities than by the court in the infringement dispute, a reopening action (Section 530 (1) ZPO) can be based on this; Section 532 (2) ZPO shall apply mutatis mutandis to the jurisdiction and Section 544 (1) ZPO for the interruption of the appeal proceedings; the period of action (Section 534 (1) ZPO) is to be calculated from the day on which the decision on the validity or effectiveness of the patent has become final.

Handling of prejudicial proceedings

Section 157. (1) If an interruption resolution (Section 156) is submitted in a nullification procedure, the following special features apply to the procedure from the date of submission:

1. The procedure is to be dealt with in an expedited manner. 2. The person who submits the interruption resolution is immediately available from the receiving office

To confirm in half-letter that he has pending proceedings before the Invalidity Department, has joined pending proceedings as a secondary intervener or has submitted an interruption resolution for pending proceedings.

3. The counter-notice (Section 115 (2)) must be submitted within the non-extendable period of one month.

4. Evidence of allegations that have not been submitted to the patent office at least two weeks before the oral hearing and communicated to the opponent may only be included if the opponent does not object.

5. The deadlines for the appeal, the response to the appeal, the revision and the response to the appeal are one month and cannot be extended.

(2) If an interruption resolution (Section 156) is presented in an objection procedure, Paragraph 1 shall apply mutatis mutandis.

Temporary protection

Section 158. If a claim pursuant to Section 101 (5) is asserted in court prior to the announcement of the grant of the patent (Section 101c (2)) and the judgment depends on whether this claim is justified, the court can continue the proceedings up to interrupt the announcement of the grant. The interrupted procedure is to be continued after the announcement of the grant on application or ex officio.

Criminal patent infringement

Section 159. (1) Anyone who infringes a patent is to be punished by the court with a fine of up to 360 daily rates. Anyone who commits the act on a commercial basis is punished with a prison sentence of up to two years.

(2) The owner or head of a company who does not prevent a patent infringement committed by an employee or agent in the company's operation shall also be punished.

(3) If the owner of the company according to Paragraph 2 is a company, a cooperative, an association or another legal entity not belonging to the physical

persons, Paragraph 2 shall apply to the organs if they are guilty of such an omission to have.

(4) Paragraph 1 does not apply to employees or agents who have carried out the act on behalf of their employer or client, provided that they could not be expected to refuse to carry out these acts due to their economic dependency.

(5) The persecution only takes place at the request of the injured party.

Private law claims

Section 160. For the assertion of claims under Section 150, the provisions of the 17th main part of the Code of Criminal Procedure 1975 (StPO), Federal Law Gazette No. 631/1975 apply. Both parties are entitled to appeal against the claim about the compensation claim.

Peculiarities of law enforcement

Section 161. Section 119 (2) and Sections 148, 149 and 157 apply mutatis mutandis to criminal proceedings. Section 156 is also to be applied mutatis mutandis, but with the proviso that the monthly period of Section 156 (3) begins with the delivery of a request from the criminal court to the accused to certify that he has filed an application for nullity with the patent office, that a declaration of nullity has been initiated it is already pending between the parties that he has joined such proceedings as a secondary intervener or has lodged an objection. If the accused does not submit the application for invalidity or the opposition in good time, the court must, if it considers the invalidity of the patent probable, to file the application for invalidity or the opposition ex officio. Parties in this proceeding are the filing court, the private prosecutor and the accused. The costs incurred in these proceedings are costs of the criminal proceedings.

Jurisdiction

Section 162. (1) The Commercial Court of Vienna is exclusively responsible for lawsuits and interim injunctions under this Federal Act. Regardless of the amount in dispute, the Senate (Section 7 (2) first sentence JN) has to decide. This also applies to injunctions. Section 146 (1) applies to the composition of the Senate in the first and second instance, and Section 146 (2) applies to the third instance.

(2) Jurisdiction in criminal matters in accordance with this federal act is vested in the Regional Court for Criminal Matters Vienna.

Requests for declarations

Section 163. (1) Anyone who manufactures an object commercially, puts it on the market, holds for sale or uses it, applies a process in an operational manner or intends to take such measures, can apply to the patent office against the holder of a patent or the exclusive licensee for a declaration that the object or the Procedure is not covered in whole or in part by the patent.

(2) The holder of a patent or the exclusive licensee may apply to the Patent Office for a declaration that the object or the process is against someone who manufactures, markets, sells or uses an object, uses a process or intends to take such measures falls under the patent in whole or in part.

(3) Requests pursuant to Paragraphs 1 and 2 shall be rejected if the respondent proves that an infringement action brought before the court between the same parties and relating to the same subject matter or the same proceedings is pending between the same parties.

(4) The application for a declaration can only relate to a patent including its additional patents. The application must be accompanied by a precise and clear description of the subject or process and, if necessary, drawings in four copies. A copy of this description, possibly including drawings, is to be attached to the final decision.

(5) When assessing the scope of protection of the patent that is the subject of the determination procedure, the Patent Office shall take into account the content of the grant files and the state of the art proven by the parties.

(6) The costs of the proceedings are to be borne by the applicant if the opponent has not given cause for filing the application through his conduct and has recognized the claim within the deadline set for him for the counter-written notice.

(7) In addition, the provisions of the contestation procedure apply to the determination procedure.

Obligation to provide information about patent protection

Section 165. Anyone who designates objects in a way that is suitable to create the impression that they enjoy patent protection must, on request, provide information about the protective right on which the designation is based.

(Federal Law Gazette No. 78/1969, Art. IZ 51)

VI. BIOPATENT MONITORING COMMITTEE

Section 166. (1) The Biopatent Monitoring Committee observes and evaluates the effects of the implementation of Directive 98/44 / EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, OJ No. L 213 of 30 July 1998, p.13, in Austrian law with regard to relevant national patents and utility models granted with protective effect for the Republic of Austria.

(2) The Biopatent Monitoring Committee has, in particular, the tasks arising from the resolution of the National Council of April 16, 1998, 107 / E (XX.GP):

1. Review of the effects of the Austrian legal provisions enacted in implementation of the directive on human rights, animals, plants and ecological systems as well as on consumer protection, agriculture and developing countries;

2. Review of the national issuing and awarding practice, in particular with regard to Section 1 Paragraph 3 Nos. 2 and 3, Section 2 Paragraph 2 Clause 1 as well as Sections 36 and 37;

3. Verification of whether the Austrian legal provisions enacted in the implementation of the directive meet the following principles:

a) no patent protection for human cloning and human germline modification techniques;

b) no patent protection for processes in which human embryos are used and for Embryos themselves;

c) no further restriction of the "animal welfare clause" in accordance with Article 6 (2) (d) of the Directive;

d) Granting of the cattle breeder and farmer's privilege in accordance with Article 11 of the Directive;

e) Compliance with the obligations from the Convention on Biological Diversity, BGBl. No. 213/1995.

4. Observation of the research and economic policy consequences, especially on small and medium-sized companies.

(3) The Federal Minister for Transport, Innovation and Technology must submit a report on the observations and assessments of the Biopatent Monitoring Committee to the National Council every three years. The first report must be submitted by June 30, 2012 at the latest.

Section 167. (1) The Biopatent Monitoring Committee consists of the following members:

1. a representative of the Federal Chancellery;
2. a representative of the Federal Minister of Health;
3. a representative of the Federal Minister for Agriculture, Forestry, Environment and Water Management;
4. a representative of the Federal Minister for Transport, Innovation and Technology;
5. a representative of the Federal Minister for Economy, Family and Youth;
6. a representative of the Federal Minister for Science and Research;
7. a representative of the bioethics committee;
8. a representative of the Austrian Chamber of Commerce;
9. a representative of the Austrian Chamber of Agriculture;
10. a representative of the Austrian Federation of Trade Unions;
11. a representative of the Austrian Chamber of Patent Attorneys;
12. a representative of the Austrian Bar Association;
13. a representative of the Association of Austrian Industry;

14. a representative of the Austrian Association for the Protection of Industrial Property and Copyright;

15. a representative of the ring of industrial patent engineers in Austria;

16. a representative of the Association for Consumer Information;

17. a representative of the Umweltbundesamt GmbH;

18. a representative of the Ökobüro - coordination office of Austrian environmental organizations.

(2) The committee should be open to dialogue with interested citizens.

(3) The chairman of the Biopatent Monitoring Committee and a possible deputy are elected by the members of the committee. The committee has a quorum if at least half of its members are present. Resolutions are passed with a simple majority; in the event of a tie, the chairman has the casting vote.

(4) The committee has to give itself rules of procedure and can also form working groups. In the fulfillment of its tasks, the committee is entitled to call in experts and other informants and to award contracts to them.

(5) The chairman of the committee is responsible for representing the committee externally. The work of the members of the committee is an unpaid honorary position.

(6) The office set up at the Patent Office supports the committee, its chairman and any working groups that may have been set up in fulfilling their tasks. The office has to prepare an estimate and a statement of accounts for each calendar year.

VII. TRANSITIONAL AND FINAL PROVISIONS

Transitional provisions

Section 173. (1) For patents and patent applications whose filing date is before January 1, 1994, Section 2 (2) for the assessment of patentability, Section 3 for the assessment of novelty, Section 48 (1) 2 and as a reason for objection, Section 102 (2) no.2 shall continue to apply in the version applicable before the Federal Law Gazette No. 634/1994 came into force.

(2) Article VI of Patent Law Amendment 1984, Federal Law Gazette No. 234/1984, shall continue to apply for the duration and expiry of patents based on patent applications filed before December 1, 1984, although the duration of these patents is at least 20 Years from the filing date. Sections 24, 25 and 173 no.3 in the version valid before January 1, 1996 continue to apply to rights that were exercised by the army or monopoly administration on the basis of Sections 24 and 25 before January 1st, 1996 apply.

(3) Subject to Paragraph 1, for patents and patent applications whose filing date is before the Federal Law Gazette I No. 81/2007 came into force, Section 3 Paragraph 2 Item 4 in the version applicable before the Federal Law came into force continue to apply. Section 3 (3), second sentence, applies to all patent applications pending

when the Federal Law Gazette I No. 81/2007 comes into force, insofar as a decision on the granting of the patent has not yet been made.

Section 174. (1) For patents and patent applications for which the decision to publish is made before the Federal Law Gazette I No. 149/2004 comes into force, Section 4 (3), Section 5 (1), Section 20 (3), Section 28 (2), Sections 31, 32, 45 (1), Section 52 (1), Section 57 (1), Section 60 (3) lit. a to c, Section 62 (3) and (4), Section 80 Paragraph 1, Section 81 Paragraph 2 and 3, Section 91 Paragraph 3, Sections 92a, 92b, 101, 102, 103 to 109, 111, 127 Paragraph 1 and 4, Sections 128, 129 Paragraph 3, Section 156 (4) and (5), Sections 157, 158 and 171 (1), (3) and (5) continue to apply in the version applicable before the aforementioned federal law came into force.

(2) For patents and patent applications pursuant to Paragraph 1, Section 81a in the version of the Federal Law, Federal Law Gazette I No. 149/2004 shall apply, with the proviso that the publication of the application shall replace the publication of the application.

(3) For patent applications that are deemed to be withdrawn on the day that the Federal Law, Federal Law Gazette I No. 149/2004 comes into force, but for which the four-month deadline pursuant to Section 99 (5) in the period before the aforementioned Federal Law came into force valid version has not yet expired, the legal consequence that the application is considered withdrawn ceases to apply if the requirements stipulated in Section 99 (5) in the version applicable before the aforementioned federal law came into force are met.

(4) For patent applications, with regard to the period of two weeks after the delivery of the negative decision before the day on which the above came into force, provided for in Section 99 (4) in the version applicable before the Federal Law Gazette I No. 149/2004 came into force Federal law has not yet expired, the statement can be made up until the deadline has expired.

(5) Patent applications for which the announcement resolution is not made before the Federal Law Gazette I No. 149/2004 comes into force must be continued in accordance with the procedural provisions applicable after the aforementioned Federal Law came into force. The legal consequence of Section 99 (5) in the version applicable before the aforementioned federal law came into force does not apply if the deadline for responding to the preliminary decision has not yet expired on the day the aforementioned federal law came into force. These patent applications are to be published even after this period has expired if publication can no longer be made within the period specified in Section 101 (1) in the version of the federal law mentioned.

(6) For the patent applications mentioned in Paragraph 5, if the deadline stipulated in Section 87a Paragraph 3 Item 1 in the version of the Federal Law Gazette I No. 149/2004 on the day of entry into force of mentioned federal law has already expired, the subsequent submission of the information mentioned in Section 87a para. 2 no. 3 takes place until the completion of the technical preparatory work for the publication.

(7) For the patent applications mentioned in Paragraph 5, with regard to which a deadline was set for separate registration in accordance with Section 92a Paragraphs 1, 2, 3 or 4 in the version applicable before the Federal Law Gazette I No. 149/2004 came into force, this deadline is deemed not to have been set and the separate registration can still be submitted up to the expiry of the deadlines set out in Section 92a in the version of the aforementioned federal law.

(8) Section 92b last sentence in the version of the Federal Law, Federal Law Gazette I No. 149/2004, does not apply to applications for conversion that are submitted before the aforementioned Federal Law comes into force.

Section 175. (1) Section 49 (5) to (7) in the version applicable before the federal law came into force shall continue to apply to requests for withdrawal submitted before the Federal Law, Federal Law Gazette I No. 149/2004 came into force.

(2) Sections 145a and 145b in the version of the Federal Law, Federal Law Gazette I No. 149/2004, shall apply if the decision of the Complaints Department is taken after the day before the aforementioned Federal Law came into force.

(3) Section 150, Paragraph 3, Section 156, Paragraphs 3 to 5 and Section 161 in the version applicable before the aforementioned Federal Law came into force shall continue to apply to actions brought before the Federal Law, Federal Law Gazette I No. 149/2004.

(4) A written power of attorney in accordance with Section 21 (1) in the version of the Federal Law, Federal Law Gazette I No. 149/2004, can only be used as a power of attorney if it is presented to the Patent Office after the aforementioned Federal Law has come into force.

Section 176. (1) For patent applications filed before the Federal Law Gazette I No. 149/2004 came into force, Section 94 (2) in the version applicable before the Federal Law came into force shall continue to apply.

(2) For applications that are submitted before the Federal Law, Federal Law Gazette I No. 149/2004 comes into force, Section 95 Paragraph 2, Section 132 Paragraph 1, 3 and 4, Section 168 Paragraph 1, 2 and 3 are the first, fourth and fifth sentences in the version applicable before the entry into force of the aforementioned federal law shall continue to apply.

(3) For annual fees, the due date of which is before the Federal Law Gazette I No. 149/2004 comes into force, Section 166 Paragraphs 2 to 10 in the version applicable before the Federal Law came into force shall continue to apply. This also applies to annual fees, the due date of which is after the entry into force of the aforementioned federal law, but which are duly paid before the aforementioned federal law comes into force.

Section 176a. (1) Until the entry into force of Section 101 in the version of the Federal Law, Federal Law Gazette I No. 149/2004 (patent law and amendment to fees 2004)

1. to apply Section 81a in the version of the Federal Act, Federal Law Gazette I No. 42/2005 (Biotechnology Directive - Implementation Amendment) with the proviso that the publication takes the place of publication,

2. Section 87a (3) no. 1 in the version of the Federal Act, Federal Law Gazette I No. 42/2005 (Biotechnology Directive - Implementation Amendment) to be applied with the proviso that the information specified in Section 87a (2) no. 3 can be submitted up to Version of the announcement decision can be made,

3. Section 87a, Paragraph 3, Item 2 as amended by Federal Law Gazette I No. 42/2005 (Biotechnology Directive - Implementation Amendment) does not apply.

(2) Until the entry into force of Section 48 in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive - Implementation Amendment), Section 48 in the version applicable before the aforementioned law came into force is to be used with the proviso that in place of the term “microorganism” is followed by the term “biological material”.

Section 176b. (1) The responsibility to continue the proceedings pending at the end of December 31, 2013 goes with respect to those

1. the appeals department and the Supreme Patent and Trademark Senate as a second instance to the Higher Regional Court of Vienna and

2. of the Supreme Patent and Trademark Senate as a third instance to the Supreme Court, whereby the requirements of Section 62 Non-Contentious Proceedings Act do not apply.

(2) If a decision of the technical department or the legal department against which a complaint is permissible was taken before the end of December 31, 2013 and a complaint against this decision was not made by the end of that day, the decision can be made within an appeal will be filed after the open deadline. A complaint against such a decision by the end of December 31, 2013 is deemed to be an appeal filed in good time.

(3) If a decision of the Invalidity Department, against which an appeal is permissible, was taken before the end of December 31, 2013 and if this decision was not appealed by the end of that day, the decision can be withdrawn within two months the delivery of which an appeal or appeal is raised. An appeal against such a decision by the end of December 31, 2013 is deemed to be an appeal filed in good time or an appeal filed in good time if the legal remedy permitted after December 31, 2013 is the appeal.

(4) Section 482 of the Austrian Code of Civil Procedure (ZPO) does not apply to appeals against decisions of the Invalidity Department that are submitted before the end of December 31, 2013.

(5) If a decision of the Appeal Department against which an appeal to the Supreme Patent and Trademark Senate is admissible was taken before the end of December 31, 2013 and an appeal against this decision was not made by the end of that day, the Decision to be made within the open deadline for revision appeal (Section 140,

Paragraph 2). The revision appeal is permissible without the requirements of Section 62 AusStrG and must be submitted to the Higher Regional Court of Vienna. A complaint against a decision of the Appeal Department filed by the end of December 31, 2013 is deemed to be a timely appeal.

(6) A complaint in accordance with Art. 144 Para. 1 BVG can be lodged with the Constitutional Court against decisions of the Supreme Patent and Trademark Senate, which were taken before the end of December 31, 2013. In the proceedings before the Constitutional Court, the Supreme Patent and Trademark Senate, if it has decided in the second instance, is replaced by the Higher Regional Court of Vienna, if it has decided in the third instance, the Supreme Court. If necessary, the proceedings must be continued before the respective court.

(7) Sections 129 to 136 shall continue to apply to reinstatement proceedings that are pending in appeal proceedings after the end of December 31, 2013.

(8) If the contested decision, in respect of which reopening is requested pursuant to Section 127, was taken before the end of December 31, 2013 by the appeals department or by the Supreme Patent and Trademark Senate, the Vienna Higher Regional Court is responsible for deciding on the request for reopening.

Section 176c. (1) Employees who are in an employment relationship with the Patent Office within the scope of their partial legal capacity pursuant to Section 58b and who are not at the same time employees of the Patent Office within the framework of an employment relationship with the federal government are entitled to enter into a contractual employment relationship with the expiry of Section 58b to switch to the federal government (Federal Ministry for Transport, Innovation and Technology - Patent Office). They must submit a declaration of willingness to change to the patent office in writing no later than seven months before the expiry of Section 58b. The declaration is legally ineffective if the employee has attached a condition. The employment relationship of those employees who do not submit the declaration in time.

(2) For those employees who submit a declaration to change to a contractual employment relationship with the federal government in accordance with Paragraph 1, but do not enter into such an employment relationship, the employment relationship with the Patent Office ends within the scope of partial legal capacity with the expiry of Section 58b while maintaining the labor law claims.

(3) The contractual employment relationships with the federal government pursuant to Paragraph 1 are to be concluded in such a way that they begin with the expiry of Section 58b. When switching to an employment relationship with the federal government, there is no entitlement to payment of a severance payment. For employees, the provisions of the service and salary law for contract employees of the federal government apply. The period of service spent in the previous employment relationship with the patent office within the scope of his partial legal capacity must, however, be taken into account for all time-dependent rights. Section 84 of the VBG shall apply to employees who, prior to the change, acquired entitlement to severance pay under the Salaried Employees Act.

(4) With the expiry of Sections 58a and 58b, the Federation shall take over the assets and other rights and liabilities that the Patent Office has within the scope of its partial legal capacity acquired or justified in accordance with the statutory provisions. The federal government is only liable up to the extent of the assets taken over.

(5) Contractual relationships under civil law between the Federal Government and the Patent Office within the scope of its partial legal capacity expire when Section 58b becomes invalid.

(6) At the beginning of the fourth month following the expiry of Section 58b, the President of the Patent Office shall present the Federal Minister for Transport, Innovation and Technology with a statement of accounts on the management within the framework of partial legal capacity.

(7) All processes in accordance with this federal law in connection with the dissolution of the partial legal area of the patent office, the transfer of assets or the granting of rights, claims and liabilities from the partial legal area of the patent office to the federal government are subject to all fees, duties and taxes regulated by federal law Exempt from sales tax.

Final provisions

Section 177. Insofar as this federal act refers to provisions of other federal statutes, unless otherwise specified, these shall be applied in their current version.

Section 178. For all personal designations used in this Federal Act, the chosen form applies to both genders.

Section 179. The following are entrusted with the implementation of this Federal Act:

1. with regard to Section 51, the Federal Government,
2. with regard to Section 49 (4), Sections 147 to 156, 158 to 162 and 165, the Federal Minister of Justice,
3. with regard to Section 126 and of Sections 138 to 146 of the Federal Minister for Transport, Innovation and Technology and the Federal Minister of Justice,
4. with regard to Section 57 (2), the Federal Minister for Transport, Innovation and Technology in Agreement with the Federal Minister for Foreign Affairs,
5. with regard to Section 58b (6), the Federal Minister for Transport, Innovation and Technology in Agreement with the Federal Minister of Economics, Family and Youth,
6. The Federal Minister of Transport, Innovation and Technology with regard to all other provisions of this Federal Act.

Section 180. (1) Sections 21, 60 (4) and (5), Section 64 (3) and (4), Sections 68, 78 (1), Sections 79, 89 (1), Sections 90, 94 (1) 2, Section 99 Paragraph 5, Section 166 Paragraph 3 and 4, Sections 168, 169, 171 Paragraph 2, the heading of Section 172a, Section 172a, the heading of VI. Section 173, as amended by Federal Law

Gazette No. 418/1992, come into force at the beginning of the fourth month following the publication of the Federal Law Gazette No. 418/1992.

(2) Section 167 shall expire at the end of the third month following the announcement of the Federal Law Gazette No. 418/1992.

(3) Article 4 (3), Article 21, Article 48 (1) 2, Article 50, Article 77, Article 81 (3), Article 90, Article 91a (1), the heading of Article 92b, Article 92b, Section 102 (2) nos. 2 and 4 and Section 102 (5) in the version of the Federal Law, Federal Law Gazette No. 212/1994, come into force on April 1, 1994.

(4) Sections 22 and 28 (1), Sections 36, 37 and 47 (1), Section 80 (1), Section 81 (7), Section 110 and 112 (2), Section 137 (2), Sections 155 and 166 Paragraph 3, Section 173 Z 2 to 7 and Section 173a in the version of the Federal Law, Federal Law Gazette No. 181/1996, come into force on January 1, 1996.

(5) Sections 24, 25, the heading of Section 29, Section 29, the heading of Section 38, Sections 38 to 42 and 47 (3), Section 110 (2), the heading of Section 164 and Sections 164, 172 and Section 173 Z 3 expire on December 31, 1995.

(6) Section 3 (2), Section 58 (2), Sections 58a and 60 (3) letter d, Section 61 (6), Section 62 (4) items 3 to 5, Section 64 (3) to 5, Section 70 (5), Section 81 (4), Sections 93a, 93b and 94 (1), Section 95 (1), Section 166 (1), Sections 172b and 172c and Section 173 (2) in the version of the Federal Law in Federal Law Gazette I No. 175/1998 come into force at the beginning of the second month following the publication of the Federal Law in Federal Law Gazette I No. 175/1998. At the same time, Section 62, Paragraph 4, Item 3 in the version currently in force and Section 110 and its heading are no longer in force.

(7) Section 36 (4) as amended by Federal Law Gazette I No. 175/1998 comes into force on January 1, 1996.

(8) Section 78 (1), Section 82 (2), Sections 83, 120 (5), Section 166 (1), (3) and (4) and Section 168 (1), (3) and (4) in the version of the Federal Law BGBl. I No. 143/2001 come into force on January 1, 2002.

(9) Section 3 par. 4, Section 5 par. 1, Section 7 par. 1, Section 20 par. 3 and 5, Section 21 par. 1 and 2, Section 22 par. 3 to 5, Sections 22a, 28 par. 2, Sections 31, 32, 43 par. 5, Section 45 par. 1, Section 48 par. 1 Z 1, 3 and 4, Section 48 par. 3, Section 49 par. 5 to 7, Sections 50, 52 par. 1, Section 57 subsection 1, Sections 57b, 58b subsection 3, Section 60 subsection 3, Section 62 subsections 3 and 4, Sections 62a, 63 subsection 2, Section 64 subsections 2, 4 and 5, Sections 68, 69, 70 subsections 2 and 5, the heading of Section 71, Sections 71, 72 subsection 2, Section 73 subsections 4, 8 and 9, Section 74 subsections. 1, 4, 10 and 11, Section 76 subsections 2 to 4, Section 78 subsections 2 and 3, Section 79 subsection 1, Section 80 subsections 1 and 2, Section 81 subsections 2 and 3, Section 81a, 82 subsections 2 and 5, Section 83, 84 subsection 1, Section 87 subsection 1, Section 87a subsections 2 and 3, Section 91 subsection 3, Sections 91a, 92a, 92b, 93 subsection 1, Sections 94, 95 para. 2, the heading of Section 99, Sections 99, 100, the heading of Section 101, Sections 101, 101a, the heading of Section 101b, Section 101b, the heading of Section 101c, Section 101c, the heading of Section

101d, Sections 101d, 102, 103 paras. 2 to 6, Sections 104, 105, the heading of Section 107, Section 107, the heading of Section 108, Sections 108, 112 subsection 2, Section 114 subsection 3, Section 115 subsection 2, the heading of Section 115a, Sections 115a, 120 subsections 4 and 5, Section 122 subsection 1, Sections 125, 127 subsections. 1 and 4, Section 128, the heading of Section 128a, Sections 128a, 129 para. 2 subpara. 2, Section 129 para. 3, Section 137 para. 2, Section 138 para. 2, Section 139 paras. 2 and 3, Sections 141, 142 para. 1 subpara. 1, the heading of Section 145a, Section 145a, the heading of Section 145b, Sections 145b, 148, 150 paras. 3 and 4, the heading of Section 151a, Sections 151a, 152 subsections 2 and 3, Sections 154, 156 subsections 3 to 6, the heading of Section 157, Section 157, the heading of Section 158, Sections 158, 159, 160, 161, the heading of Section VI. Section, the heading of Section 173, Sections 173 to 176, the heading of Section 177 and Sections 177 to 179 in the version of the Federal Act Federal Law Gazette I No. 149/2004 shall enter into force at the beginning of the seventh month following the promulgation of the said Federal Act. At the same time, Section 4 para 3, Section 49 para 6, Section 76 para 5, Section 90, the heading of Section 106, Section 106, the heading of Section 109, Section 109, the heading of Section 111, Section 111, Section 129 para 2 subpara 3, Section 132, the V. Section, Sections 172b, 172c and 173a shall cease to be in force in the previously applicable version.

(10) Section 21 (4) and (5), Sections 58, 58a (4), Section 60 (1) and (2), Sections 61, 72 (1), Section 74 (3), Section 75 (1), Section 115 Paragraph 1, Section 119 Paragraph 3 and Section 181 in the version of the Federal Law, Federal Law Gazette I No. 149/2004, come into force at the beginning of the day following the announcement of the aforementioned Federal Law. At the same time, Sections 59 and 60 Paragraphs 4 and 5 of the previous version cease to apply.

(11) Section 1 Paragraphs 2 to 4, Sections 2, 3 Paragraph 3, Sections 22b, 22c, 36 Paragraphs 2 to 5, Section 37, the heading of Section 38, Sections 38, 47 Paragraph 1, the headings of Section 81a, Sections 81a, 87a Paragraphs 2 and 3, Sections 89a, 102 Paragraph 2 No. 4 and Section 182 in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive - Implementation Amendment) in force at the beginning of the day following the announcement of the aforementioned federal law. At the same time, Section 36 Paragraphs 4 to 7 and the heading in front of Section 37 in the currently applicable version as well as Section 81a, Section 87a Paragraphs 2 and 3 and Section 102 Paragraph 2 No. 4 in the version of the Federal Law, Federal Law Gazette I No. 149 / 2004 (patent law and fee amendment 2004) no longer in force.

(12) Section 48, Paragraph 1, Item 4 and Section 48, Paragraph 3 in the version of the Federal Law, Federal Law Gazette I No. 42/2005 (Biotechnology Directive - Implementation Amendment) come into force with the entry into force of Section 101 in the version of the Federal Law, Federal Law Gazette I No. 149/2005 (patent law and amendment of fees 2004) (*Note: correct: Federal Law Gazette I No. 149/2004*) in force. At the same time, Section 48, Paragraph 1, Item 4 and Section 48, Paragraph 3 in the version of the Federal Law, Federal Law Gazette I No. 149/2004 (patent law and amendment to fees 2004) expire.

(13) Section 159 (3) as amended by Federal Law Gazette No. 151/2005 comes into force on January 1, 2006.

Section 180a. (1) Section 22 (1), Sections 57a, 60 (3), Section 61 (3), Section 62 (2) and (7), Section 81 (4), the headings before Section 111a, Section 111a (3) and Section 181a in the version of the Federal Law, Federal Law Gazette I No. 130/2005, shall come into force on the day following the announcement of the aforementioned Federal Law.

(2) Section 64 (4), Section 67 (1), Section 75 (2), Section 79 (2), Sections 92 and 95 (3) as amended by Federal Law Gazette I No. 130/2005 join in force on January 1, 2006.

(3) The ordinance of the Federal Ministry for Trade and Reconstruction of October 2, 1965 on the quality and wearing of the official dress of the members of the Supreme Patent and Trademark Senate, Federal Law Gazette No. 293/1965, the ordinance of the Federal Minister for Economic Affairs regarding implementation of the Patent Act 1970, the Patent Contracts Introductory Act, the Protection Certificate Act 1996, the Utility Model Act, the Semiconductor Protection Act, the Trademark Protection Act 1970 and the Design Protection Act 1990 (Patents, Utility Models, Brands and Model Ordinance - PGMMV), Federal Law Gazette No. 226/1994, and the ordinance of the Federal Minister for economic matters relating to the publication of official publications by the Patent Office, Federal Law Gazette II No. 237/1997, expire on December 31, 2005.

(4) Section 151a, the heading of Section 151b, Sections 151b and 183 in the version of the Federal Law, Federal Law Gazette I No. 96/2006, shall come into force at the beginning of the day following the announcement of the aforementioned Federal Law.

(5) Section 1 (1), Section 3 (2) and (3), Sections 22a, 60 (3) no.1 and Section 173 (3) in the version of the Federal Law, Federal Law Gazette I No. 81/2007 come into force of the revised version of the European Patent Convention comes into force.

(6) Section 21 (4) in the version of the Federal Law, Federal Law Gazette I No. 81/2007, comes into force at the beginning of the day following the publication of the aforementioned Federal Law.

(7) Section 54 (2), Section 58b (6), Section 74 (9), Section 157 (1) item 2, Sections 178a and 179 items 5 and 6 as amended by Federal Law Gazette I No. 126 / 2009 come into force on January 1, 2010.

(8) Section 58 (1), Section 58a (1) and (2), Section 58b (3) and (5), Section 60 (3) (1), Section 62 (1), Section 64 (2) second sentence and Section V in of the version of the Federal Law in Federal Law Gazette I No. 126/2009 come into force at the beginning of the day following the publication of the aforementioned Federal Law.

Section 180b. (1) Section 76, Paragraph 1, Item 2 in the version of the Federal Act, Federal Law Gazette I No. 135/2009, comes into force on January 1, 2010.

(2) Section 21 (1), (4) and (6), Section 37 (5), Section 60 (3) (2) and (3), Section 61 (2), (3) and (6), Section 62 (8), Sections 63 and 66 , 67, 76, 77, 82 paragraph 4, Sections 83, 84 paragraph 3, Sections 85, 95 paragraph 3, Section 103 paragraph 5, Section 111a paragraph 5, Section 114a paragraph 1, Section 115 Paragraphs 3 and 4, Section 119 Paragraphs 1 and 3, Section 125 Paragraph 1, Sections 126, 127

Paragraph 4, Section 129 Paragraph 2, Section 130 Paragraph 2, Section 137, the heading of main part IV, Sections 138 to 146 including headings, the renaming of the previous main part IV, Section 156, Paragraph 6, the heading of Section 157, Section 157, Paragraph 1, Item 5, Sections 160, 162, Paragraph 1, the renaming of the previous one V. and VI. Main part, Sections 176b and 179 Z 3 in the version of the federal law, Federal Law Gazette I No. 126/2013, come into force on January 1, 2014. At the same time, Section 60, Paragraph 3, Item 4, Sections 70 to 75, including the headings, and Section 178a in the previously applicable version are no longer in force.

(3) Section 2 (3), Section 43 (6) and (7), Section 62 (8), Section 80 (4), Section 91a first sentence, Sections 92, 101 (2) last sentence and Section 111a (4) in the version of the Federal Law Gazette I No. 124/2017 come into force at the beginning of the day following the announcement of the said Federal Law.

(4) The headings of Section 81 and Section 81 (8) in the version of the 2nd Material Data Protection Adaptation Act, Federal Law Gazette I No. 37/2018, come into force on May 25, 2018.

Section 180c. (1) Section 58 (3) in the version of the Federal Law, Federal Law Gazette I No. 71/2016, comes into force at the beginning of the tenth month following the publication of the aforementioned Federal Law. At the same time, Section 58a and Section 58b expire. Section 2 (2) first sentence, Section 57b last sentence, the heading to Section 58, Section 58 (1) first sentence and Section 176c come into force at the beginning of the day following the announcement of the aforementioned federal law.

(2) The ordinance of the President of the Patent Office on the services and information to be provided within the framework of the partial legal capacity of the patent office (partial legal capacity ordinance 2010 - TRFV 2010), PBl. 2010, No. 2, Appendix, ceases to be in force at the beginning of the tenth month following the announcement of the aforementioned federal law.

Section 181. Ordinances on the basis of this federal law in its current version may already be issued from the day following the announcement of the federal law to be implemented; however, they may not come into force before the statutory provisions to be implemented.

Section 181a. (1) This Federal Act implements Article 10 (6) of Directive 2001/83 / EC on the creation of a Community code for medicinal products for human use, last amended by Directive 2004/27 / EC of the European Parliament and of the Council of March 31, 2004 of Directive 2001/83 / EC, OJ No. L 136 of April 30, 2004 p. 34.

(2) This Federal Act implements Article 13 (6) of Directive 2001/82 / EC on the creation of a Community code for veterinary medicinal products, last amended by Directive 2004/28 / EC of the European Parliament and of the Council of March 31, 2004 of Directive 2001/82 / EC, OJ No. L 136 of April 30, 2004 p. 58.

Section 182. This federal law implements Directive 98/44 / EC of the European Parliament and of the Council of July 6, 1998 on the legal protection of biotechnological inventions, OJ No. L 213 of July 30, 1998 p. 13.

Section 183. With this federal law, the patent law is attached to Directive 2004/48 / EC of the European Parliament and of the Council on the enforcement of intellectual property rights, OJ No. L 157 of 30.4. 2004, page 45, adapted.

(Note: from Federal Law Gazette No. 349/1977, on Section 156 Federal Law Gazette No. 259/1970)

Article II

Section 156 in the version of this Federal Act shall not apply to infringement proceedings that were brought before the court before this Federal Act came into force.

(Note: from Federal Law Gazette No. 349/1977, to Section 163 Federal Law Gazette No. 259/1970)

Article III

Section 163 of this federal law does not apply to judicial proceedings pursuant to Section 228 of the Austrian Code of Civil Procedure (ZPO) which are aimed at a determination within the meaning of Section 163 of this Federal Act and which have not yet been legally concluded at the time this Federal Act comes into force.

(Note: from Federal Law Gazette No. 526/1981, on Sections 166 Paragraphs 1, 3 and 4, Sections 167, 168 Paragraphs 1 and 5 of Federal Law Gazette No. 259/1970)

Article III

(1) The provisions made in this Federal Act on the extent of the fees apply to all payments that are made after the entry into force of this Federal Act or are intended for applications that are submitted after the entry into force of this Federal Act.

(2) Deferred fees are to be paid even after the entry into force of this Federal Act to the extent that was in effect at the time the deferral was granted.

(Note: from Federal Law Gazette No. 126/1984, on Sections 166 Paragraphs 1, 3 and 4, Sections 167, 168 Paragraphs 1 and 5 of Federal Law Gazette No. 259/1970)

Article III

(1) The provisions made in this Federal Act on the extent of the fees apply in accordance with Paragraphs 2 and 3 to all payments that are made after the entry into force of this Federal Act or before the entry into force of this Federal Act, but are intended for applications which will be handed over after this federal law has come into force.

(2) The first annual fee and the annual fee for additional patents are to be paid in the amount specified in the respective resolutions pursuant to Section 101 (1) of the Patent Act 1970.

(3) Deferred fees are to be paid to the extent that was in effect at the time the deferral was granted.

(Note: from Federal Law Gazette No. 234/1984, to Federal Law Gazette No. 259/1970)

Article III

If data is processed automatically for the purpose of creating registers that are kept by the Patent Office on the basis of statutory provisions or to fulfill an existing obligation of the Patent Office to provide information, then Sections 11 and 11 shall

apply to their determination, processing, transmission, correction and deletion 12 para. 2 no. 2 of the Data Protection Act, Federal Law Gazette No. 565/1978, in the currently applicable version.

(Note: from Federal Law Gazette No. 653/1987, on Section 166 Paragraphs 1, 3 and 4, Section 167, Section 168 Paragraph 1 Federal Law Gazette No. 259/1970)

Article III

(1) The provisions made in this Federal Act on the extent of the fees apply in accordance with Paragraphs 2 and 3 to all payments that are made after the entry into force of this Federal Act or before the entry into force of this Federal Act, but are intended for applications which will be handed over after this federal law has come into force.

(2) The first annual fee and the annual fee for additional patents are to be paid in the amount specified in the respective resolutions pursuant to Section 101 (1) of the Patent Act 1970.

(3) Deferred fees are to be paid to the extent that was in effect at the time the deferral was granted.

(Note: from Federal Law Gazette No. 349/1977, on Sections 166 Paragraphs 1, 3 and 4, Sections 167, 168 Paragraphs 1, 2 and 4, Section 171 Paragraph 1 Federal Law Gazette No. 259/1970)

Article IV

(1) The fee provisions of this Federal Act apply to all payments that are made after the entry into force of this Federal Act or are intended for applications that are submitted after the entry into force of this Federal Act.

(2) Deferred fees are to be paid even after the entry into force of this Federal Act to the extent that was in effect at the time the deferral was granted.

(Note: from Federal Law Gazette No. 234/1984, on Section 2 Federal Law Gazette No. 259/1970)

Article IV

(1) Insofar as and as long as a reservation by Austria in accordance with Article 167

(2) (a) of the European Patent Convention, Federal Law Gazette No. 350/1979, is effective, patents for inventions of chemical products as such, of food as such for humans or pharmaceuticals as such are not granted, unless the invention relates to a process for the production or use of a chemical product or a process for the production of a food for humans or a medicament.

(2) After the entry into force of this federal law (Art. VII, Paragraph 1), patents granted contrary to Paragraph 1 are to be declared null and void upon application.

(Note: from Federal Law Gazette No. 234/1984, on Sections 13, 9698 Federal Law Gazette No. 259/1970)

Article V.

(1) Patents that were granted prior to the entry into force of this Federal Act (Art. VII, Paragraph 1) are to be declared null and void on application if it emerges that their subject matter is subject to Sections 1 to 3 of the Patent Act 1970, BGBl. No. 259, was not patentable or the invention is the subject of a previous applicant's patent.

(2) Priority rights claimed prior to the entry into force of this Federal Act within the meaning of Sections 96 to 98 of the Patent Act 1970, Federal Law Gazette No. 259, in the version of the Patent Act Amendment 1977, Federal Law Gazette No. 349, continue to apply.

(Note: from Federal Law Gazette No. 234/1984, on Sections 28, 46 Paragraph 1 Z 1 and Paragraph 3, Section 110 Paragraph 2 Federal Law Gazette No. 259/1970)

Article VI

For the duration and expiry of patents based on patent applications filed before this Federal Act (Art. VII, Paragraph 1) came into force, Section 28, Section 46, Paragraph 1, Item 1 and Paragraph 3 and Section 110, Paragraph 2 of the Patent Act shall apply 1970, Federal Law Gazette No. 259, continues to be authoritative.

(Note: from Federal Law Gazette I No. 135/2009, to Section 76, Federal Law Gazette No. 259/1970)

Article 79

Entry into force and transitional provisions

(1) Art. 2 (Amendment of the General Civil Code), Art. 3 (Amendment of the Marriage Act), Art. 4 (Amendment of the Reproductive Medicine Act), Art. 6 (Amendment of the jurisdiction norm), Art. 7 (Amendment of the Criminal Code), Art. 27 (Amendment of the Income Tax Act 1988), Art. 28 (Amendment of the Corporate Income Tax Act 1988), Art. 29 (Amendment of the Sales Tax Act 1994), Art. 30 (Amendment of the Valuation Act 1955), Art. 31 (Amendment of the Fees Act 1957), Art. 33 (Amendment of the Federal Tax Code), Art. 34 (Amendment of the Alcohol Tax Act), Art. 61 (Amendment of the Physicians Act 1998), Art. 62 (Amendment of the Salary Fund Act 2002), Art. 63 (Amendment of the Pharmacy Act), Art. 72 (Amendment of the Study Support Act), Art. 76 (Amendment of the Development Aid Act), Art. 77 (Amendment of the Federal Act on the Tasks and Organization of the Foreign Service - Statute) and Art. 78 (Federal Act on the Granting of Privileges and Immunities to International Organizations) come into force on January 1, 2010.

(2) The penal provisions amended by this Federal Act shall not apply in criminal cases in which the judgment was passed in the first instance before they came into force. However, following the annulment of a judgment as a result of a nullity complaint, appeal, resumption or renewal of criminal proceedings or as a result of an objection, the procedure is in accordance with Sections 1 and 61 of the Criminal Code.