

# Federal Law on Patents for Inventions (LBI\*)

(of June 25, 1954, as last amended on March 24, 1995)\*\*

## TABLE OF CONTENTS\*\*\*

	<i>Articles</i>
Part I:	General Provisions
Chapter 1:	Conditions for Obtaining Patents and Effects of Patents
	A. Patentable Inventions
	I. General Conditions ..... 1
	II. Special Cases ..... 1a
	B. Inventions Excluded From Patentability ..... 2
	C. Right to Obtain the Patent
	I. General Principle ..... 3
	II. In Examination Procedure ..... 4
	D. Mention of Inventor
	I. Right of Inventor ..... 5
	II. Renunciation of Mention ..... 6
	E. Novelty of the Invention
	I. State of the Art ..... 7
	II. Prior Right ..... 7a
	III. Unclaimable Disclosures ..... 7b
	IV. New Use of Known Substances ..... 7c
	F. Effects of Patent ..... 8
	G. Patents of Addition [Repealed] ..... 9 – 10
	H. Notice of Patent Protection
	I. Patent Marking ..... 11
	II. Other References ..... 12
	J. Residence Abroad ..... 13
	K. Term of Patent
	I. Maximum Term ..... 14
	II. Premature Expiration ..... 15
	L. Reservation ..... 16
Chapter 2:	Right of Priority
	A. Conditions and Effects of Priority ..... 17
	B. Right to Claim the Right of Priority ..... 18
	C. Formal Requirements ..... 19
	D. Burden of Proof in Legal Action ..... 20
	E. Prohibition of Cumulative Protection ..... 20a – 23
Chapter 3:	Modification of the Scope of the Patent
	A. Partial Renunciation
	I. Conditions ..... 24
	II. Issue of New Patents ..... 25
	B. Action for Invalidation
	I. Grounds for Nullity ..... 26
	II. Partial Nullity ..... 27
	III. Qualification to Take Action ..... 28
Chapter 4:	Modifications of the Right to Obtain a Patent and of the Right to the Patent; Grant of Licenses
	A. Action for Assignment
	I. Conditions and Effects Against Third Parties ..... 29
	II. Partial Assignment ..... 30
	III. Term for Action ..... 31
	B. Expropriation of the Patent ..... 32
	C. Transfer of Rights to Obtain a Patent and of Patent Right ..... 33
	D. Grant of Licenses ..... 34
Chapter 5:	Legal Restrictions on Patent Rights
	A. Third Party Right Derived From Prior Use; Foreign Vehicles ..... 35
	B. Dependent Inventions ..... 36
	C. Working the Invention in Switzerland
	I. Action for Grant of License ..... 37

\* French title: Loi fédérale sur les brevets d'invention (Loi sur les brevets, LBI).

\*\* Entry into force (of last amending Law): January 1, 1996

	II. Action for Revocation of the Patent .....	38	
	III. Exceptions .....	39	
	D. Licenses in the Public Interest.....	40	
	E. Compulsory Licenses in the Field of Semiconductor Technology .....	40a	
	F. Provisions Common to Articles 36 to 40a .....	40b	
Chapter 6:	Fees		
	A. Principles .....	41	
	B. Due Date of Annual Fees [Repealed].....	42	– 43
	C. Respite for Payment [Repealed].....	44	– 46
Chapter 7:	Further Processing and <i>Restitutio in integrum</i>		
	A. Further Processing .....	46a	
	B. <i>Restitutio in integrum</i> .....	47	
	C. Reservation for Third Party Rights .....	48	
Part II:	Grant of the Patent		
Chapter 1:	Patent Application		
	A. Formal Requisites .....	49	
	B. Disclosure of the Invention .....	50	
	C. Claims		
	I. Scope of the Claims.....	51	
	II. Independent Claims.....	52	– 54
	III. Dependent Claims.....	55	
	IV. Claims Subject to a Fee [Repealed].....	55a	
	D. Abstract.....	55b	
	E. Filing Date		
	I. In General.....	56	
	II. Division of Patent Application .....	57	
	III. Modification of Technical Documents.....	58	
Chapter 2:	Examination of the Patent Application		
	A. Subject Matter of the Examination .....	59	
	B. Completion of Examination .....	59a	
	C. Postponement of Grant.....	59b	
	D. Appeals .....	59c	
	E. Reservation on Preliminary Examination.....	59d	
Chapter 3:	Patent Register; Publications Made by the Institute		
	A. Patent Register .....	60	
	B. Publications		
	I. Concerning Patent Applications and Granted Patents .....	61	
	II. Postponement of Publication.....	62	
	III. Patent Specification		
	a. Without Preliminary Examination .....	63	
	b. With Preliminary Examination .....	63a	
	C. Letters Patent .....	64	
	D. Preservation of Files .....	65	
Part III:	Civil and Penal Sanctions		
Chapter 1:	Provisions for Protection Under Both Civil Law and Penal Law		
	A. Conditions for Responsibility .....	66	
	B. Reversal of Burden of Proof.....	67	
	C. Safeguard of Manufacturing or Business Secrets.....	68	
	D. Sale or Destruction of Products or Installations .....	69	
	E. Publication of Decision .....	70	
	F. Interdiction of Successive Actions .....	71	
Chapter 2:	Special Provisions for Protection Under Civil Law		
	A. Action for Injunction or Suppression of the State of Things.....	72	
	B. Action for Damages .....	73	
	C. Action for Declaratory Judgment .....	74	
	D. Jurisdiction.....	75	
	E. Sole Cantonal Instance .....	76	
	F. Provisional Measures		
	I. Conditions .....	77	
	II. Competence.....	78	
	III. Security.....	79	
	IV. Responsibility of Petitioner .....	80	
Chapter 3:	Special Provisions for Protection Under Penal Law		
	A. Penal Provisions		
	I. Patent Infringement .....	81	
	II. Fallacious Allusion to Protection .....	82	
	B. General Provisions of the Swiss Penal Code Applicable .....	83	

	C. Jurisdiction.....	84	
	D. Competence of the Cantonal Authorities		
	I. In General.....	85	
	II. Exception of Nullity of the Patent.....	86	
Part IV:	Preliminary Examination		
Chapter 1:	Field of Application and Organs		
	A. Field of Application of the Preliminary Examination.....	87	
	B. Bodies.....	88	
	C. Examiners.....	89	
	D. Opposition Divisions.....	90	
	E. Boards of Appeal		
	I. Competence [Repealed].....	91	
	II. Jurisdictional Independence; Decision Final [Repealed].....	92	
	III. Joint Boards [Repealed].....	93	
	IV. Appointment of Members [Repealed].....	94	– 95
Chapter 2:	Examination of the Patent Application		
	A. Before the Examiner		
	I. In General.....	96	
	II. Rejection of Appeal.....	97	
	B. Publications		
	I. Conditions.....	98	
	II. Form.....	99	
	III. Postponement.....	100	
	C. Opposition.....	101	– 103
	D. Costs Incurred in Determining a State of Fact.....	104	
	E. Amendment of the Technical Documents.....	105	
	F. Methods of Appeal		
	I. Appellate Body.....	106	
	II. Right to Appeal.....	106a	to 108
Part V:	European Patent Applications and European Patents		
Chapter 1:	Applicable Law		
	Scope of the Law; Relation to the European Patent Convention.....	109	
Chapter 2:	Effects of the European Patent Application and of the European Patent		
	A. Principle.....	110	
	B. Provisional Protection Afforded by European Patent Application.....	111	
	C. Reservation Concerning Translations		
	I. For Published European Patent Applications.....	112	
	II. For European Patents.....	113	
	III. Revision of Translations.....	114	
	D. Authentic Languages		
	I. Language of Procedure.....	115	
	II. Language of the Translation; Right of Concurrent Use.....	116	
Chapter 3:	Administration of the European Patent		
	A. Swiss Register of European Patents.....	117	
	B. Publications.....	118	
	C. Annual Fees for the European Patent [Repealed].....	119	
	D. Representation.....	120	
Chapter 4:	Transformation of the European Patent Application		
	A. Causes for Transformation.....	121	
	B. Legal Effects.....	122	
	C. Translation.....	123	
	D. Reservation in Favor of the European Patent Convention.....	124	
Chapter 5:	Provisions Concerning Protection Under Civil Law and Criminal Law		
	A. Prohibition on Cumulative Protection		
	I. Predominance of the European Patent.....	125	
	II. Predominance of Patents Resulting from Transformation.....	126	
	B. Rules of Procedure		
	I. Limitation of Partial Renunciation.....	127	
	II. Suspension of Procedure		
	a. Civil Procedure.....	128	
	b. Criminal Procedure.....	129	
Chapter 6:	Letters Rogatory Issued by the European Patent Office Transmitting Authority.....	130	
Part VI:	International Patent Applications		
Chapter 1:	Applicable Law		
	Scope of the Law; Relation to the Patent Cooperation Treaty.....	131	
Chapter 2:	Applications Filed in Switzerland		

	A. Receiving Office .....	132
	B. Procedure .....	133
Chapter 3:	Applications Designating Switzerland; Elected Office	
	A. Designated Office and Elected Office.....	134
	B. Effect of the International Application	
	I. Principle .....	135
	II. Right of Priority .....	136
	III. Provisional Protection.....	137
	C. Formal Conditions; Annual Fee .....	138
	D. Search Report.....	139
	E. Prohibition of Cumulative Protection.....	140
Part VII:	Supplementary Protection Certificates for Medicinal Products	
A. Principle	.....	140a
	B. Conditions .....	140b
	C. Entitlement.....	140c
	D. Subject Matter of Protection and Effects .....	140d
	E. Term of Protection .....	140e
	F. Time Limit for Filing an Application .....	140f
	G. Grant of Certificate .....	140g
	H. Fees .....	140h
	I. Premature Lapse; Suspension.....	140i
	K. Invalidity.....	140k
	L. Procedure, Register, Publications .....	140l
	M. Applicable Law .....	140m
Final Part		
Final and Transitional Provisions		
	A. Implementing Measures.....	141
	B. Transition From the Former Law to the New Law	
	I. Patents .....	142
	II. Patent Applications	
	a. Principle and Exceptions.....	143
	b. Invention Previously Excluded From Patenting.....	144
	III. Civil Liability.....	145
	C. Supplementary Protection Certificates	
	I. Authorization Prior to Entry Into Force.....	146
	II. Expired Patents .....	147

## PART I GENERAL PROVISIONS

### Chapter 1 Conditions for Obtaining Patents and Effects of Patents

#### *A. Patentable Inventions*

##### *I. General Conditions*

*Art. 1.—*

- (1) Patents for inventions shall be granted for new inventions applicable in industry.
- (2) Anything that manifestly follows from the state of the art (Article 7) shall not be patentable as an invention.
- (3) Patents shall be granted without the guarantee of the State.

## *II. Special Cases*

*Art. 1a.* Patents shall not be granted for new varieties of plants or animal breeds, or for essentially biological processes for producing plants or breeding animals; microbiological processes and products obtained by such processes shall be patentable, however.

### *B. Inventions Excluded From Patentability*

*Art. 2.* The following shall not be patentable:

- (a) inventions the implementation of which would be contrary to public order or morality;
- (b) methods of surgical or therapeutic treatment and of diagnosis applied to the human body or to the bodies of animals.

### *C. Right to Obtain the Patent*

#### *I. General Principle*

*Art. 3.—*

(1) The inventor, his legal successor or a third party owning the invention under any other title shall be entitled to the right to obtain the patent.

(2) Where several inventors have made an invention jointly, they shall be joint owners of the right to obtain the patent.

(3) Where several inventors have made the invention independently of each another, this right belongs to whomever may base himself upon the earlier application or the application with the earlier priority date.

#### *II. In Examination Procedure*

*Art. 4.* In the procedure before the Federal Institute of Intellectual Property, the patent applicant shall be considered as being entitled to apply for the grant of the patent.

### *D. Mention of Inventor*

#### *I. Right of Inventor*

*Art. 5.—*

(1) The applicant shall file a written designation of the inventor with the Federal Institute of Intellectual Property.

(2) The person designated by the applicant shall be recorded as inventor in the Register of Patents, in the publication of the grant of the patent, and in the patent.

(3) Paragraph (2) shall apply by analogy if a third party produces an enforceable judgment establishing that he and not the person designated by the applicant is the inventor.

#### *II. Renunciation of Mention*

*Art. 6.—*

(1) If the inventor designated by the applicant renounces his right to the measures provided for in Article 5(2), these measures shall not be taken.

(2) A declaration made beforehand by the inventor renouncing being recorded as such shall be without legal effect.

## *E. Novelty of the Invention*

### *I. State of the Art*

*Art. 7.—*

(1) An invention that is not included in the state of the art shall be deemed to be new.

(2) The state of the art shall consist of everything that has been made accessible to the public prior to the filing or priority date, by means of a written or oral description or a practice, or by any other means.

### *II. Prior Right*

*Art. 7a.* An invention shall not be deemed to be new if, while not included in the state of the art, it is the subject of a valid patent granted in respect of Switzerland as a result of a prior filing, or enjoying earlier priority.

### *III. Unclaimable Disclosures*

*Art. 7b.* Where the invention has been made accessible to the public during the six months prior to the application date or priority date, this disclosure shall not be included in the state of the art when it is the direct or indirect result of:

(a) a manifest abuse in relation to the applicant or his legal predecessor; or

(b) the fact that the applicant or his legal predecessor has displayed the invention at an official or officially recognized exhibition within the meaning of the Convention of November 22, 1928, concerning international exhibitions, where he has declared the fact at the time of filing and has produced sufficient supporting evidence in good time.

### *IV. New Use of Known Substances*

*Art. 7c.* Substances or compounds which are included as such in the state of the art or are the subject of a prior right, but which do not meet these conditions with respect to their use for the implementation of a method of surgical or therapeutic treatment or of diagnosis (*Article 2(b)*), shall be deemed to be new to the extent that they are intended solely for such use.

## *F. Effects of Patent*

*Art. 8.—*

(1) The patent shall confer on its owner the exclusive right to the professional use of the invention.

(2) Besides the utilization and execution of the invention, use shall include offering for sale, sale, placing in circulation and importing for such purposes.

(3) If the invention concerns a process, the effects of the patent shall extend to the immediate products of the process.

## *G. Patents of Addition*

*Art. 9.* [Repealed]

*Art. 10.* [Repealed]

## *H. Notice of Patent Protection*

### *I. Patent Marking*

*Art. 11.—*

(1) Products enjoying patent protection, or their packages, may be marked with the patent notice consisting of the Federal Cross and the number of the patent. The Federal Council may specify additional indications.

(2) The patentee may require any owners of a right to use the invention by virtue of prior use or a license to affix the patent marking on the products of their manufacture or on the packages of such products.

(3) If the said parties do not comply with the patentee's requirement, they shall be liable to the latter for any resulting damage, without prejudice to the patentee's right to require the patent marking.

### *II. Other References*

*Art. 12.—*

(1) Whoever issues or offers for sale his business papers, notices of any kind, products or goods bearing any other notice referring to patent protection shall inform any third party upon request of the number of the patent application or the patent to which the notice refers.

(2) Whoever accuses third parties of infringing his rights or warns them against such infringement shall upon request give them the same information.

## *J. Residence Abroad*

*Art. 13.—*

(1) Persons having no Swiss residence shall appoint an agent resident in Switzerland who, in procedures provided for in this Law, shall represent him before the administrative bodies and before the courts.

(2) The legal provisions on the practice of the profession of attorney are reserved.

## *K. Term of Patent*

### *I. Maximum Term*

*Art. 14.—*

(1) The maximum term of a patent shall be 20 years from the filing date of the application.

(2) [Repealed]

### *II. Premature Expiration*

*Art. 15.—*

(1) The patent shall expire:

- (a) if the owner renounces it by a written declaration to the Federal Institute of Intellectual Property;
- (b) if an annual fee due is not paid within the prescribed time.

(2) [Repealed]

### *L. Reservation*

*Art. 16.* Patent applicants or patent owners who are Swiss nationals may rely on the provisions of the text, binding Switzerland, of the Paris Convention for the Protection of Industrial Property of March 20, 1883, where those provisions are more favorable than the provisions of this Law.

## **Chapter 2 Right of Priority**

### *A. Conditions and Effects of Priority*

*Art. 17.—*

(1) Where an invention is the subject of a regular filing of an application for a patent for invention, a utility model or an inventor's certificate and where the filing takes place or produces its effects in one of the countries party to the Paris Convention for the Protection of Industrial Property of March 20, 1883, other than Switzerland, it shall give rise to a right of priority in accordance with Article 4 of the Convention. Such right may be claimed for a patent application filed in Switzerland for the same invention within 12 months from the date of the initial filing.

(*bis*) The first filing in a country that grants reciprocity to Switzerland shall have the same effect as the first filing in a country party to the Paris Convention for the Protection of Industrial Property.

(*ter*) Except as otherwise provided by this Law or by the Ordinance, paragraph (1) and Article 4 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, shall apply *mutatis mutandis* to an initial Swiss application.

(2) The effect of the priority right shall be to make non-opposable to the application any facts which have come to pass since the date of the first application.

(3) [Repealed]

### *B. Right to Claim the Right of Priority*

*Art. 18.—*

(1) [Repealed]

(2) The right of priority may be claimed by the first applicant or the person who has acquired the right belonging to the first applicant to file a patent application in Switzerland for the same invention.

(3) If the first filing, the filing in Switzerland or both were effected by a person who was not entitled to the grant of the patent, the real owner of the right may claim the priority deriving from that first filing.

### *C. Formal Requirements*

*Art. 19.—*

(1) Any person claiming a right of priority shall file a declaration and a priority document with the Federal Institute of Intellectual Property.

(2) The right of priority shall lapse if the time limits and formal requirements laid down by the Ordinance are not complied with.

### *D. Burden of Proof in Legal Action*

*Art. 20.—*

(1) Acceptance of a priority claim in the procedure for the grant of the patent does not relieve the patentee from proving the existence of such right in the case of a legal action.



(2) The filing on the basis of which priority is claimed shall be presumed to be the first filing (Article 17(1) and (1bis)).

### *E. Prohibition of Cumulative Protection*

*Art. 20a.* Where an inventor or his successor in title has obtained for the same invention two valid patents with the same filing date or priority date, the effects of the patent based on the earlier application shall cease insofar as the scope of protection afforded by the two patents is the same.

*Art. 21.* [Repealed]

*Art. 22.* [Repealed]

*Art. 23.* [Repealed]

## **Chapter 3 Modification of the Scope of the Patent**

### *A. Partial Renunciation*

#### *I. Conditions*

*Art. 24.—*

(1) The owner of a patent may partially renounce his patent rights by requesting the Federal Institute of Intellectual Property:

- (a) to cancel a claim (Articles 51 and 55); or
- (b) to restrict an independent claim by incorporating one or more dependent claims in it; or
- (c) to restrict an independent claim in some other way; in that case, the restricted claim shall refer to the same invention and define an embodiment that is included in the specification of the published patent and in the version of the patent application that determined its filing.

(2) A request under subparagraph (c) shall be acceptable once only for the same patent and shall not be acceptable after four years from the grant of the patent.

#### *II. Issue of New Patents*

*Art. 25.—*

(1) If, as a result of partial renunciation, claims remain that are incompatible in the same patent according to Articles 52 and 55, the patent shall be further restricted accordingly.

(2) The patentee may apply for the issue of one or more new patents to cover the eliminated claims; such new patents shall be given the filing date of the initial patent.

(3) Following the recording of the partial renunciation in the Register of Patents, the Federal Institute of Intellectual Property shall set a term for the patentee to apply for the issue of new patents according to paragraph (2); after this term, such an application shall no longer be acceptable.

### *B. Action for Invalidation*

#### *I. Grounds for Nullity*

*Art. 26.—*

(1) On request, the court shall declare a patent to be invalid:

- 1. where the subject matter of the patent is not patentable according to Articles 1 and 1a;
- 2. where the invention is not patentable according to Article 2;

3. where the invention is not disclosed in the patent specification in such a way that a person skilled in the art could carry it out;
- 3bis. where the subject matter of the patent goes beyond the content of the version of the patent application that determined the filing date;
4. [repealed];
5. [repealed];
6. where the patentee is neither the inventor nor his successor in title and had not acquired a right to the patent under any other title.

(2) Where a patent has been granted with acknowledgment of priority, and the patent application the priority of which is claimed did not result in the grant of a patent, the court may demand that the owner of the patent indicate the reasons therefor, and produce evidence in support of those reasons; if the owner of the patent refuses to comply, the court shall have full discretion in its judgment of such refusal.

## *II. Partial Nullity*

*Art. 27.—*

(1) Where only a part of the patented invention is found to be invalid, the judge shall accordingly limit the patent.

(2) He shall give the parties an opportunity to be heard on the proposed new version of his claim; he may additionally request the opinion of the Federal Institute of Intellectual Property.

(3) Article 25 shall apply by analogy.

## *III. Qualification to Take Action*

*Art. 28.* Any person proving an interest may take action for invalidation; however, only the rightful owner shall be qualified to take action based on Article 26(1)6.

# **Chapter 4**

## **Modifications of the Right to Obtain a Patent and of the Right to the Patent; Grant of Licenses**

### *A. Action for Assignment*

#### *I. Conditions and Effects Against Third Parties*

*Art. 29.—*

(1) When the patent application was filed by an applicant who, according to Article 3, is not entitled to obtain a patent, the rightful owner may apply for assignment of the patent application or, if the patent has already been granted, he may apply for assignment of the patent or enter an action for invalidation.

(2) [Repealed]

(3) Where assignment is ordered by the court, any licenses or other rights conferred in the meantime on third parties shall be void; such third parties may, however, apply for a non-exclusive license if they have professionally used the invention in good faith in Switzerland or have made special preparations for that purpose.

(4) Any claims for damages shall be reserved.

(5) The corresponding provisions of Article 40b shall apply.

## *II. Partial Assignment*

*Art. 30.—*

(1) If the plaintiff cannot prove his right to all the claims, assignment of the patent application or of the patent shall be ordered by the court, subject to the elimination of the claims to which the plaintiff has not proved his right.

(2) In this case, Article 25 shall apply by analogy.

## *III. Term for Action*

*Art. 31.—*

(1) An action for assignment must be filed within two years from the official date of the publication of the patent specification.

(2) An action against a defendant of bad faith has no time limit.

## *B. Expropriation of the Patent*

*Art. 32.—*

(1) If public interest so requires, the Federal Council may wholly or partially expropriate the patent.

(2) The former owner of an expropriated patent shall be entitled to full compensation which, in case of dispute, shall be fixed by the Federal Court; the provisions of Chapter II of the Federal Law of June 20, 1930, on expropriation shall apply by analogy.

## *C. Transfer of Rights to Obtain a Patent and of Patent Right*

*Art. 33.—*

(1) The right to obtain a patent and the right to the patent shall pass to the heirs; these rights can be assigned to third parties either wholly or in part.

(2) Where the said rights are jointly owned, each co-owner may exercise those rights only with the consent of the others; however, each one may independently dispose of his part and take action for violation of the patent.

(2*bis*) The transfer of a patent application and of the patent that result from a legal act shall be valid only if evidenced in writing.

(3) A patent may be transferred without entry of the transfer in the Register of Patents; however, in the absence of such entry, any action provided for in this Law may be taken against the former owner of the patent.

(4) Rights of third parties not recorded in the Register of Patents are not opposable against persons who have in good faith acquired rights to the patent.

## *D. Grant of Licenses*

*Art. 34.—*

(1) The applicant for or the registered owner of a patent may grant to third parties the right to use the invention (grant of licenses).

(2) Where a patent application or the patent itself is owned by several persons, a license may not be granted without the consent of all co-owners.

(3) Licenses not recorded in the Register of Patents are not opposable against persons who have in good faith acquired rights to the patent.

## **Chapter 5**

### **Legal Restrictions on Patent Rights**

#### *A. Third Party Right Derived From Prior Use; Foreign Vehicles*

*Art. 35.—*

(1) A patent shall have no effect against persons who, prior to the date of filing of the patent application, were in good faith professionally using the invention in Switzerland or had made special preparations for that purpose.

(2) Any such person may use the invention for the purposes of their trade or business; this right may be transferred only by assignment or inheritance, together with the trade or business.

(3) A patent shall have no effect with regard to vehicles which are only temporarily in Switzerland and to equipment applied to these vehicles.

#### *B. Dependent Inventions*

*Art. 36.—*

(1) If a patented invention cannot be used without infringing a prior patent, the owner of the more recent patent shall have the right to the grant of a non-exclusive license to the extent required for such use of his invention, provided that the invention represents an important technical advance of considerable economic interest in relation to the invention that is the subject of the first patent.

(2) A license to use the invention that is the subject matter of the first patent may only be assigned jointly with the second patent.

(3) The owner of the first patent may make the grant of a license conditional on the fact that the holder of the second patent afford to him in turn a license to use his invention.

#### *C. Working the Invention in Switzerland*

##### *I. Action for Grant of License*

*Art. 37.—*

(1) After a period of three years from the date of grant of a patent, but not sooner than four years after the filing of the application, any person having a legitimate interest may apply to the court for the grant of a non-exclusive license to use the invention if, until the time of filing such action, the owner of the patent has not worked the invention to a sufficient extent in Switzerland and cannot give a good reason for his failure to do so. Importing shall be deemed to constitute working of the patent in Switzerland.

(1*bis*) and (2) [Repealed]

(3) At the request of the petitioner, the court may grant a license immediately after the action has been filed, without prejudice to the final decision, providing that, in addition to the conditions set out in paragraph (1), the petitioner furnishes *prima facie* evidence of his interest in the immediate use of the invention and that he provides adequate security to the defendant; the defendant shall be heard beforehand.

##### *II. Action for Revocation of the Patent*

*Art. 38.—*

(1) If the grant of licenses does not suffice to meet the demand of the Swiss market, any person proving an interest may take action for the revocation of the patent after a period of two years from the grant of the first license under Article 37(1).

(2) If the law of the country of which the owner of the patent is a national or in which he is resident allows action for revocation of the patent for failure to work the invention in that country as early as three

years after the grant of the patent, such action shall be allowed in place of the action for the grant of a license, subject to the conditions specified in Article 37 for the grant of licenses.

### *III. Exceptions*

*Art. 39.* The Federal Council may decree Articles 37 and 38 to be inapplicable against the nationals of countries granting reciprocity.

#### *D. Licenses in the Public Interest*

*Art. 40.—*

(1) Where the public interest so dictates, the person to whom the owner of the patent has, without sufficient reason, refused to grant the license requested may apply to the court for the grant of a license to use the invention.

(2) [Repealed]

#### *E. Compulsory Licenses in the Field of Semiconductor Technology*

*Art. 40a.* In the case of an invention in the field of semiconductor technology, a non-exclusive license may only be granted in order to remedy a practice that has been declared contrary to competition law in a judicial or administrative proceeding.

#### *F. Provisions Common to Articles 36 to 40a*

*Art. 40b.—*

(1) The licenses referred to in Articles 36 to 40a shall only be granted if the efforts undertaken by the petitioner to obtain a contractual license on reasonable commercial conditions have not succeeded within a reasonable period of time. Such efforts shall not be a requirement in situations of national emergency or in other circumstances of extreme urgency.

(2) The scope and duration of licenses shall be limited to the purposes for which they have been granted.

(3) Licenses may only be assigned together with that part of the enterprise in which they are worked. The same shall apply to sublicenses.

(4) Licenses shall be granted mainly for the supply of the internal market.

(5) On a petition, the court may withdraw a license from the person holding it if the circumstances that have led to its grant cease to exist and it appears probable that they will not reoccur. The legitimate interests of the entitled person shall enjoy adequate protection.

(6) The owner of the patent shall be entitled to equitable remuneration. That remuneration shall be determined as a function of the particular case and of the economic value of the license.

(7) The court shall decide on the grant and withdrawal of a license, on the scope and duration of the license and on the remuneration to be paid.

## **Chapter 6 Fees**

### *A. Principles*

*Art. 41.* The grant and maintenance of a patent and the processing of special requests shall be subject to payment of the relevant fees prescribed in the schedule.

## *B. Due Date of Annual Fees*

### *I. In General*

*Art. 42* [Repealed]

### *II. In the Case of Divided Applications*

*Art. 42a* [Repealed]

### *III. In the Case of the Grant of New Patents*

*Art. 43.* [Repealed]

## *C. Respite for Payment*

*Art. 44* [Repealed]

*Art. 45.* [Repealed]

*Art. 46.* [Repealed]

## **Chapter 7 Further Processing and Restitutio *in integrum***

### *A. Further Processing*

*Art. 46a.*—

(1) Where an applicant or holder of a patent has not complied with a time limit laid down by law or by the Federal Institute of Intellectual Property, he may file with that Institute a written request for further processing.

(2) He shall submit such request within two months of the time he gained knowledge of failure to comply with the time limit, but six months at the latest from the expiry of the time limit that was not complied with. He shall further be required to execute in full, during such time limits, the omitted act, supplement where necessary the patent application and pay the fee for further processing.

(3) Acceptance of the request for further processing shall have the effect of restoring the situation that would have resulted from the carrying out of the act in good time. Article 48 shall remain unaffected.

(4) Further processing shall not be allowed where the following time limits have not been complied with:

- (a) time limits that do not have to be satisfied with regard to the Federal Institute of Intellectual Property;
- (b) time limits for submitting a request for further processing (paragraph (2));
- (c) time limits for submitting a request for restitution (Article 47(2));
- (d) time limits for submitting a patent application accompanied by a priority claim and a priority declaration (Articles 17 and 19);
- (e) time limit for the request for partial renunciation (Article 24(2));
- (f) time limit for the modification of technical documents (Article 58(1));
- (g) time limit for election (Article 138(2));

- (h) time limits for filing an application for a supplementary protection certificate (Articles 140f(1), 146(2) and 147(3));
- (i) any other time limit, laid down by ordinance, where failure to comply with that time limit excludes further processing.

## *B. Restitutio in integrum*

*Art. 47.—*

(1) Where the applicant or patentee establishes *prima facie* evidence of having, not by his fault, been prevented from respecting a term prescribed by this Law or the Rules, or set by the Federal Institute of Intellectual Property, he shall, upon petition, be reintegrated in the prior state.

(2) The petition shall be filed with the authority which should have received the non-performed act, within two months from the cessation of the conditions impeding such action, but at the latest within one year from the end of the expired term; at the same time, the said act must be performed.

(3) Reintegration shall not be granted for the case provided in paragraph (2), above (term for the petition for reintegration).

(4) The effect of acceptance of the petition is to reestablish the situation which would have prevailed if the act had been performed in due time, the provisions of Article 48 being reserved.

## *C. Reservation for Third Party Rights*

*Art. 48.—*

(1) The patent may not be invoked against any person who, during the periods specified below, has professionally used an invention in good faith in Switzerland or who has made special preparations for that purpose:

- (a) between the last day of the time limit stipulated for payment of an annual fee and the filing date of a request for further processing (Article 46a) or an application for restitution (Article 47);
- (b) between the last day of the priority period (Article 17(1)) and the day on which the patent application was filed.

(2) The right thus acquired as above by a third party shall be subject to the provision of Article 35(2).

(3) Any person claiming a right based on Article 1a shall pay to the patentee a reasonable compensation from the date on which the patent is revived.

(4) In case of dispute, the judge shall decide on the existence and on the extent of the rights claimed by a third party and on the amount of the compensation according to paragraph (3).

# PART II GRANT OF THE PATENT

## **Chapter 1 Patent Application**

### *A. Formal Requisites*

*Art. 49.—*

(1) [Repealed]

(2) The application shall contain:

- (a) a request for the grant of the patent;
- (b) a description of the invention;
- (c) one or more claims;

- (d) the drawings to which the description or claims refer;
- (e) an abstract.
- (3) Every patent application shall entail payment of the application fee.
- (4) [Repealed]

## *B. Disclosure of the Invention*

*Art. 50.—*

(1) The invention shall be disclosed in the patent application in such a way that a person skilled in the art may carry it out.

(2) [Repealed]

## *C. Claims*

### *I. Scope of the Claims*

*Art. 51.—*

- (1) The invention shall be defined in one or more claims.
- (2) The claims shall determine the extent of the protection conferred by the patent.
- (3) The description and drawings shall serve for the interpretation of the claims.

### *II. Independent Claims*

*Art. 52.—*

(1) Every independent claim shall define one invention only, namely:

- (a) a process; or
- (b) a product, a means for performing a process, or a device; or
- (c) the application of a process; or
- (d) the utilization of a product.

(2) A patent may contain several independent claims where they define a set of inventions that are linked to each other in such a way that they constitute a single overall inventive concept.

*Art. 53. [Repealed]*

*Art. 54. [Repealed]*

### *III. Dependent Claims*

*Art. 55.* Special means of carrying out an invention defined by an independent claim may be the subject of dependent claims.

### *IV. Claims Subject to a Fee*

*Art. 55a. [Repealed]*

## *D. Abstract*

*Art. 55b.* The abstract shall serve exclusively the purposes of technological information.



## *E. Filing Date*

### *I. In General*

*Art. 56.—*

(1) The day on which the last of the documents prescribed by Article 49(2)(a) to (d) is filed shall be regarded as the filing date.

(2) For postal dispatches, the determinant moment shall be that at which they have been delivered to the Swiss Post Office for transmission to the Federal Institute of Intellectual Property.

### *II. Division of Patent Application*

*Art. 57.—*

(1) A patent application resulting from the division of an earlier application shall have the same filing date as that earlier application:

- (a) if, at the time of its filing, it is expressly identified as being a divisional application;
- (b) if, at the time of filing of the divisional application, the earlier application was still pending; and
- (c) insofar as its subject matter does not go beyond the content of the original version of the earlier application.

(2) Where the subject matter of the divisional application goes beyond the original content of the earlier application, but not beyond that of a later version, the divisional application shall be given the date on which that later version was filed as its filing date.

### *III. Modification of Technical Documents*

*Art. 58.—*

(1) As long as the examination procedure has not been completed, the applicant may modify the technical documents.

(2) Where the subject matter of the modified application goes beyond the content of the documents originally filed, the date on which the documents describing the invention claimed are filed shall be considered the filing date; in such case, the original filing date shall lose all legal effect.

(3) [Repealed]

## **Chapter 2** **Examination of the Patent Application**

### *A. Subject Matter of the Examination*

*Art. 59.—*

(1) If the subject matter of the patent application is not or is only partly in conformity with Articles 1, 1a and 2, the Federal Institute of Intellectual Property shall inform the applicant accordingly, stating the reasons, and shall allow him a period of time for reply.

(2) If the patent application does not meet other requirements of this Law or of the Ordinance, the Federal Institute of Intellectual Property shall allow the applicant a period of time for the correction of the defects.

(3) [Repealed]

(4) The Federal Institute of Intellectual Property shall not examine whether the invention is new or whether it manifestly follows from the state of the art.

(5) [Repealed]

(6) [Repealed]

## *B. Completion of Examination*

*Art. 59a.*—

(1) If the conditions for the grant of a patent are met, the Federal Institute of Intellectual Property shall inform the applicant that the examination procedure has been completed.

(2) [Repealed]

(3) The Federal Institute of Intellectual Property shall reject the application if:

- (a) it has not been withdrawn, even though a patent cannot be granted for the reasons mentioned in Article 59(1); or
- (b) the defects mentioned in accordance with Article 59(2) have not been corrected.

## *C. Postponement of Grant*

*Art. 59b.*—

(1) The grant of the patent may, at the request of the applicant, be postponed for a maximum of six months from the date of the communication indicating that the examination procedure has been completed (Article 59a(1)).

(2) Extension of the postponement beyond six months shall be allowed where the public interest requires that the invention be kept secret. The Federal Council shall specify the conditions for extension and the appropriate procedure.

## *D. Appeals*

*Art. 59c.* The decisions of the Federal Institute of Intellectual Property with regard to patents may be appealed from the Intellectual Property Appeals Commission (Appeals Commission).

## *E. Reservation on Preliminary Examination*

*Art. 59d.* The provisions of Articles 59, 59a and 59b shall not apply to applications subject to preliminary examination (Articles 87 *et seq.*).

# **Chapter 3**

## **Patent Register; Publications**

### **Made by the Institute**

## *A. Patent Register*

*Art. 60.*—

(1) The Federal Institute of Intellectual Property shall grant the patent by registering it in the Patent Register.

(1*bis*) The Patent Register shall in particular contain the following information: the number of the patent; the classification symbol; the title of the invention; the filing date; the name and domicile of the owner of the patent and, where applicable, the information regarding priority; the name and business address of the agent; and the name of the inventor.

(2) Any modifications concerning the patent or the rights attached thereto shall be entered in this Patent Register.

(3) The courts shall deliver to the Federal Institute free of charge complete copies of final and unappealable decisions ordering such modifications for entry in the Patent Register.

## *B. Publications*

### *I. Concerning Patent Applications and Granted Patents*

*Art. 61.—*

(1) The Federal Institute of Intellectual Property shall publish in the Swiss Journal of Patents, Designs and Marks:

1. the recording of the patent in the Patent Register with the particulars referred to in Article 60(1bis);
2. the cancellation of the Patent Register;
3. the modifications entered in the Patent Register concerning the existence of the patent and the rights attached thereto.

(2) In the case of patent applications subject to preliminary examination (Article 87 *et seq.*), the Federal Institute shall also publish:

1. the patent application with the particulars referred to in Article 99(1);
2. the withdrawal or rejection of the patent application already published.

### *II. Postponement of Publication*

*Art. 62.* Where the Confederation has acquired rights to a patent publication of the recording in the Register, it may, upon the request of the competent Department, be deferred for an indefinite term.

### *III. Patent Specification*

#### **a. Without Preliminary Examination**

*Art. 63.—*

(1) The Federal Institute of Intellectual Property shall issue a specification in respect of every patent granted without preliminary examination (Article 87 *et seq.*).

(2) The specification shall include the description, claims, abstract, drawings if any, and the particulars recorded in the Register (Article 60(1bis)).

#### **b. With Preliminary Examination**

*Art. 63a.—*

(1) In the case of patent applications subject to preliminary examination (Article 7 *et seq.*), the Federal Institute of Intellectual Property shall issue a specification for every patent application published and a specification for every patent granted.

(2) These documents shall contain the description, claims, abstract, drawings if any, the report on the state of the art and any particulars concerning the application (Article 99(1)) and the patent (Article 60(1bis)).

(3) If the patent specification does not differ with respect to content from the application specification, it may be limited to the particulars concerning the patent (Article 60(1bis)) and merely refer to the application specification.

## *C. Letters Patent*

*Art. 64.—*

(1) As soon as the printed specification is ready for publication, the Federal Institute of Intellectual Property shall issue the letters patent.

(2) The said patent shall consist of a certificate to the effect that the legal conditions to obtain a patent have been fulfilled and of a printed copy of the specification.

### *D. Preservation of Files*

*Art. 65.* The Federal Institute of Intellectual Property shall preserve the original patent files or a copy thereof until five years after the expiration of the patent.

## PART III CIVIL AND PENAL SANCTIONS

### Chapter 1 Provisions for Protection Under Both Civil Law and Penal Law

#### *A. Conditions for Responsibility*

*Art. 66.* Action may be taken under civil law or penal law, in the conditions hereinafter set forth against any person:

- (a) who unlawfully utilizes the patented invention; imitation shall be deemed to be utilization;
- (b) who refuses to name to the competent authorities the origin of unlawfully manufactured products in his possession;
- (c) who removes the patent marking from products or their packages without authorization from the patentee or the licensee;
- (d) who abets any of the said offenses, participates in them, aids or facilitates performance of any of these acts.

#### *B. Reversal of Burden of Proof*

*Art. 67.—*

(1) If the invention concerns a process for the manufacture of a new product, every product of the same composition shall be presumed to have been made by the patented process until proof to the contrary has been adduced.

(2) Paragraph (1) shall apply by analogy in the case of a process for the manufacture of a known product if the patentee shows *prima facie* evidence of infringement of the patent.

#### *C. Safeguard of Manufacturing or Business Secrets*

*Art. 68.—*

(1) Manufacturing or business secrets of the parties shall be safeguarded.

(2) Evidence which would disclose such secrets may be made available to the adversary only to such an extent as is compatible with the safeguard of the secrets.

#### *D. Sale or Destruction of Products or Installations*

*Art. 69.—*

(1) In the event of a condemnation, the court may order the confiscation and the sale or destruction of the unlawfully manufactured goods or of the instruments, tooling and other means whose main purpose is to manufacture such goods.

(2) The net result of such sale shall primarily be used for payment of the fine, next for payment of the costs for the judicial investigation and the court costs, and finally for collection of damages and costs granted

to the adverse party by a final and unappealable decision; any remaining sum shall revert to the former owner of the objects sold.

(3) Even in the event of acquittal or dismissal of the action, the court may order the destruction of the instruments, tooling and other means whose main purpose is to infringe the patent.

### *E. Publication of Decision*

*Art. 70.—*

(1) The judge may authorize the party in favor of whom he has rendered his decision to publish the decision at the expense of the other party; he shall decide upon the nature, the extent and the time of the publication.

(2) In penal cases (Articles 81 and 82), the publication of the decision shall be governed by Article 61 of the Swiss Penal Code.

### *F. Interdiction of Successive Actions*

*Art. 71.* Whoever takes one of the actions provided for in Article 72, 73, 74 or 81, and subsequently takes further action against the same party for the same or a similar act on the basis of another patent shall bear the court costs and the costs of the other party for the new action if he does not furnish *prima facie* evidence that in the prior action he was, through no fault on his part, unable to invoke the other patent.

## **Chapter 2 Special Provisions for Protection Under Civil Law**

### *A. Action for Injunction or Suppression of the State of Things*

*Art. 72.—*

(1) Whoever is threatened with or has his rights violated by an act mentioned in Article 66 may demand an injunction for the suppression of the resulting state of things.

(2) In the case of patent applications subject to preliminary examination (Article 87 *et seq.*), the applicant has the right to be a party to judicial proceedings as from the publication of the patent application, provided that he gives the opposing party equitable security; Article 80 (responsibility) shall apply *mutatis mutandis*.

### *B. Action for Damages*

*Art. 73.—*

(1) Whoever performs an act mentioned in Article 66 either willfully or by negligence or imprudence shall be bound to pay damages to the injured party according to the provisions of the Code of Obligations.

(2) If the injured party is unable to assess beforehand the amount of the damages to which he is entitled, he may request the judge to award damages at the latter's discretion on the basis of the evidence produced later to determine the extent of the damages.

(3) The action for damages may be introduced only after grant of the patent; however, damages may be claimed from the time at which the defendant became aware of the contents of the patent application.

(4) In the case of patents granted after preliminary examination (Article 87 *et seq.*), it shall be possible, in all cases, to demand redress for damages caused by the defendant after publication of the patent application.

### *C. Action for Declaratory Judgment*

*Art. 74.* Any person proving an interest may enter an action to obtain a declaratory judgment on the existence or the nonexistence of a circumstance or legal relationship governed by this Law, in particular:

1. that a certain patent is valid;
2. that the defendant has performed an act mentioned in Article 66;
3. that the plaintiff has not performed an act mentioned in Article 66;
4. that a certain patent is not enforceable against the plaintiff by virtue of a legal provision;
5. that with regard to two specific patents the conditions of Article 36 for the grant of a license are or are not fulfilled;
6. that the plaintiff has made an invention covered by a certain patent application or patent;
7. that a certain patent has become invalid because it violates the prohibition on cumulative protection.

### *D. Jurisdiction*

*Art. 75.—*

(1) For the actions provided for in this Law, jurisdiction is granted:

- (a) for actions entered by the patent applicant or patentee against third parties: to the court at the domicile of the defendant, or at the place where the act was performed, or at the place where the act has taken effect;
- (b) for actions entered by third parties against the patent applicant or patentee: to the court at the domicile of the defendant; if that place is not in Switzerland, then at the place of business of the agent recorded in the Register or, if such record has been expunged from the Register, at the place of the principal offices of the Federal Institute of Intellectual Property.

(2) Where more than one place enters into consideration, the court at which the action had first been entered shall have jurisdiction.

### *E. Sole Cantonal Instance*

*Art. 76.—*

(1) The cantons shall designate a court to be competent to receive the civil actions governed by this Law, which court shall have jurisdiction for the entire territory of the canton as sole cantonal instance.

(2) Appeal to the Federal Court shall be admissible regardless of the value of the interests involved in the action.

### *F. Provisional Measures*

#### *I. Conditions*

*Art. 77.—*

(1) Upon petition by a person qualified to enter an action, the competent authority shall order provisional measures in order to secure evidence, to maintain the actual state of facts, or provisionally to exercise disputed rights, enjoin or suppress any of the resulting conditions; it may particularly provide for a precise description of the processes or products allegedly used or made contrary to law, and of the installations, appliances, etc., used for the manufacture of those products, or the seizure of those objects.

(2) The petitioner shall produce *prima facie* evidence that the other party has committed or intends to commit an act contrary to this Law and that he is threatened by a loss which is not easily reparable and which can be avoided only by provisional measures.

(3) Before making a provisional order, the authority shall hear the opposing party. Urgent measures may nevertheless be taken beforehand where there is an imminent danger. The opposing party shall be informed thereof immediately after execution of such measures.

(4) At the time of accepting the petition, the authority shall give the petitioner a term not exceeding 30 days to institute action and shall inform him that the measures ordered will lapse if he does not act within that term.

## *II. Competence*

*Art. 78.—*

(1) The competent authority is that of the place for the institution of a civil action according to Article 75; after introduction of the action, only the judge who is dealing with the action shall be competent to order or to revoke provisional measures.

(2) The cantons shall designate the authorities competent to pronounce such measures and shall, where necessary, enact supplementary rules of procedure.

## *III. Security*

*Art. 79.—*

(1) As a general rule, the petitioner shall be required to furnish sufficient security.

(2) The competent authority may desist from ordering provisional measures or wholly or in part revoke those ordered if the defendant supplies sufficient security for the benefit of the petitioner.

## *IV. Responsibility of Petitioner*

*Art. 80.—*

(1) If it should appear that the petition for provisional measures was not based on a substantive right, the petitioner shall compensate the opposing party for the damages occasioned by the said measures; the judge shall decide upon the nature and the amount of the compensation for damages according to Article 43 of the Code of Obligations.

(2) The action for damages shall be barred by one year's limitation from the time when the provisional measures cease to have effect.

(3) Any security paid by the petitioner shall not be refunded to him unless it has been established that no action for damages will be brought; the authority may grant the opposing party a reasonable term within which to bring such action with the notice that the security shall be refunded to the petitioner if such action is not brought within the prescribed term.

# **Chapter 3 Special Provisions for Protection Under Penal Law**

## *A. Penal Provisions*

### *I. Patent Infringement*

*Art. 81.—*

(1) Whoever willfully commits an act referred to in Article 66 shall be liable, on an action brought by the injured party, to imprisonment of up to one year or a fine of up to 100,000 francs.

(2) The right to bring an action against the offender shall be barred by six months' limitation from the time at which the aggrieved person had knowledge of the identity of the offender.

## *II. Fallacious Allusion to Protection*

*Art. 82.—*

(1) Whoever willfully offers for sale or issues his business papers, his advertisements of any kind, his products or goods bearing a notice that is adapted falsely to represent that the products or goods are protected by the present Law shall be liable to a fine not exceeding 2,000 francs.

(2) The judge may order the publication of his decision.

## *B. General Provisions of the Swiss Penal Code Applicable*

*Art. 83.* The general provisions of the Swiss penal code shall be applicable insofar as the present Law does not provide otherwise.

## *C. Jurisdiction*

*Art. 84.—*

(1) The competent authority for the prosecution and judgment of an offense is the authority of the place where the act was committed or of the place where the act occurred; where more than one place enters into consideration, or where several joint offenders are concerned, the competent authority is that of the place where the offense was first commenced.

(2) The competent authority for the prosecution and judgment of the main offender is also competent for the prosecution and judgment of the instigator and the accomplice.

## *D. Competence of the Cantonal Authorities*

### *I. In General*

*Art. 85.—*

(1) The prosecution and judgment of offenses are incumbent on the cantonal authorities.

(2) Judgments, sentences by administrative bodies and decisions to relinquish a prosecution shall immediately be communicated in full to the Federal Public Prosecutor free of cost.

### *II. Exception of Nullity of the Patent*

*Art. 86.—*

(1) If the accused raises the exception of nullity of the patent, the court may grant him a sufficient term to bring an action for nullity, with a warning of the consequences of his failure so to act; if the patent had been granted without official preliminary examination, or if the accused produces *prima facie* evidence in support of his exception of nullity so as to make it appear well founded, the court may grant the injured party a sufficient term to bring an action for declaratory judgment on the validity of the patent, as well as with a warning of the consequences of his failure so to act.

(2) Where action is thereupon instituted within the said term, the penal prosecution shall be suspended until a final decision on the action has been rendered; the statute-bar shall be suspended during this period.

(3) The action may be brought either before the judge at the place of domicile of the defendant or before the judge of the place where the penal prosecution was introduced.



PART IV  
PRELIMINARY EXAMINATION

**Chapter 1**  
**Field of Application and Organs**

*A. Field of Application  
of the Preliminary Examination*

*Art. 87.—*

(1) [Repealed]

(2) Patent applications filed by the end of the month following entry into force of the amendment of February 3, 1995<sup>1</sup>, to this Law and having the following subject matter shall be subject to preliminary examination:

(a) inventions of products obtained by the application of processes that are not purely mechanical for the improvement of textile fibers of all kinds, whether raw or already worked, as well as the processes themselves when the inventions relate to the textile industry;

(b) inventions with characteristics that suit them specifically to chronometric technology.

(3) [Repealed]

(4) [Repealed]

(5) The applicant may file opposition with the examiner against the latter's decision declaring that the application is subject to preliminary examination or that it is not; the decision on opposition may be appealed from to the Appeals Commission.

*B. Bodies*

*Art. 88.—*

(1) For the carrying out of tasks associated with preliminary examination, the Federal Institute of Intellectual Property shall comprise examiners and opposition divisions.

(2) [Repealed].

*C. Examiners*

*Art. 89.—*

(1) The examiners shall examine patent applications where their content is the decisive factor; they shall decide, in all cases where there is no opposition procedure, whether the patent should be granted.

(2) Each examiner shall perform his duties alone; he must possess a technical education.

(3) [Repealed].

*D. Opposition Divisions*

*Art. 90.—*

(1) The opposition divisions shall rule on oppositions; they shall take the decision regarding the grant of the patent.

(2) They shall be composed of lawyers and of technically educated members.

(3) Decisions may be taken only by patent sections composed of three members including the examiner.

---

<sup>1</sup> Editor's Note: The amending Law of February 3, 1995 entered into force on September 1, 1995.

(4) [Repealed]

## *E. Boards of Appeal*

### *I. Competence*

*Art. 91.* [Repealed]

### *II. Jurisdictional Independence; Decision Final*

*Art. 92.* [Repealed]

### *III. Joint Boards*

*Art. 93.* [Repealed]

### *IV. Appointment of Members*

*Art. 94.* [Repealed]

*Art. 95.* [Repealed]

## **Chapter 2 Examination of the Patent Application**

### *A. Before the Examiner*

#### *I. In General*

*Art. 96.—*

(1) The patent application shall be examined by the examiner.

(1*bis*) [Repealed]

(2) If the examiner considers that the invention cannot be patented according to Articles 1, 1a and 2, he shall inform the applicant accordingly, stating his reasons, and shall set him a time limit for reply.

(3) If the examiner finds that the patent application does not comply with other provisions of the Law or the Ordinance, he shall grant the applicant a term to amend the application.

(4) The examiner shall not determine whether the invention is also new within the meaning of Article 7a.

#### *II. Rejection of Appeal*

*Art. 97.* The patent application shall be rejected if:

(a) it is not withdrawn, although the grant of a patent is barred for the reasons specified in Article 96(2); or

(b) the defects notified in accordance with Article 96(3) are not corrected;

(c) [Repealed]

## *B. Publications*

### *I. Conditions*

*Art. 98.—*

(1) If the grant of the patent does not appear to be barred for any of the reasons specified in Article 96(2) and if, in addition, the patent application complies in other respects with the provisions of this Law and the Ordinance, the examiner shall inform the applicant that the examination procedure has been completed.

(2) [Repealed]

(3) [Repealed]

### *II. Form*

*Art. 99.—*

(1) The patent application shall be published with the following indications in particular: the number of the patent application; the classification symbols; the title of the invention; the filing date; the name and domicile of the applicant and, where appropriate, the indications relating to priority; the name and business address of the agent, and the name of the inventor.

(2) During the term allowed for opposition, the application shall be publicly displayed at the Federal Institute of Intellectual Property in order that any person may inspect its contents; it shall be accompanied by the report on the state of the art and by the priority documents, if any.

### *III. Postponement*

*Art. 100.—*

(1) If the applicant so requests, publication may be postponed for a maximum of six months following the communication indicating that the examination procedure has been completed (Article 98).

(2) An extension beyond six months shall be allowed where the public interest requires that the invention be kept secret. The Federal Council shall specify the conditions for extension and the appropriate procedure.

## *C. Opposition*

*Art. 101.—*

(1) Any person may, within three months from the date of publication, oppose the grant of the patent.

(2) Opposition may be based only on the ground that the invention is unpatentable (Articles 1 and 1a) or that it is barred from patenting (Article 2). Opposition based on lack of novelty owing to the existence of a prior right (Article 7a) may be filed even if the patent resulting from the application enjoying an earlier filing or priority date has not yet been granted.

(3) Opposition shall be filed in writing. The facts stated and the proof adduced shall be indicated in a complete manner. If the opposition division so requests, the proof shall be submitted.

(4) If the opposition does not comply with this Article or with the Ordinance, the opposing party may be excluded from the procedure.

*Art. 102.* [Repealed]

*Art. 103.* [Repealed]

#### *D. Costs Incurred in Determining a State of Fact*

*Art. 104.* In their decision regarding the grant of the patent, and as a result of the partial or total withdrawal of the patent application or the opposition, the examiner or the opposition division shall specify the extent to which the costs incurred in determining the state of fact shall be borne by the parties concerned.

#### *E. Amendment of the Technical Documents*

*Art. 105.—*

(1) When the examination procedure has been completed (Article 98), amendments may be made to the technical documents only if this is warranted by the opposition or appeal procedure.

(2) [Repealed]

(3) Post-dating the application according to Article 58 is reserved.

#### *F. Methods of Appeal*

##### *I. Appellate Body*

*Art. 106.—*

(1) The decisions of the examiners and opposition divisions may be appealed from to the Appeals Commission.

(2) The decisions of the Intellectual Property Appeals Commission taken within the framework of the official preliminary examination shall be final.

(3) [Repealed]

(4) [Repealed]

##### *II. Right to Appeal*

*Art. 106a.—*

(1) The following may appeal to the Appeals Commission:

(a) the person who is concerned as a party to the procedure that resulted in the decision appealed against;

(b) the person whom the decision appealed against has excluded from the procedure (Article 101(4)).

(2) The opposing party shall have the right to appeal only insofar as he has been admitted as a party to the opposition procedure.

*Art. 107.* [Repealed]

*Art. 108.* [Repealed]

PART V  
EUROPEAN PATENT APPLICATIONS  
AND EUROPEAN PATENTS

**Chapter 1**  
**Applicable Law**

*Scope of the Law;*  
*Relation to the European Patent Convention*

*Art. 109.—*

(1) This Part shall apply to European patent applications and European patents that produce their effects in Switzerland.

(2) The other provisions of this Law shall be applicable except where the Convention of October 5, 1973, on the Grant of European Patents (European Patent Convention) or this Part provides otherwise.

(3) The text of the European Patent Convention that binds Switzerland shall have precedence over this Law.

**Chapter 2**  
**Effects of the European Patent Application**  
**and of the European Patent**

*A. Principle*

*Art. 110.* Applications for European patents to which a filing date has been assigned and European patents shall produce the same effects in Switzerland as patent applications filed in due form with the Federal Institute of Intellectual Property and patents granted by that Institute.

*B. Provisional Protection Afforded*  
*by European Patent Application*

*Art. 111.—*

(1) Published European patent applications shall not confer on the applicant the protection provided for in Article 64 of the European Patent Convention.

(2) However, the injured party may, in an action for damages, invoke the damages caused by the defendant as from the moment at which the latter became aware of the content of the European patent application, but at the latest as from the date of publication of the application by the European Patent Office.

*C. Reservation Concerning Translations*

*I. For Published European Patent Applications*

*Art. 112.* Where the European patent application has not been published in a Swiss official language, the date to be taken into consideration for the claim of damages shall be that on which the applicant:

- (a) communicated to the defendant a translation of the claim in a Swiss official language; or
- (b) made it available to the public through the intermediary of the Federal Institute of Intellectual Property.

## *II. For European Patents*

*Art. 113.—*

(1) Where the European patent has not been published in a Swiss official language, the patent applicant or patent owner shall file with the Federal Institute of Intellectual Property a translation of the patent specification in a Swiss official language.

(2) The European patent shall be deemed not to have produced any effect if the translation of the patent specification has not been submitted within three months of the publication:

- (a) in the European Patent Bulletin, of the notice of grant of the patent;
- (b) of the notice of the decision on opposition where the patent has been maintained in its amended form in the course of opposition proceedings.

## *III. Revision of Translations*

*Art. 114.—*

(1) The patent applicant or patent owner may revise translations of the patent.

(2) The revised translation shall produce its effects only after it has been made available to the public through the intermediary of the Federal Institute of Intellectual Property, or communicated to the defendant in the case of Article 112.

## *D. Authentic Languages*

### *I. Language of Procedure*

*Art. 115.* With respect to the scope of protection conferred by the European patent application or the European patent, the text in the language of the procedure before the European Patent Office shall be authentic.

### *II. Language of the Translation; Right of Concurrent Use*

*Art. 116.—*

(1) Third parties may invoke the translation provided for in this Law in dealings with the owner of the patent when the European patent application or the European patent confers less extensive protection according to the text of that translation than according to the text in the language of the procedure.

(2) Where the patent applicant or patent owner has revised the translation of the patent in such a way that it produces its effects, the European patent may not be invoked against a person who, in good faith, had previously used the invention professionally in Switzerland or had made special preparations for that purpose.

(3) This right of use shall be governed by Article 35(2).

## **Chapter 3** **Administration of the European Patent**

### *A. Swiss Register of European Patents*

*Art. 117.* As soon as the grant of the European patent has been recorded in the European Patent Journal, the Federal Institute of Intellectual Property shall record it in the Swiss Register of European Patents, with the particulars mentioned in the Register of European Patents.

## *B. Publications*

*Art. 118.* The Federal Institute of Intellectual Property shall publish the entries made in the Swiss Register of European Patents.

## *C. Annual Fees for the European Patent*

*Art. 119.* [Repealed]

## *D. Representation*

*Art. 120.* The Federal Council may authorize the agent identified in the Register of European Patents to act before the Federal Institute of Intellectual Property in procedures concerning European patents insofar as there is reciprocity with respect to representation before the special departments of the European Patent Office (Article 143 of the European Convention).

# **Chapter 4**

## **Transformation of the European Patent Application**

### *A. Causes for Transformation*

*Art. 121.—*

(1) The European patent application may be transformed into a Swiss patent application:

- (a) in the cases provided for in Article 135(1)(a) of the European Patent Convention;
- (b) in the case of failure to observe the time limit provided for in Article 14(2) of the European Patent Convention, where the original application was filed in Italian;
- (c) where the European Patent Office has established that the application is not in conformity with Article 54(3) and (4) of the European Patent Convention, and that, for that reason, it has been rejected or withdrawn with respect to its effect in Switzerland.

(2) Transformation into a Swiss patent application shall also be allowed where the European patent has been revoked for the reason indicated in subparagraph (1)(c).

### *B. Legal Effects*

*Art. 122.—*

(1) Where the transformation is filed in due form and communicated in good time to the Federal Institute of Intellectual Property, the patent application shall be deemed to have been filed on the date of filing of the European patent application.

(2) The documents accompanying the European patent application or European patent that were filed with the European Patent Office shall be deemed to have been filed at the same time with the Federal Institute of Intellectual Property.

(3) The rights attaching to the European patent application shall remain valid.

### *C. Translation*

*Art. 123.* Where the language in which the original text of the European patent application is drafted is not a Swiss official language, the Federal Institute of Intellectual Property shall allow the applicant a period of time within which to file a translation in a Swiss official language.

*D. Reservation in Favor  
of the European Patent Convention*

*Art. 124.—*

(1) Subject to Article 137(1) of the European Patent Convention, the provisions in force for Swiss patent applications shall apply to patent applications resulting from translation.

(2) The claim of a patent application resulting from transformation of a European patent may not be drafted in such a way that the protection conferred by the patent is thereby extended.

**Chapter 5  
Provisions Concerning Protection Under Civil Law  
and Criminal Law**

*A. Prohibition on Cumulative Protection*

*I. Predominance of the European Patent*

*Art. 125.—*

(1) Where, for one and the same invention, a Swiss patent and a European patent having effect in Switzerland have been granted to the same inventor or to his successor in title with the same filing or priority date, the Swiss patent shall have no further effect as from the date on which:

- (a) the time limit for filing opposition to the European patent has lapsed; or
- (b) the opposition procedure has resulted in a final decision maintaining the European patent in force.

(2) Article 27 shall apply *mutatis mutandis*.

*II. Predominance of Patents Resulting From Transformation*

*Art. 126.—*

(1) Where, for one and the same invention, a patent resulting from a Swiss or international patent application (Article 131 *et seq.*) and a patent resulting from a transformed European patent application have been granted to the same inventor or to his successor in title with the same filing or priority date, the first-mentioned patent shall have no further effect as from the date on which the patent resulting from the transformed European patent application was granted.

(2) Article 127 shall apply *mutatis mutandis*.

*B. Rules of Procedure*

*I. Limitation of Partial Renunciation*

*Art. 127.* The request in respect of partial renunciation of the European patent shall not be acceptable insofar as opposition to the patent may yet be filed with the European Patent Office or a final decision has not been taken on the subject of an opposition already filed.

*II. Suspension of Procedure*

**a. Civil Procedure**

*Art. 128.* The court may suspend the procedure, and in particular defer judgment, where the validity of a European patent has been contested and where one of the parties to the dispute gives proof that opposition may yet be filed with the European Patent Office or that a final decision has not been taken on the subject of an opposition already filed.



**b. Criminal procedure**

*Art. 129.—*

(1) If, in the case provided for in Article 86, the party proceeded against invokes the exception of the nullity of the European patent, the court may allow him, insofar as opposition to the patent may yet be filed with the European Patent Office or intervention in an opposition procedure is still possible, an appropriate time limit for the filing of opposition or for intervention in the opposition procedure.

(2) Article 86(2) shall apply *mutatis mutandis*.

**Chapter 6**  
**Letters Rogatory Issued by the**  
**European Patent Office**

*Transmitting Authority*

*Art. 130.* The Federal Institute of Intellectual Property shall receive letters rogatory issued by the European Patent Office and shall transmit them to the competent authority.

PART VI  
INTERNATIONAL PATENT APPLICATIONS

**Chapter 1**  
**Applicable Law**

*Scope of the Law;*  
*Relation to the Patent Cooperation Treaty*

*Art. 131.—*

(1) This Part shall apply to international applications under the Patent Cooperation Treaty of June 19, 1970, for which the Federal Institute of Intellectual Property acts as receiving Office, designated Office or elected Office.

(2) The other provisions of this Law shall apply except where the Patent Cooperation Treaty or this Part provides otherwise.

(3) The text of the Patent Cooperation Treaty that binds Switzerland shall have precedence over this Law.

**Chapter 2**  
**Applications Filed in Switzerland**

*A. Receiving Office*

*Art. 132.* The Federal Institute of Intellectual Property shall act as receiving Office under Article 2 of the Patent Cooperation Treaty in respect of international applications filed by Swiss nationals or persons having their registered office or domicile in Switzerland.

## *B. Procedure*

*Art. 133.—*

(1) The Patent Cooperation Treaty, complemented by this Law, shall apply to the procedure before the Federal Institute of Intellectual Property acting as receiving Office.

(2) In addition to the fees prescribed by the Patent Cooperation Treaty, the international application shall give rise to the payment of a transmittal fee collected by the Federal Institute of Intellectual Property.

(3) Article 13 shall not apply.

## **Chapter 3** **Applications Designating Switzerland;** **Elected Office**

### *A. Designated Office and Elected Office*

*Art. 134.* The Federal Institute of Intellectual Property shall act as designated Office and elected Office under Article 2 of the Patent Cooperation Treaty in respect of international applications which seek protection of an invention in Switzerland, where such applications do not have the effect of a European patent application.

### *B. Effect of the International Application*

#### *I. Principle*

*Art. 135.* If a filing date has been assigned to it, the international application in respect of which the Federal Institute of Intellectual Property acts as designated Office shall produce the same effects in Switzerland as a Swiss patent application filed in due form with the said Institute.

#### *II. Right of Priority*

*Art. 136.* Even if the first application has been filed in Switzerland or only in respect of Switzerland, the right of priority under Article 17 may be claimed for an international application.

#### *III. Provisional Protection*

*Art. 137.* Articles 111 and 112 of this Law shall apply, *mutatis mutandis*, to international applications published under Article 21 of the Patent Cooperation Treaty for which the Federal Institute of Intellectual Property is the designated Office.

### *C. Formal Conditions; Annual Fee*

*Art. 138.—*

(1) The applicant shall be required to carry out within a period of 20 months as from the filing date or the priority date, with respect to the Federal Institute of Intellectual Property, the following acts:

- (a) state in writing the name of the inventor;
- (b) pay the filing fee;
- (c) submit a translation into an official Swiss language if the international application is not drawn up in such language.

(2) If Switzerland is elected before the expiry of the 19th month after the filing date or the priority date and the Federal Institute of Intellectual Property is an elected Office, the time limit shall be 30 months as from the filing date or the priority date. In such case, the third annual fee shall become due on the last day

of the month during which such period expires, on condition that such day be later than the date referred to in Article 42(1) and (2).

#### *D. Search Report*

*Art. 139.—*

(1) Where the international application is subject to prior examination, the international search report shall replace the report on the state of the art (Article 49(4)).

(2) Where the international search report does not allow examination of the application under Article 96(2), the search fee shall be paid for the establishment of a complementary report on the state of the art; the fee shall be repaid to the applicant in full or in part under the conditions prescribed by the Ordinance where he has himself submitted such a report in good time.

#### *E. Prohibition of Cumulative Protection*

*Art. 140.—*

(1) Where, in respect of one and the same invention, two patents having the same priority date have been granted to the same inventor or to his successor in title, the patent resulting from the national application shall cease to have effect as of the date of grant of the patent resulting from the international application, irrespective of whether the priority of the national application is claimed for the patent resulting from the international application or whether the priority of the international application is claimed for the patent resulting from the national application.

(2) Article 27 shall apply *mutatis mutandis*.

### PART VII SUPPLEMENTARY PROTECTION CERTIFICATES FOR MEDICINAL PRODUCTS

#### *A. Principle*

*Art. 140a.—*

(1) The Federal Institute of Intellectual Property shall issue on request supplementary protection certificates (certificates) for the active ingredients or combinations of active ingredients of medicinal products (products).

(2) A certificate shall be issued once only for any given product.

#### *B. Conditions*

*Art. 140b.—*

(1) A certificate shall be issued if, at the time of the application:

- (a) the product as such, the process for manufacturing the product or its use are protected by a patent;
- (b) an official authorization to place the product on the market as a medicinal product has been obtained in Switzerland.

(2) The certificate is granted on the basis of the first authorization.

#### *C. Entitlement*

*Art. 140c.* The certificate shall be granted to the holder of the patent.

## *D. Subject Matter of Protection and Effects*

*Art. 140d.—*

(1) Within the limits of the scope of protection afforded by the patent, the certificate shall protect all uses of the product as a medicinal product that have been authorized before the expiry of the certificate.

(2) The certificate shall afford the same rights as the patent and shall be subject to the same restrictions.

## *E. Term of Protection*

*Art. 140e.—*

(1) The certificate shall be valid as from the expiry of the maximum term of the patent and for a period corresponding to the time that elapses between the filing date under Article 56 and the date of the first authorization to place the product on the market as a medicinal product in Switzerland, less five years.

(2) It shall be valid for five years at most.

(3) The Federal Council may stipulate that an authorization granted in the European Economic Area (EEA) shall constitute the first authorization within the meaning of paragraph (1) if it precedes that granted in Switzerland.

## *F. Time Limit for Filing an Application*

*Art. 140f.—*

(1) The application for a certificate shall be filed:

(a) within a period of six months from the grant of the first authorization to place the product on the market as a medicinal product in Switzerland;

(b) within a period of six months as from the grant of the patent, if that occurs after the grant of the first authorization.

(2) If the above time limits are not complied with, the Federal Institute of Intellectual Property shall declare the application inadmissible.

## *G. Grant of Certificate*

*Art. 140g.* The Federal Institute of Intellectual Property shall grant the certificate and enter it in the Patent Register.

## *H. Fees*

*Art. 140h.—*

(1) The certificate shall be subject to payment of a filing fee and of annual fees.

(2) The annual fees shall be paid in advance in one single payment for the full term of the certificate. They shall become due on the last day of the month during which:

(a) the term of the certificate begins to run;

(b) the certificate is granted where it is granted after the expiry of the maximum term of the patent.

(3) The annual fees shall be paid within a period of six months of their becoming due; if payment is effected during the final three months, a surcharge shall be paid.

## *I. Premature Lapse; Suspension*

*Art. 140i.*—

(1) The certificate shall lapse where:

- (a) the holder surrenders it by means of a written application addressed to the Federal Institute of Intellectual Property;
- (b) the annual fees have not been paid in good time;
- (c) the authorization to place the product on the market as a medicinal product is revoked.

(2) Should the authorization be suspended, the certificate shall also be suspended. Suspension shall not interrupt the term of the certificate.

(3) The authority that grants the authorizations shall communicate any revocation or suspension of the authorization to the Federal Institute of Intellectual Property.

## *K. Invalidity*

*Art. 140k.*—

(1) The certificate shall be invalid if:

- (a) it was granted contrary to Articles 140a(2), 140b, 146(1) or 147(1);
- (b) the patent has lapsed before its maximum term expires (Article 15);
- (c) the patent is declared invalid;
- (d) the patent is limited to the extent that the product for which the certificate was granted is no longer covered by the claims;
- (e) after lapse of the patent, grounds for revocation exist which would have justified the declaration of invalidity of the patent under item (c) or a limitation under item (d).

(2) Any person may bring an action for a declaration of invalidity of the certificate before the authority responsible for declaring the patent invalid.

## *L. Procedure, Register, Publications*

*Art. 140l.*—

(1) The Federal Council shall lay down the procedure for granting certificates, their entry in the Patent Register and the publications of the Federal Institute of Intellectual Property.

(2) It shall take into account the regulations of the European Community.

## *M. Applicable Law*

*Art. 140m.* The provisions of Parts I, II, III and V of this Law shall apply *mutatis mutandis* where the provisions on certificates remain silent.

# FINAL PART

## **Final and Transitional Provisions**

### *A. Implementing Measures*

*Art. 141.*—

(1) The Federal Council shall take all the necessary steps for the implementation of the Law.

(2) It may, in particular, enact regulations on the institution of examiners, the opposition divisions and the Boards of Appeal, and also on the distribution of their business, the procedure to be followed before them and time limits and fees.

## *B. Transition From the Former Law to the New Law*

### *I. Patents*

*Art. 142.—*

(1) Patents that have not yet expired on the date of entry into force of this Law shall be governed as from that date by the said Law.

(2) The following shall continue to be regulated by the former Law, however:

- (a) patents of addition;
- (b) partial renunciation;
- (c) grounds for nullity;
- (d) payment of fees payable prior to the entry into force of this Law.

(3) The main patent resulting from the transformation of a patent of addition shall continue in force not longer than until the expiration of 20 years from the filing date of the first main patent.

### *II. Patent Applications*

#### **a. Principle and Exceptions**

*Art. 143.—*

(1) Patent applications that are pending on the date of entry into force of this Law shall be governed as from that date by the said Law.

(2) The following shall continue to be regulated by the former Law, however:

- (a) applications for patents of addition to main patents that were granted prior to the entry into force of the new Law and patents of addition resulting from such applications;
- (b) the priority derived from an exhibition;
- (c) patentability, if the conditions on which it depends are more favorable under the former Law;
- (d) claims for processes for the manufacture of chemical substances and for the manufacture of substances by nuclear fission.

(3) Patent applications that are pending on the date of entry into force of this Law shall not give rise to payment of the search fee or of the examination fee.

(4) The priority right under Article 17(1 ter) may also be claimed if, at the time of entry into force of the amendment of February 3, 1995<sup>2</sup>, to this Law, the initial patent application is no longer pending.

#### **b. Invention Previously Excluded From Patenting**

*Art. 144.—*

(1) Patent applications that are pending on the date of entry into force of this Law having as their subject matter inventions that are excluded from patenting under the former Law but not under the new Law, may be maintained on condition that their filing date is postponed to the date of such entry into force.

(2) The original filing or priority date shall nevertheless remain applicable determining rank under Article 7a.

### *III. Civil Liability*

*Art. 145.* Civil liability shall be regulated by the provisions in force at the time of accomplishment of the act concerned.

---

<sup>2</sup> *Editor's Note:* The amending Law of February 3, 1995 entered into force on September 1, 1995.

## *C. Supplementary Protection Certificates*

### *I. Authorization Prior to Entry Into Force*

#### *Article 146.—*

(1) A supplementary protection certificate may be granted for any product which, at the time of entry into force of the amendment of February 3, 1995<sup>3</sup>, to this Law, is protected by a patent and for which a first authorization to place on the market was granted after January 1, 1982, in accordance with Article 140b.

(2) The application for a certificate shall be filed within the six months following the entry into force of the amendment of February 3, 1995<sup>4</sup>, to this Law. If that time limit is not complied with, the Federal Institute of Intellectual Property shall declare the application inadmissible.

### *II. Expired Patents*

#### *Art. 147.—*

(1) Certificates may also be granted on the basis of patents that have expired, at the end of their maximum term, between January 2, 1993, and the entry into force of the amendment of February 3, 1995<sup>5</sup>, to this Law.

(2) The term of protection of the certificate shall be computed in accordance with Article 140e; its effects shall not begin until the publication of the application for a certificate.

(3) The application shall be filed within two months following the entry into force of the amendment of February 3, 1995<sup>6</sup>, to this Law. If that time limit is not complied with, the Federal Institute of Intellectual Property shall declare the application inadmissible.

(4) Article 48(1), (2) and (4) shall apply *mutatis mutandis* for the period which elapses between the expiry of the patent and the publication of the application.

---

<sup>3</sup> *Editor's Note:* The amending Law of February 3, 1995 entered into force on September 1, 1995.

<sup>4</sup> *Editor's Note:* The amending Law of February 3, 1995 entered into force on September 1, 1995.

<sup>5</sup> *Editor's Note:* The amending Law of February 3, 1995 entered into force on September 1, 1995.

<sup>6</sup> *Editor's Note:* The amending Law of February 3, 1995 entered into force on September 1, 1995.