

Ordinance on Patents for Inventions

(Patent Ordinance)

(of October 19, 1977, amended on April 27 and September 14, 1983, on August 12, 1986, and on December 2, 1991)*

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Part I: General Provisions

Chapter 1: Relations with the Federal Intellectual Property Office

(Competence)

1. The Federal Intellectual Property Office (hereinafter referred to as “the Office”) shall carry out the administrative operations arising from the Law.¹

¹ Federal Law on Patents for Inventions; see *Industrial Property Laws and Treaties*, SWITZERLAND – Text 2–001 (*Editor's note*).

(Date of Postal Submissions)

2. —

(1) For material sent by mail from Switzerland, the mailing date shall be regarded as the date of submission. Proof thereof shall be constituted by the postmark affixed by the post office of consignment, or by the postmark of the receiving post office where that of the post office of consignment is missing or illegible; if the postmark of the receiving post office is also missing or illegible, the date of receipt of the material by the Office shall be regarded as the date of submission. The sender shall be allowed to prove an earlier date of submission.

(2) For material sent by mail from abroad, the date to be taken into consideration shall be that of the first postmark affixed by a Swiss post office; if that postmark is missing or illegible, the date of receipt of the material by the Office shall be regarded as the date of submission. The sender shall be allowed to prove an earlier date of receipt by a Swiss post office.

(Signature)

3. —

(1) Any communication that is to be made in writing to the Office must bear a valid signature.

(2) In the absence of a signature, the submission date of the unsigned written matter shall be recognized on condition that, at the request of the Office, the defect is remedied within 14 days.

(Language)

4. —

(1) Written matter sent to the Office shall be in French, German or Italian (official languages).

(2) The official language chosen by the applicant at the time of filing shall be the language in which the procedure takes place.

(3) The language originally chosen for the drafting of the technical documents shall be maintained. Changes made to those documents in another language shall not be allowed. This rule shall apply also to partial renunciation (Section 24 of the Law).

(4) Where other written matter is not submitted in the language adopted for the procedure, a translation into that language may be demanded.

(5) Documents submitted as proof that are not in an official language shall not be taken into consideration unless they are accompanied by a translation in an official language. Sections 40(2), 45(3) and 75(3) are reserved.

(6) Where a translation of a document has to be produced, it may be required that its accuracy be certified within a term specified for the purpose. If such certification is not submitted, the document shall be regarded as not having been filed.

(7) Where the documents relating to a divisional application or to a request for the constitution of a new patent (Sections 25, 27, 30 and 57 of the Law) are not written in the same language as the original patent application or patent, the Office shall allow the patent applicant or patent owner a term by the expiration of which a translation in that language has to be produced.

(More than One Applicant)

5. —

(1) Where two or more persons are joint owners of a patent application, they shall designate from among themselves the person to whom the Office may send all communications, such communications being applicable to all of them, or shall appoint a common agent.

(2) Where neither of these conditions is met, the person mentioned first in the application shall be regarded as the recipient of communications within the meaning of subsection (1). Where one of the other persons raises an objection, the Office shall invite all those concerned to act in accordance with subsection (1).

(Impossibility of Delivering a Communication)

6.—

(1) Where the address of the applicant or that of the agent is not sufficient for an official communication to reach its recipient, the Office shall endeavor to obtain the exact address.

(2) If this endeavor is without result, or if the recipient has not taken possession of material mailed to the exact address, the consequences of failure to observe the terms specified in the communications shall nevertheless apply. If the communication contains a decision, that decision shall be notified through publication in the Swiss Journal of Patents, Designs and Marks.

(Succession)

7. In the event of the death of the applicant, the Office shall give the heirs known to it a term within which to settle the matter of the succession to the patent application; it may extend this term as appropriate.

Chapter 2: Representation

(Relation of the Office with the Agent)

8.—

(1) Insofar as the patent applicant or the patent owner has an agent, the Office shall, in general, not accept either communications or written requests from the mandator, with the exception of revocation of the power of attorney, withdrawal of the patent application and renunciation of the patent. (2) The agent shall remain authorized to receive such documents and fees as are returned by the Office.

(Right of Representation)

9.—

(1) In addition to natural persons domiciled in Switzerland, corporations that have their headquarters in Switzerland may be designated as agents in dealings with the Office.

(2) If the professional conduct of an agent gives rise to complaint, the Federal Department of Justice and Police may, after having heard the agent, either:

(a) give him a warning;

(b) authorize the Office to exclude him either temporarily or permanently from the exercise of this activity;

(c) order the publication of the above measures.

(3) In order to judge professional conduct for the purposes of subsection (2), account shall be taken of the entire business activity of the agent, both in Switzerland and abroad.

(4) In general, the Office shall not be authorized to exclude an agent unless a prior warning has proved to be without effect.

Chapter 3: Terms

(Calculation)

10.—

(1) Where a term initiated by a communication by the Office is calculated in days and where its duration is specified in the Law or in this Ordinance, that term shall start on the day following its notification.

(2) Where a term the duration of which is specified in the Law or in this Ordinance is calculated in months or years, the calculation shall be made in the following manner:

(a) the term shall start on the day following the day on which the event that sets it in motion occurs;

(b) where that day is the last day of the month, the term shall end on the last day of the month during which it expires.

(3) Other terms shall be specified by the indication of the date of their expiration. The dates between July 15 and August 16 may not constitute expiration dates.

(4) Where the last day of the term is a Saturday, a Sunday or another day on which the Office is closed, or a day regarded as an official public holiday at the applicant's domicile in Switzerland or at his agent's domicile or headquarters, the term shall expire on the following working day.

(5) Where a term is counted from the priority date and where several priorities are claimed, the earliest priority date shall be decisive.

(Duration)

11.—

(1) The terms set in the course of the examination procedure shall be determined in relation to the probable amount of work of the applicant. They shall be not less than two months and not more than five months.

(2) Section 74(2) shall apply to the opposition procedure.

(Extension Terms)

12.—

(1) Terms of a duration specified in the Law or in this Ordinance may not be extended.

(2) Other terms shall be extended:

(a) in the examination procedure, once for a month, where the appropriate fee is paid prior to the expiration of the term, and a second time for a maximum of three months, where a reasoned request is submitted and the fee, increased by one-half, is paid prior to the expiration of the extended term;

(b) in other cases, where the person requesting extension produces sufficient reasons prior to the expiration of the term.

(3) A term shall not be suspended by requests for further details, except where the reply from the Office implies the contrary.

(4) Section 74(2) shall apply to the opposition procedure.

(Consequences of Failure to Observe a Time Limit)

13.—

(1) Failure to observe a time limit shall cause the application to be rejected by the Office, except where the Law or this Ordinance provides for other consequences.

(2) Any communication that specifies a time limit shall indicate the consequences of failure to observe that time limit.

(3) Failure to observe a time limit may only have consequences that have been indicated.

(Continuation of the Procedure)

14.—

(1) Where a patent application has been rejected for failure to observe a time limit within the meaning of subsection (2), such rejection shall be cancelled if the continuation of the procedure is requested.

(2) Such a request shall be accepted only if one of the following time limits has not been observed:

(a) time limits the duration of which is fixed by the Office;

(b) time limits for the payment of application fees, printing fees, search fees or examination fees;

(c) time limit for furnishing the mention of the inventor.

(3) The request for continuation of the procedure shall be filed in writing within two months following notification of the decision to reject; at the same time, the omitted act must be fully executed, the patent application supplemented and the fee for continuation of the procedure paid.

(4) Subsections (1) to (3) shall apply *mutatis mutandis* to the rejection of a declaration of partial renunciation or to the rejection of a request for the constitution of a new patent.

(Restoration to Prior State)

a. Form and Contents of the Application

15.—

(1) The request for restoration to the prior state (Section 47 of the Law) shall be submitted in writing. It shall contain a statement of the facts on which it is based and, in particular, the dates of the beginning and end of the preventive circumstances. At the same time, the unperformed act shall be fully performed. If one of these conditions is not met, the request for restoration shall not be taken into consideration.

(2) The restoration fee shall be paid.

b. Examination of the Request

16.—

(1) If the restoration fee has not been paid at the time of filing the request, the Office shall allow the applicant an additional period of one month in which to do so.

(2) If the facts stated in support of the request are not substantiated, the Office shall allow the applicant a period in which to remedy this defect. If the reasons given are insufficient, it shall reject the request.

(3) If the request is accepted, the restoration fee may be repaid to the applicant either in full or in part.

Chapter 4: Fees

(Ordinance on Fees)

17. The amount of the fees provided for in the Law and in this Ordinance, and the procedure for their payment, shall be governed by the Ordinance of October 19, 1977, on the Fees of the Federal Intellectual Property Office.

(Annual Fees)

18.—

(1) The patent applicant or patent owner alone shall be responsible to the Office for the payment of annual fees.

(2) The Office shall draw the attention of the patent applicant or patent owner to the fact that an annual fee is due, and shall inform him of the time limit for payment as well as the consequences of failure to observe that time limit. At the request of the patent applicant or patent owner, the Office may also send notification to third parties who regularly effect payments on behalf of the patent applicant or patent owner. No notification shall be sent abroad.

(3) The Confederation shall not be liable for damages resulting from failure to send notification.

(4) A patent application in respect of which an annual fee due has not been paid in time shall be rejected; a patent in respect of which an annual fee due has not been paid in time shall be struck off the Register.

(5) The Office shall strike off the patent with effect from the date on which the unpaid annual fee was due; where the patent is not granted until after that date, it shall be struck off with effect from the date of such grant. The owner shall be notified that his patent has been struck off.

(6) Annual fees may not be paid more than one year prior to their falling due. If the Office strikes off a patent, it shall repay any annual fee that has not yet fallen due.

(Respite)

19.—

(1) Any person who wishes to benefit from a respite within the meaning of Section 44 of the Law shall make the appropriate request in writing and shall attach to it a certified extract from the Tax Register, or any other appropriate official certificate, establishing his state of indigence.

(2) If the official certificate is considered insufficient, the Office shall allow the applicant a period within which to remedy this defect.

(3) The request for respite shall have no staying effect.

(4) The respite shall lapse when the patent application or patent is assigned to a third party. The Office shall allow the registered new applicant or patent owner a period of six months for the payment of all the fees to which the respite applies; a surcharge shall be collected when payment is effected during the last three months of that period. If the time limit for payment is not observed, the Office shall reject the patent application or cancel the patent with effect from the date of the formal notice to pay.

(Repayment)

20. When the patent application is entirely withdrawn or rejected, the Office shall repay the following fees:

(a) any annual fee paid in advance and not yet due;

(b) the printing fee, if the Office has not yet ordered the printing of the patent specification or application specification;

(c) the search fee and examination fee, under the conditions set forth in Sections 59 and 61.

Part II: Patent Application

Chapter 1: General

(Documents Required. Fees)

21.—

(1) The following shall be produced on the filing date of the application:

(a) the request for the grant of a patent;

(b) the description of the invention;

(c) one or more claims;

(d) the drawings to which the description or claims refer.

(2) The following shall be produced or paid, as the case may be, on the filing date, or not later than within the period specified:

- (a) the application fee, and the claim fees, if any;
- (b) the abstract;
- (c) two additional copies of the technical documents;
- (d) the power of attorney of the agent, if any;
- (e) the search fee and examination fee, if any.

(3) The following shall be produced on the filing date of the application, or not later than 16 months following the filing date of the application or the priority date:

- (a) the indication of the name of the inventor;
- (b) the priority document, if any.

(4) The printing fee shall be paid within one month of the completion of the examination.

(5) The following shall be paid as from the third year following the filing date: the annual fees.

(Correction of Errors)

22.—

(1) Errors in meaning or transcription and errors contained in the application documents may be corrected on request or *ex officio*; Sections 37 and 52(3) to (5) are reserved.

(2) Correction of the description, claims or drawings shall not be allowed unless it is obvious that the incorrect part had no other possible meaning.

Chapter 2: Requests for the Grant of a Patent

(Form)

23. The request shall be submitted on the form supplied free of charge by the Office.

(Contents)

24.—

(1) The request shall contain the following particulars:

- (a) the request for the grant of a patent;
- (b) the title of the invention (Section 26(1));
- (c) the surname and given name or corporate name or business style, the domicile or headquarters and the address of the applicant;
- (d) an inventory of the documents submitted and fees paid to the Office;
- (e) the signature of the applicant or his agent.

(2) The request shall also contain:

- (a) when an agent has been appointed, the name, domicile or headquarters and address of the agent;
- (b) where there are two or more applicants, the designation of the addressee;
- (c) where the application is a divisional application, its designation as such and the number of the initial application and the filing date claimed;
- (d) when priority is claimed, the declaration of priority (Section 39);
- (e) when immunity derived from an exhibition is alleged, a declaration to that effect (Section 44).

Chapter 3: Technical Documents

(General)

25.—

(1) The description of the invention, the claims, the drawings and the abstract shall constitute the technical documents. The beginning of each of these parts shall appear on a new leaf.

(2) The technical documents shall be produced in triplicate.

(3) They must be capable of being reproduced directly. The leaves must not be folded and only one side of them shall be used.

(4) They shall be submitted on light, white, smooth, matt, durable paper of A4 format (21 x 29.7 cm).

(5) The pages of the text shall leave an empty margin on the left-hand side of at least 2.5 cm; the other margins should be 2 cm.

(6) All the sheets shall be numbered in Arabic figures.

(7) The pages shall be typewritten or printed. Symbols and other signs and chemical or mathematical formulae may be written by hand or drawn. The spacing between lines must be at least 1 1/2. The type face shall be chosen in such a way that the capital letters are at least 0.21 cm high. The type must be indelible.

(8) The description, claims and abstract shall not contain any drawings.

(9) Units of measurement shall be expressed in accordance with the Federal Law on Metrology of June 9, 1977; other units of measurement may be used for additional information. In the case of mathematical and chemical formulae, the symbols generally accepted in the field concerned should be used.

(10) In general, use shall be made only of technical terms, signs and symbols that are generally accepted in the field concerned. The terminology and signs used in the patent application shall be uniform.

(Description)

26.—

(1) The description shall begin with a title that gives the invention a clear and concise technical designation. The title shall not contain any fanciful denomination.

(2) [Repealed.]

(3) The introduction shall set out the invention in terms that allow the technical problem and its solution to be understood.

(4) The description shall contain a list of the figures included in the drawings and shall indicate briefly the contents of each figure.

(5) It shall contain at least one example of the execution of the invention, except where it is sufficiently described in another manner.

(6) Insofar as this is not evident, the description shall explain how the subject matter of the invention may be used industrially.

(7) [Repealed.]

(8) [Repealed.]

(Inventions in the Microbiological Field)

27.—

(1) Where an invention concerning a microbiological process or a product obtained by such a process entails the use or production of a microorganism to which the public does not have access and which cannot be described in the technical documents in such a way as to enable a person skilled in the art to carry out the invention, the applicant shall supplement the description of the invention by the reference in it to the deposit of a microorganism culture.

(2) The culture shall be deposited, not later than on the filing date of the application, with an institution recognized by the Office possessing a culture collection.

(3) The deposited culture shall form an integral part of the description by virtue of the fact that the description refers to it.

(4) The reference shall contain the following information:

(a) the designation of the institution possessing the culture collection;

(b) the date of deposit;

(c) the serial number under which the culture is registered with the institution possessing the culture collection.

(5) When the reference is furnished within 16 months of the date of deposit or of priority, it shall be deemed to have been furnished at that first date.

(6) The release of samples of a culture to third parties may be made subject to the condition that those third parties communicate to the institution possessing the culture collection their names and addresses for the information of the depositor and that they undertake:

(a) not to afford other persons access to the deposited culture or to a culture derived therefrom;

(b) not to use it outside the scope of the Law;

(c) to prove, in the event of litigation, that they have not failed to honor their undertakings under items (a) and (b).

(Drawings)

28.—

(1) The usable surface of the leaves containing the drawings shall not exceed 17 x 26.2 cm, or be framed.

(2) The drawings shall be executed in indelible, even and well-defined lines, without colors or washes; they must permit direct printing.

(3) Cross sections shall be indicated by hatching, which must not affect the reading of reference marks and the clarity of outlines.

(4) The scale of the drawings and the graphic execution shall be such that all details may be readily distinguished in a photographic reproduction. If the scale is indicated on a drawing, it must be represented graphically; other indications of size shall in general not be allowed.

(5) Numbers, letters and reference marks appearing on the drawings shall be simple and clear.

(6) The reference marks used on the drawing shall correspond to those used in the description or claims.

(7) If necessary, the elements of a figure may be represented on several sheets, on condition that the complete figure may be readily assembled by placing the sheets side by side.

(8) The various figures shall be clearly separated from one another but arranged without loss of space. They shall be numbered consecutively in Arabic figures, independently of the numbering of the sheets.

(9) The drawings shall not contain any textual matter; only short indications or keywords making the drawing more comprehensible and in the same language as the application shall be allowed.

(Claims)

29.—

(1) The claims shall indicate the technical characteristics of the invention.

(2) The claims shall be drafted as clearly and concisely as possible.

(3) They shall be arranged in a systematic, clear and logical manner.

(4) In general, they shall not contain references to the description or to the drawings or, in particular, expressions like “as described in part... of the description” or “as illustrated in figure... of the drawings.”

(5) The reference marks which, in the drawings refer to the technical characteristics of the invention shall be repeated between brackets in the claims if the understanding of the claims is thereby facilitated. They shall not have the effect of limiting the claims.

(6) The claims shall be numbered consecutively in Arabic numerals.

(Independent Claims)

30.—

(1) Where a patent application contains more than one independent claim, of the same or different categories (Section 52 of the Law), the technical link expressing the general inventive concept should transpire from the claims themselves.

(2) This condition shall be deemed met, in particular, where the patent application contains one of the following combinations of independent claims:

(a) in addition to a first claim for a process: a claim for a means of implementing that process, a claim for the product resulting therefrom, and a claim for either an application of the process or a use of the product;

(b) in addition to a first claim for a product: a claim for a process for the manufacture of that product, a claim for a means of implementing the process and a claim for the use of the product;

(c) in addition to a first claim for a device: a claim for a process for the operation of the device and a claim for the manufacture of the device.

(Dependent Claims)

31.—

(1) A dependent claim shall refer to at least one previous claim and contain the characteristics identifying the special form of execution that constitutes its subject matter.

(2) A dependent claim may refer to more than one previous claim on condition that such claims be clearly and exhaustively enumerated.

(3) All the dependent claims shall be grouped together in a clear manner.

(Form and Content of the Abstract)

32.—

(1) The abstract shall contain the technical information whereby it may be ascertained whether the patent specification or the application specification should be consulted.

(2) The abstract shall contain a summary of the invention described and state the main uses of the invention.

(3) Where the technical documentation contains chemical formulae for characterizing the invention, one at least of those formulae must be given in the abstract; its symbols must be explained.

(4) Where the technical documentation contains drawings needed to characterize the invention, one of those drawings at least should be designated for inclusion in the abstract; the most important reference signs given in that drawing will be shown in brackets in the abstract.

(5) Any figure selected must be capable of being reduced by photographic means.

(6) The abstract shall not contain more than 150 words.

(Final Abstract)

33.—

(1) The final wording of the abstract shall be decided upon *ex officio*.

(2) [Repealed.]

Chapter 4: Mention of the Inventor

(Form)

34.—

(1) The name of the inventor shall be mentioned in a separate text that shall contain only the following particulars:

(a) the name and given name and the address of the inventor; in the event of changes of civil status, the previous name shall also be indicated;

(b) the declaration by the applicant that no one else has, to his knowledge, contributed to the invention;

(c) if the applicant is not the inventor, or is not the only inventor, a declaration stating the manner in which he acquired the right to the grant of the patent;

(d) the title of the invention and, if known, the number of the patent application;

(e) the name and the given name or corporate name or business style and the address of the applicant.

(2) [Repealed.]

(3) If the mention of the inventor is not written in either an official language or in English, a translation into one of those languages shall be attached.

(Time Limit)

35.—

(1) If the mention of the inventor is not produced at the same time as the application, it may be filed within a period of 16 months from the filing date or priority date.

(2) The Office shall allow an applicant who files a divisional application (Section 57 of the Law) a period of two months within which to produce the mention of the inventor, insofar as the time limit provided for in subsection (1) does not expire later.

(3) If the mention of the inventor is not produced in good time, the Office shall reject the patent application.

(Transmittal to the Inventor)

36. [Repealed.]

(Rectification)

37.—

(1) The patent applicant or patent owner may request rectification of the mention of the inventor. Such request shall be accompanied by a declaration of the consent of the person wrongly mentioned as the inventor, and the appropriate fee shall be paid.

(2) If the person wrongly mentioned as the inventor has already been registered in the Patent Register, the rectification shall also be registered and published.

(3) Once produced, the mention of the inventor shall not be returned.

(Renunciation of Mention)

38.—

(1) The renunciation by the inventor of a mention in the Patent Register and in the publications of the Office shall be taken into consideration only if the applicant files with the Office, prior to the end of the examination, a declaration of renunciation made by the inventor.

(2) The declaration shall indicate the title of the invention and the number of the patent application, if the latter is known; it shall also be dated and shall bear the authenticated signature of the inventor.

(3) Section 34(3) shall apply *mutatis mutandis*.

(4) The declaration of renunciation meeting the requirements and the mention of the inventor shall be filed separately; the existence of these documents shall be recorded in the file.

Chapter 5: Priority and Immunity Derived from an Exhibition

I. PRIORITY

(Priority Declaration)

39.—

(1) The priority declaration shall include the following particulars:

- (a) the filing date of the first application;
- (b) the country in which or in respect of which the application was filed;
- (c) the number of that application.

(2) The priority declaration, with the exception of the number, shall be produced together with the application for the grant of a patent, failing which the right of priority shall lapse.

(3) The number shall be indicated within the period allowed for the production of the priority document (Sections 40(4) and 43(3)) if it does not appear in that document.

(4) If a priority declaration has been produced in good time, other priority declarations (Section 42), relating to non-prior first applications, may be filed within three months following the filing date.

(Priority Document)

40.—

(1) The priority document shall include:

- (a) a copy of the technical document of the first application, the conformity of which with the original documents shall be certified by the authority with which the first application was filed.
- (b) a certificate from that authority attesting to the filing date of the first application.

(2) If the document is written neither in a Swiss official language nor in English, a translation thereof shall be produced in one of those languages.

(3) If the priority document has to serve for more than one patent application, it shall be sufficient to file it for one patent application and refer to it in good time for the others. Reference to the priority document shall have the same effects as its actual filing.

(4) The priority document shall be produced within 16 months following the priority date. Failure to comply with the time limit shall cause the priority right to lapse (Section 19(2) of the Law); the right may be revived if, within two months of the official communication of lapse of the right, the priority document is furnished and a fee equal to the fee for continuation of the procedure (Section 14(3)) is paid.

(5) The certification referred to in subsection (1)(a) shall not be required when the first filing took place or produced its effects in one of the countries that grants reciprocity to Switzerland; the right of the Office to demand certification for the purposes of the examination as to substance is reserved.

(Additional Priority Documents)

41. If it is apparent from the priority document that the application on which the priority claimed is based constitutes only in part a first application within the meaning of the Paris Convention for the Protection of Industrial Property of March 20, 1883, the Office may demand the provision of such documents relating to prior applications as are necessary to clarify the facts.

(Multiple Priority)

42. Where separate applications for protection have been filed for more than one invention, those inventions being then grouped in Switzerland in a single patent application, as many priority declarations as there were applications may be filed, subject to the conditions specified in Section 17 of the Law.

(Priority in the Case of Divisional Applications)

43.—

(1) In the case of a divisional application (Section 57 of the Law), the applicant may invoke a priority that was validly claimed for the initial application if, to that end, he filed a priority declaration at the time of filing the divisional application.

(2) Where more than one priority has been claimed (Section 42), the applicant shall specify the priorities that relate to the divisional application.

(3) The Office shall allow the applicant a period of two months within which to produce the priority document (Section 40), insofar as the time limit provided for in Section 40(4) does not expire later.

II. IMMUNITY DERIVED FROM AN EXHIBITION

(Declaration of Immunity Derived from an Exhibition)

44.—

(1) The declaration of immunity derived from an exhibition (Section 7b(b) of the Law) shall include the following particulars:

(a) the exact designation of the exhibition;

(b) a declaration concerning the actual presentation of the invention.

(2) It shall be produced with the application for the grant of a patent, failing which the immunity derived from the exhibition shall lapse.

(3) Section 43(1) and (2) shall apply *mutatis mutandis* to divisional applications.

(Requisite Documents)

45.—

(1) The documents concerning the immunity derived from an exhibition shall be filed within four months following the date of filing.

(2) These documents shall have been issued in the course of the exhibition by the competent authority and shall contain the following particulars:

(a) a certificate attesting that the invention actually was displayed;

(b) the opening date of the exhibition;

(c) the date of the first disclosure of the invention where it does not coincide with the opening date;

(d) a document, authenticated by the above-mentioned authority, whereby the invention may be identified.

(3) If these documents are not written in either an official language or English, a translation into one of these languages shall be filed.

(4) Section 43(3) shall apply *mutatis mutandis* to divisional applications.

Part III: Examination of the Patent Application

Chapter 1: Examination on Filing and Examination as to Form

I. EXAMINATION ON FILING

(Assignment of Filing Date)

46.—

(1) The filing date shall be assigned to the patent application filed in an official language which contains:

- (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 descriptions or claims refer;
- (e) indications whereby the applicant may be identified.

(2) The filing date shall also be assigned when the documents listed in subsection (1)(a) to (d) do not fully comply with the Law and the Ordinance.

(3) When the conditions laid down in subsection (1) are not met, the Office shall regard the application as not having been filed. It shall return the documents filed to the applicant, if he is identified, or shall give him the opportunity of meeting the conditions still required for the assignment of the filing date.

(4) If a drawing is missing, the Office shall invite the applicant to supply it or to request, for the purpose of ensuring the maintenance of the filing date, that the reference to the drawing concerned be regarded as not having been made.

(5) Once the filing date has been established, the Office shall issue a certificate of filing to the applicant.

(6) Where a divisional application is in conformity with Section 57(1)(a) and (b) of the Law, the Office shall allow the filing date claimed to stand as of right, as long as examination as to substance does not produce another conclusion.

II. EXAMINATION AS TO FORM

(Subject Matter of the Examination)

47. Once the filing date has been established as a result of the examination on filing, the Office shall examine:

- (a) whether there is cause for an agent to be appointed (Section 48);
- (b) whether the filing fee and the claim fees, if any, have been paid (Sections 49 and 51(4));
- (c) whether the technical documents are in conformity with the requirements that do not concern their contents (Sections 50 and 51);
- (d) whether the other documents relating to the application have been filed in time and are in conformity with the requirements (Section 52).

(Appointment of an Agent in the Case of Residence Abroad)

48. An applicant who has no domicile in Switzerland and who, at the time of filing the patent application, has not designated an agent shall be invited by the Office to indicate, within a month, the name, domicile or headquarters and address of his agent.

(Application Fee and Claim Fee)

49.—

(1) If the application fee has not been paid at the time of filing of the patent application, the Office shall invite the applicant to pay it within two months.

(2) If the technical documents originally filed contain more than 10 claims, the Office shall invite the applicant to pay the claim fees within the same period. In the event of failure to pay or partial payment, the supernumerary claims shall be deleted, starting from the last.

(Formal Defects in the Technical Documents)

50.—

(1) Examination of the technical documents as to form shall relate only to:

- (a) [repealed];
- (b) the choice of the appropriate language (Section 4(3) and (7));
- (c) the prescribed number of copies (Sections 25(2) and 51(3));
- (d) the required presentation (Section 25(1) and (3) to (7) and Section 28(1) and (2));

(2) If the Office discovers a formal defect, it shall invite the applicant to remedy it.

(Amendments to the Technical Documents)

51.—

(1) Amendments to the technical documents shall be allowed only if an indication is given of the patent application to which they relate.

(2) The letter accompanying the submission of the amendments shall be signed by the applicant or his agent.

(3) Amendments shall be submitted in duplicate.

(4) If the amended technical documents contain more claims subject to payment of the fee than they did prior to amendment, or more than 10 claims for the first time, the Office shall invite the applicant to pay the missing claim fees within a month. In the event of failure to pay or partial payment, the supernumerary claims shall be deleted, starting from the last. Claim fees due and paid shall not be refunded.

(Other Submissions Relating to the Application)

52.—

(1) If the request for the grant of the patent has not been submitted on the prescribed form (Section 23), the Office shall invite the applicant to do so.

(2) Where the applicant has appointed an agent, the Office shall ascertain whether a power of attorney in favor of that agent has been filed. If the power of attorney is missing, the Office shall invite the applicant to file one.

(3) If the designation of the inventor, submitted in good time, contains defects, the Office shall invite the applicant to remedy those defects.

(4) The Office shall invite the applicant to correct those of the defects in the priority declarations or priority documents, submitted in good time, that are susceptible of correction, and, if necessary, to produce the translation of the priority document (Section 40(2)) and of the documents relating to a prior application (Section 41). If the applicant does not comply with this request, the right of priority shall lapse.

(5) Subsection (4) shall apply *mutatis mutandis* to the declaration and other documents relating to the immunity derived from an exhibition (Sections 44 and 45).

Chapter 2: Decision on the Procedure for Examination as to Substance

(Sorting)

53.—

(1) When, as a result of the examination on filing, the filing date has been established, the Office shall notify the applicant:

(a) either that the application will not be submitted to the examiner (Section 89 of the Law) because it is clearly not subject to preliminary examination (Section 87(2) of the Law);

(b) or that his application will be submitted to the examiner for a decision on whether or not it is subject to examination.

(2) At the request of the applicant who has received a notification under subsection (1)(a), the patent application shall be submitted to the examiner for a decision on whether or not it is subject to examination.

(Decision Regarding Examination)

54.—

(1) Where the patent application has been submitted to the examiner (Section 53(1)(b) or (2)), the examiner shall make a ruling on the subject of examination.

(2) Where the technical documents do not allow a decision to be taken according to subsection (1), the examiner shall invite the applicant to remedy this defect.

(3) Any opposition to the examiner's decision (Section 87(5) of the Law) shall be made in writing, with a statement of reasons, within one month from the notification of the decision.

(4) If the opposition is clearly unfounded, the examiner shall, in his decision on the opposition, charge the cost of the procedure to the applicant.

(5) The patent application finally declared subject to preliminary examination shall remain so, even if the technical documents are subsequently amended.

Chapter 3: Search of the State of the Art in the Preliminary Examination Procedure

(Payment of the Search Fee)

55.—

(1) At the same time as the decision is taken to submit the patent application to preliminary examination, the applicant shall be invited to pay the search fee within two months.

(2) If this decision is subject to opposition and subsequently confirmed, a new two-month time limit for payment shall be afforded to the applicant.

(3) Where, at the time of the decision, a request for postponement of the examination as to substance (Section 62) has been filed or where such a request is filed during the period for payment, the said period for payment shall be extended until the expiration of the postponement. The Office shall inform the applicant accordingly but shall not send him any further reminder.

(Preliminary Examination)

56. Once the search fee has been paid, the examiner shall ascertain whether the patent application is such that a meaningful search of the state of the art may be made. If such is not the case, it shall invite the applicant to remedy the defects.

(Report on the State of the Art)

57.—

(1) The examiner shall carry out the search of the state of the art on the basis of the documents at his disposal at that time.

(2) In order to carry out the search of the state of the art, the Office shall be authorized to enter into cooperation agreements with other authorities or organizations.

(3) The report on the state of the art shall list those of the documents to be taken into consideration for the assessment of patentability that were available to the department responsible for the search (Section 1 of the Law).

(4) The report, together with copies of the documents mentioned in it, shall be sent to the applicant.

(Exemption from the Search Fee)

58.—

(1) Exemption from the search fee shall be granted only if, before the applicant is invited to pay (Section 55(1)) or, if postponement of the examination as to substance has been requested, one month before the expiration of the extended period for payment (Section 55(3)), the examiner already has a report on the state of the art in his possession which:

(a) comes from the search service for Swiss patent applications; and

(b) on the basis of the same filing date or the same priority date, deals exhaustively with the subject matter of the patent application.

(2) Such a report may, in particular, relate:

(a) to the original patent application, in the case of a divisional application (Section 57 of the Law);

(b) to the first application the priority of which is claimed;

(c) to another application, where the patent application is the first application the priority of which is claimed for such other application.

(Repayment of the Search Fee)

59.—

(1) The search fee shall be repaid in full:

(a) when the applicant supplies a report meeting the requirements set forth in Section 58(1) before the search of the state of the art is carried out (Section 57(1)); or

(b) when, for another reason, it is not necessary to determine the state of the art.

(2) If the report referred to in subsection (1)(a) meets the requirements set forth in Section 58(1) only in part, the amount saved by the Office on account of that report shall be repaid.

(Additional Search Fee)

60.—

(1) Where the state of the art has not been determined for all the claims owing to a lack of unity in the patent application (Sections 52 and 55 of the Law), the examiner shall invite the applicant to pay the additional search fees within two months; where the applicant is able to show that the application does not lack unity within the time limit for payment, the additional search fees shall be refunded to him.

(2) If the applicant does not comply with this invitation, the examiner shall reject the patent application insofar as the state of the art has not been established. The part concerned may, up to the entry into force of the rejection, be made the subject of a divisional application (Section 57 of the Law).

(3) If the filing date is postponed following the state-of-the-art search, the applicant shall be invited to pay an additional search fee within two months. Section 59(2) shall apply *mutatis mutandis*.

(Examination Fee)

61.—

(1) When the search of the state of the art has been completed, the applicant shall be invited to pay the examination fee within three months.

(1*bis*) Where a request for postponement of examination as to substance (Section 62) has been submitted at the time of the invitation under subsection (1) or where such request is submitted during the time limit for payment, the Office shall extend the time limit up to the end of the period of postponement.

(2) The examination fee shall be refunded if the patent application is withdrawn or rejected prior to a notification within the meaning of Section 68 or a communication within the meaning of Section 69(1) has been made.

Chapter 4: Examination as to Substance

I. GENERAL PROVISIONS

(Postponement of Examination)

62.—

(1) The applicant may request that the examination as to substance be postponed by a maximum of 18 months from the filing date or priority date.

(1*bis*) Where the applicant establishes, on the basis of a priority, that in addition to his Swiss patent application he has submitted a corresponding application for a European patent in which he requests protection for the invention in Switzerland, he may request that the examination as to substance be deferred until the date specified by Section 125 of the Law. If the European patent application is definitively refused or withdrawn, or if the European patent is annulled, the examination as to substance shall be resumed.

(2) The requests under subsections (1) and (1*bis*) shall be submitted in writing; they shall not be taken into consideration until the postponement fee has been paid.

(3) These requests shall not stay any time limit already set, except where they have been extended under Sections 55(3) and 61(1*bis*).

(Rapid Procedure)

63.—

(1) The applicant may request that the examination as to substance be carried out according to a rapid procedure.

(2) The request shall be submitted in writing; it will not be taken into consideration until a fee equal to the postponement fee (Section 62(2)) has been paid.

(Amended Technical Documents)

64.—

(1) Where the content of a claim has been amended or the claim is a new one, the applicant shall state, at the request of the Office, the part of the patent application documentation in which the newly-defined subject matter was described for the first time.

(2) If it transpires, as a result of Section 52(2) that the filing date should be postponed to the date of submission of the amended documents, the applicant shall be allowed a period during which he may:

(a) either renounce the amendment that caused the date to be postponed, insofar as the description of the invention is not thereby affected;

(b) or provide proof that the invention is already described in the documents of the patent application file that were submitted earlier.

(3) If the applicant does not renounce the amendment or if he fails to dispose of the objections, the postponement of the filing date shall be pronounced, as well as the loss of the right of priority when the priority period is thereby exceeded.

(4) Once this decision has come into force, renunciation of the amendment shall not have the effect of restoring an earlier filing date.

(5) The repeated filing of amendments shall not hinder the normal course of the procedure. Applications for amendments that are not in conformity with this rule shall not be taken into consideration.

(Filing Date of Divisional Applications)

65.—

(1) At the request of the Office, the applicant shall state the part of the documentation for the previous application in which the subject matter defined in the divisional application was described for the first time.

(2) If it becomes apparent that the filing date provisionally assigned to a divisional application at the time of the examination carried out on filing (Section 46(6)) has been wrongly claimed, Section 64(2) to (4) shall apply *mutatis mutandis*.

(Classification)

66.—

(1) Every patent application shall be classified according to the International Patent Classification established by the Strasbourg Agreement of March 24, 1971. The applicant shall provide the necessary information to this end.

(2) The Office may amend the classification until the time of recording in the Patent Register.

II. PURPOSE AND COMPLETION OF EXAMINATION

(Procedure without Prior Examination)

67.—

(1) In the procedure without prior examination, the Office shall ascertain first whether the patent application should be the subject of a notification under Section 59(1) of the Law. If such is the case, it shall reject the patent application when the applicant is not capable of disposing of the objections raised by amending the technical documents or in another way.

(2) If the Office considers that the patent application does not comply with the provisions of Sections 50, 51, 52, 55 and 57 of the Law or with those of the Ordinance, it shall allow the applicant a period for the correction of this defect. If the defect is corrected only in part, the Office may, when it sees fit, make other notifications.

(Prior Examination Procedure)

68.—

(1) Once the examination fee has been paid, the examiner (Section 89 of the Law) shall ascertain first whether the patent application should be the subject of a notification under Section 96(2) of the Law. If such is the case, he shall reject the patent application when the applicant fails to dispose of the objections raised by amending the technical documents or in another way.

(2) If the examiner considers that the patent application does not comply with the provisions of Sections 50, 51, 52, 55 and 57 of the Law or with those of this Ordinance, he shall allow the applicant a period in which to correct this defect. If the defect is corrected only in part, the examiner may, if he sees fit, make other notifications.

(End of Examination)

69.—

(1) If the conditions to which publication of the patent application is subject, in the prior examination procedure, or to which the grant of the patent is subject, in the procedure without prior examination, are met, the scheduled date for the completion of the examination procedure shall be communicated to the applicant at least one month in advance; at the same time, the applicant shall be advised of the annual fee to be paid prior to completion of examination. At the same time, there shall also be communicated to him any amendments to the abstract or corrections within the meaning of Section 22(2) and also the amount of the publication fee (Section 71) and the expiry of the time limit for payment; this time limit shall be one month as from the completion of examination.

(2) Where the publication fee and the annual fee due prior to the date of completion of examination have been paid, the probable date of publication of the application or of issue of the patent shall be communicated to the applicant.

(3) If the technical documents comply with the provisions of the Law and this Ordinance at the outset or after notification, the applicant shall be deemed to have approved the version in which the patent application, in the prior examination procedure, is to be published or in which the patent, in the procedure without prior examination, is to be granted.

(4) [Repealed.]

(5) [Repealed.]

*Chapter 5: Preparation of Publication of the Application or
Grant of the Patent*

(Postponement of Publication or Grant)

70.—

(1) An applicant wishing to postpone publication of a patent application, in the prior examination procedure, or the grant of a patent in the procedure without prior examination, shall apply to the Office within two months following the communication of the completion of examination.

(2) Where the requested postponement does not exceed six months as from the communication of completion of the examination, it shall not be necessary to give reasons for the request.

(3) When it is established that the applicant consents thereto, postponement for more than six months may also be requested of the federal authority which, depending on the subject matter of the invention, has an interest in the maintenance of secrecy. Such request shall be accompanied by a statement of reasons. The Federal Department of Justice and Police shall rule on a proposal by the Office, after the Office has consulted the authority that is qualified in the field concerned. The Office shall determine every year whether there is still an interest in the maintenance of the secrecy of the invention.

(Calculation of the Printing Fee)

71.—

(1) The printing fee shall be calculated on the basis of the technical documents produced by the applicant.

(2) The version of the documents mentioned in the communication of the completion of examination shall be decisive.

(3) Where that version exists in a form enabling the cost of printing of the application or the patent to be reduced, the Office may grant a corresponding reduction in the printing fee for each page of text.

(Delaying Period)

72. Requests for the provisional or final recording of amendments in the Register, as well as the withdrawal of the patent application, that reach the Office less than one month before the date set for the publication of the application or grant of the patent, as communicated to the applicant, shall be deemed not to have been filed until after the publication of the application or grant of the patent.

Chapter 6: Opposition During the Prior Examination Procedure

(Form and Content)

73.—

(1) Opposition shall be filed in duplicate within three months following publication, and shall contain:

- (a) the surname and given name or corporate name or business style, the domicile or headquarters and the address of the opposing party;
- (b) the designation of the patent application opposed;
- (c) the declaration stating the extent to which the grant of the patent is opposed;
- (d) the grounds for opposition (Sections 1, 1a and 2 of the Law);
- (e) the statement of the reasons, giving all the facts and proofs invoked.

(2) When the second copy of the opposition document is lacking, the opposing party may produce it within 14 days after having been invited to do so.

(3) When written matter is invoked as proof, the date of its appearance and the relevant passages in it shall be indicated. If, even after having been invited to do so, the opposing party does not provide these indications, the opposition division shall not be bound to take the proof into consideration.

(4) Section 5 shall apply *mutatis mutandis*.

(Competence of the Chairman of the Division)

74.—

(1) The chairman of the opposition division shall designate, from among the officials and employees of the Office who have technical or legal training, the members necessary to deal with a case.

(2) He shall conduct the procedure; he shall, in particular, be competent to order such measures as are likely to clarify the facts, and to set and extend time limits in the opposition procedure.

(Language)

75.—

(1) Subject to Section 37 of the Federal Law on Administrative Procedure, the opposition procedure shall take place in the language in which the application opposed is written.

(2) If the opposition or another document submitted by the opposing party is produced in another official language, the opposing party shall, on request, submit a translation in the language adopted for the procedure.

(3) When a document invoked as proof is written neither in an official language nor in English, a translation in one of those languages may be demanded. If such a translation is not produced, the opposition division shall not be bound to take this proof into consideration.

(Representation of the Opposing Party)

76.—

(1) The opposing party who has to appoint an agent established in Switzerland (Section 13 of the Law) shall be obliged to indicate, within the opposition period, the name, domicile, or headquarters and address of that agent.

(2) The agent shall produce a power of attorney within the period allowed him.

(3) In all other respects, Sections 8 and 9 shall apply *mutatis mutandis*.

(Opposing Party Excluded from Procedure)

77.—

(1) If the opposition is not in conformity with Sections 73(1) and 76, or if the time limit provided for in Section 73(2) has not been observed, the opposition division shall exclude the opposing party from the procedure.

(2) If, after expiration of the opposition period, new grounds, facts or proof (Section 73(1)(d) and (e)) are invoked without appearing to be justified, notably by amendment of the technical documents subsequent to publication, the opposition division may exclude the opposing party from the procedure with respect to that extension.

(Rebuttal of the Opposition)

78.—

(1) The opposition shall be notified to the applicant, who shall be invited to make a rebuttal and, where applicable, to produce the amended documents (Section 105 of the Law).

(2) The rebuttal and the amended documents shall be submitted in as many copies as there are oppositions; to these should be added one copy of the rebuttal and two copies of the amended documents.

(Amendment of the Claims)

79. When the claims are modified by the introduction of characteristics that are not contained in the application specification or cause a date to be postponed, publication shall be repeated.

(Exchange of Statements. Debates)

80.—

(1) The opposition division shall communicate to all the opposing parties the reply of the applicant and the amendments to the technical documents, and shall at the same time bring the other oppositions to their notice.

(2) If the applicant has amended the technical documents, or if the opposition division considers this necessary for other reasons, it shall invite the opposing parties to state their views.

(3) The opposition division may invite the parties to a further exchange of statements or to take part in the debates. The debates may also take place at the request of one party, if it appears that they are likely to clarify the facts.

(4) When the opposition division decides to initiate debates, it shall communicate the place and date to the parties.

(5) The debates shall not be public. The persons appearing shall justify their right to take part. Summary minutes shall be taken of the debates.

(6) The deliberations shall take place *in camera*.

(Final Decision of the Opposition Division)

81.—

(1) When the documents are in order, the opposition division shall decide:

(a) that the patent application is entirely or partly rejected and that, to that extent, the opposition is allowed; or

(b) that the patent may be granted on the basis of the documents presented or the documents amended in the course of the opposition procedure, and that the opposition is rejected with respect to any other matter.

(2) When a patent application is partly rejected, the opposition division shall invite the applicant, once the decision has come into force, to adapt the technical documents to the amended claims. If the applicant does not comply with this request, the remaining part shall be rejected.

(3) Section 69(3) shall apply *mutatis mutandis* to the grant of the patent on the basis of amended documents.

Part IV: Appeals in the Prior Examination Procedure

(Applicable Law)

82. Appeals in the prior examination procedure (Section 106 of the Law) shall be governed by Chapter 3 of the Federal Law on Administrative Procedure and Part IV of the Patent Law, supplemented by Part IV of this Ordinance.

(Composition of the Board and Objections to Members)

83.—

(1) The Chairman of the Board of Appeal shall designate from among the members appointed by the Federal Council those who are to constitute the Board for the hearing of a case.

(2) The composition of the Board shall be communicated in writing to the parties before the case is heard. At the same time they shall be allowed a period of two months in which to present, in writing, grounds for objection.

(3) On expiration of this period, the members against whom no ground for objection has been presented shall be authorized to inspect the complete file.

(Competence of the Chairman of the Board)

84. The Chairman of the Board of Appeal shall conduct the proceedings; he shall in particular be competent to order such measures as are likely to clarify facts and to set and prolong time limits in the appeal procedure.

(Language)

85. Subject to Section 37 of the Federal Law on Administrative Procedure, the provisions concerning the language to be used before the lower authority shall apply also to the appeal procedure.

(Possibility of Amending and Completing the Appeal)

86.—

(1) When the appeal is not in conformity with the requirements as to substance and form, the appellant shall be allowed an additional period of 10 days in which to amend it.

(2) When the appeal is in conformity with the said requirements, the appellant who so requests shall be allowed a period of 30 days from the expiration of the appeal period to enable him to complete the grounds for appeal.

(Debates)

87. If the Board of Appeal orders debates, Section 80(4) to (6) shall apply *mutatis mutandis*.

(Force of *Res Judicata* on Decisions)

88. Decisions of Boards of Appeal shall have force of *res judicata* as soon as they have been rendered.

Part V: Patent Files and Patent Register

Chapter 1: File

(Contents)

89.—

(1) The Office shall keep a file on every patent application and every patent containing information on the course taken by the examination procedure and on the amendments affecting the existence of the patent and the right to the patent.

(2) Any person who includes a probative document among the documents and states that the said document discloses manufacturing or business secrets may request that it be filed separately. The existence of such documents shall be mentioned in the file.

(Inspection of Documents)

90.—

(1) Before the publication of a patent application, in the prior examination procedure, or before the grant of a patent, in the procedure without prior examination, the following persons shall be authorized to inspect the file:

(a) the applicant and his agent;

(b) persons who are in a position to prove that the applicant has alleged violation by them of the rights deriving from his patent application or that he has warned them against such violation;

(c) third parties who are in a position to prove that the applicant or his agent has consented thereto.

(2) These persons shall also be authorized to consult rejected or withdrawn patent applications.

(3) After the stage referred to in subsection 1), the file may be inspected by any person.

(4) Any person who, by virtue of subsections (1) or (2), intends to inspect the file shall inform the Office in advance and in writing of the date on which he intends to do so.

(5) If the inspection of probative documents filed separately (Section 89(2)) is requested, the Office shall take a decision after having heard the patent applicant or patent owner. In opposition procedures and appeal procedures the chairman of the opposition division or of the Board of Appeal shall take the decision.

(6) Where the public interest so requires, the Federal Department of Justice and Police may authorize the Office to allow directors of divisions of the Federal Administration to inspect the file.

(7) On request and against payment of costs, the documents to be inspected shall be issued in the form of copies.

(8) The general provisions on mutual judicial assistance shall be reserved.

(Information on Patent Applications)

91.—

(1) Against payment of a fee, the Office shall give to third parties, without any guarantee as to its completeness, the following information on pending patent applications:

- (a) name and address of the applicant and of his agent;
- (b) name and domicile of the inventor, except where the inventor has elected not to be mentioned;
- (c) number of the patent application;
- (d) filing date;
- (e) information concerning priority and immunity derived from an exhibition;
- (f) title of the invention;
- (g) provisional classification;
- (h) whether or not the application is subject to prior examination;
- (i) requests for postponement of the examination as to substance, of publication of the application or of grant of the patent;
- (k) date of publication and number of the application specification;
- (l) opposition procedure in progress;
- (m) rights granted, likewise restrictions to the right of disposal, imposed by courts or authorities responsible for measures of distraint.

(2) The Office shall provide this information if the name of the applicant or the number of the patent application is indicated. As far as possible, the Office shall also base the information provided on other indications.

(Keeping of Documents)

92. The Office shall keep the original or a copy of the documents relating to withdrawn or rejected patent applications for five years from the withdrawal or rejection, but for at least 10 years from the date of filing.

Chapter 2: Patent Register

(Keeping of the Register)

93.—

(1) The Office shall keep a register of patents granted.

(2) Published patent applications shall be provisionally registered therein. Once the patent has been granted, the provisional entries shall be regarded as final.

(Contents of the Register)

94.—

(1) Patents shall be finally entered in the Register with the following particulars:

- (a) number of the patent;
- (b) classification symbols;
- (c) title of the invention;
- (d) date of filing;

- (e) number of the patent application;
 - (f) date of publication of the patent application in the prior examination procedure;
 - (g) date of grant of the patent;
 - (h) priorities and immunities derived from exhibitions;
 - (i) name and first name or corporate name or business style, domicile or headquarters and address of the owner of the patent;
 - (k) name, domicile or headquarters and address of the agent;
 - (l) name and domicile of the inventor, except where the inventor has elected not to be mentioned;
 - (m) rights granted, likewise restrictions on the right of disposal ordered by the courts or by authorities responsible for measures of distraint;
 - (n) changes affecting the existence of the patent or of the right to the patent;
 - (o) changes of domicile or headquarters of the owner of the patent;
 - (p) changes of agent, or of the domicile or headquarters of the agent.
- (2) Published patent applications shall be provisionally entered with the corresponding indications under the anticipated patent number.
- (3) The Office may also enter, provisionally or finally, such other indications as it considers useful.

(Consultation: Extracts from the Register)

95.—

- (1) Any person shall be allowed to consult the Patent Register against payment of a fee.
- (2) On request and on payment of a fee, the Office shall make extracts from the Patent Register.

Chapter 3: Modifications

I. MODIFICATIONS AFFECTING THE EXISTENCE OF THE PATENT

(Partial Renunciation)

a. Form

96.—

- (1) The declaration of partial renunciation of a patent (Section 24 of the Law) shall be filed in writing and in two copies.
- (2) It shall be unconditional.
- (3) It shall not be deemed to have been filed until the required fee has been paid.

b. Contents

97.—

- (1) The declaration of partial renunciation shall not give rise to any doubt as to the legal scope of the claims; Sections 1, 1a, 2, 51, 52 and 55 of the Law shall also govern the rearrangement of the claim.
- (2) The description, drawings and abstract may not be modified. Partial renunciation nevertheless includes a declaration of the following kind:
Such parts of the description and drawings as are incompatible with the rearranged claims are to be regarded as deleted.
- (3) If the declaration of partial renunciation is not in conformity with the requirements, the Office shall allow the owner of the patent a period in which to remedy the defect. If the defect is remedied only in part, the Office may, if it sees fit, make other notifications.

(4) Where partial renunciation relates to a patent granted according to the prior examination procedure, the subject matter of the new claim shall not give rise to another examination of its patentability in relation to the state of the art.

c. Registration and Publication

98.—

(1) If the declaration of partial renunciation is in conformity with requirements, it shall be registered.

(2) The Office shall publish it and attach it to the patent specification; a new patent document shall be issued to the owner of the patent.

(3) At the same time, the Office shall allow the owner of the patent a period of three months in which to apply for the constitution of new patents (Section 5 of the Law).

(Limitation by the Court)

99. Section 98 shall apply *mutatis mutandis* when the patent has been limited by the court (Section 27 or 30 of the Law).

(Constitution of New Patents)

a. Request

100. The provisions governing patent applications shall apply to the request for the constitution of a new patent (Sections 25, 27(3) or 30(2) of the Law); Sections 101 and 102 are reserved.

b. Claims

101.—

(1) For each new patent to be constituted under Section 100, at least one new claim shall be made within the limits of the claims deleted from the original patent, account being taken of Section 24 of the Law.

(2) If the original patent was granted according to the prior examination procedure, the subject matter of the new claims shall not give rise to a new examination of patentability in relation to the state of the art.

c. Description

102.—

(1) With regard to the description and drawings' reference may be made to the specification of the original patent; a statement of the following kind shall be added:

Such parts of the descriptions and drawings appearing in patent specification No.... as are incompatible with the claims of this patent are to be regarded as deleted.

(2) If the reference provided for in subsection (1) gives rise to doubt as to the legal scope of the patent, the parts of the specification of the original patent that are necessary for the understanding of the claim of the new patent shall be reproduced in an appropriate form.

II. MODIFICATIONS AFFECTING THE RIGHT TO THE GRANT OF A PATENT AND THE RIGHT TO THE PATENT; CHANGES OF AGENT

(Partial Allowance of an Action for Assignment)

103.—

(1) If the court has ordered the assignment of a patent application with the elimination of certain claims (Section 30 of the Law), the applicant against whom this ruling is made may, with the eliminated claims, make one or more patent applications. Their filing date shall be that of the assigned application, and in other respects they shall be treated as divisional applications (Section 57 of the Law).

(2) If the court has ordered the assignment of a patent with the elimination of certain claims (Section 30 of the Law), the owner of the patent to which the said ruling applies may, with the eliminated claims request the constitution of one or more new patents (Sections 100 to 102).

(3) When it has the final judgment on the assignment in its possession, the Office shall allow the patent applicant or patent owner against whom the ruling has been made a period of three months within which to file new patent applications or a request for the constitution of new patents.

(Mention in the File)

104.—

(1) Before the publication of a patent application, in the prior examination procedure, or the grant of a patent, in the procedure without prior examination, the following shall be mentioned in the file:

- (a) changes of applicant;
- (b) changes of corporate name or business style;
- (c) other changes such as changes of agent, the grant of right and restrictions on the right of disposal ordered by the courts or by the authorities responsible for measures of distraint.

(2) Section 105(2) to (6) shall apply *mutatis mutandis*.

(3) The party acquiring a patent application shall take over the application in the state in which it was at the time the probative document reached the Office.

(Provisional or Final Recording in the Patent Register)

105.—

(1) The following shall be provisionally or finally entered in the Patent Register:

- (a) changes affecting the right to the grant of the patent that occur after publication of the patent application in the prior examination procedure;
- (b) changes affecting the right to the patent;
- (c) changes of corporate name or business style;
- (d) other modifications, such as changes of agent, the grant of rights and restrictions to the right of disposal ordered by the courts or by authorities responsible for measures of distraint.

(2) All modifications shall be certified by a statement from the previous patent applicant or patent owner, bearing his authenticated signature, or by another sufficient probative document; Sections 106 and 107 are reserved. Probative documents shall be incorporated in the file.

(3) Insofar as an exclusive license is provisionally or finally entered in the Register, no other license that is incompatible with it shall be either provisionally or finally entered in respect of the same patent.

(4) A sub-license shall be provisionally or finally entered in the Register when it is certified by a statement, bearing the authenticated signature of the licensee who has been provisionally or finally entered, or by another sufficient probative document. In other respects, the right of the licensee to grant sub-licenses shall be established.

(5) The request for the provisional or final registration of a change shall not be deemed to have been filed until the required fee has been paid. If simultaneous registration of several changes is requested in respect of one and the same patent, the fee shall be paid only once.

(6) Provisional or final registration shall be effected without cost in respect of changes that are based on an executory judgment or on an award resulting from a measure of distraint, and also in respect of restrictions on the right of disposal ordered by the courts or by the authorities responsible for measures of distraint.

(Cancellation of Third-Party Rights)

106. At the request of the patent applicant or patent owner, the Office shall cancel rights in favor of a third party that are mentioned in the file or provisionally or finally entered in the Patent Register if, at the same time, a declaration of renunciation bearing the authenticated signature of the third party or another sufficient probative document is submitted.

(Changes of Agent)

107.—

(1) Changes of agent shall be mentioned in the file or provisionally or finally entered in the Patent Register on submission of the power of attorney in favor of the new agent.

(2) The appointment of a new agent shall for the Office constitute revocation of the power of attorney in favor of the previous one.

(3) The first appointment of an agent and the revocation of agents already appointed shall be exempt from fees.

Part VI: Publications of the Office

(Publication Organ)

108.—

(1) The publications in the Swiss Journal of Patents, Designs and Marks that are required to be made under the Law and this Ordinance shall be made twice a month.

(2) The Office shall also publish information of general interest in this periodical.

(Patent Specification and Application Specification)

109.—

(1) The patent application shall be published on the date of grant of the patent. The grant shall be announced on the same day in the Swiss Journal of Patents, Designs and Marks.

(2) In the prior examination procedure, the application specification shall be published on the same day as the patent application. The files shall be open to inspection on the same day.

(Other Official Publications)

110.—

(1) The Office shall publish annually a catalog of cases handled in the course of the previous business year.

(2) On the basis of the patent documentation in its possession, the Office may issue publications of general interest, notably a collection of abstracts published.

(Selling Price)

111. The Office shall set the selling price of publications in agreement with the Central Office for Printed Matter and Stationery.

(Provision Free of Charge)

112.—

- (1) On request, the Office shall supply its publications free of charge:
 - (a) to the departments of the Federal Administration;
 - (b) to the Federal Tribunal;
 - (c) to the general management of the Federal Railways and the Post, Telephone and Telegraph Company;
 - (d) to the federal polytechnical colleges and to the higher technical colleges;
 - (e) to cantonal governments and to the courts competent under Section 78(2) of the Law.
- (2) With the consent of the Federal Department of Justice and Police, the Office shall supply its publications free of charge:
 - (a) to public collections in Switzerland;
 - (b) subject to reciprocity, to foreign patent offices and to other bodies that request them.

(Documentation)

113.—

- (1) It shall be possible to consult or obtain, on payment of a fee, patent specifications, application specifications and other Swiss or foreign official publications in the Office's possession.
- (2) The Office shall keep them at the disposal of the public in an appropriate form.
- (3) On payment of a fee, information on the state of the art may be obtained from the Office, or from its representative.

Part VII: European Patent Applications and European Patents

(Scope of the Ordinance)

114.—

- (1) This Part shall apply to European patent applications and European patents that produce their effects in Switzerland.
- (2) The other provisions of this Ordinance shall also apply, except where Section 109 of the Law and this Part provide otherwise.

(Filing with the Office)

115.—

- (1) Persons who have their domicile or headquarters in Switzerland shall be entitled, as applicants or agents, to file European patent applications with the Office, with the exception of divisional applications.
- (2) The Office shall indicate on the application documents the date on which they received them.
- (3) Fees collected under the European Patent Convention shall be paid directly to the European Patent Office.

(Translation)

116.—

(1) Any person who submits to the Office a translation of a claim of a published European patent application (Section 112 of the Law) or of the original or amended specification of the European patent (Section 113 of the Law) shall indicate the number of the application or of the patent.

(2) If, as a result of the opposition procedure, the European patent has been maintained in an amended form, the new translation may be entirely replaced by a declaration specifying to what extent the previous translation is also applicable to the amended patent specification.

(3) The Office shall record the date of receipt of the translation. It shall confine itself to examining whether the translation is complete.

(4) For the purposes of consultation, the Office shall immediately make the translation available and shall record the date as from which it is available for consultation.

(5) If the translation is revised (Section 114 of the Law), subsections (1) to (4) shall apply *mutatis mutandis*.

(6) If the translation of the patent specification or of the declaration under subsection (2) has not been submitted in time (Section 113(2) of the Law), the Office shall state that the patent has not produced its effects in Switzerland. When this decision has come into force, it shall cancel the patent with effect from the date of grant.

(Register and File)

117.—

(1) The following shall be entered in the Swiss Register of European Patents (Section 117 of the Law):

- (a) the information given in the European Patent Register at the time of grant;
- (b) the information contained in the European Patent Register on the subject of the opposition procedure;
- (c) in addition, the indications provided for Swiss patents.

(2) The Office shall register the information in the language used in the procedure before the European Patent Office; where that language is English, registration shall take place in the Swiss official language in which the translation of the patent specification has been supplied and, if such a translation is lacking, in the official language chosen by the Office.

(3) The language adopted in accordance with subsection (2) shall be the language in which the procedure takes place (Section 4).

(4) The Office shall keep a file on each European patent.

(Transformation)

118.—

(1) When a European patent application or a European patent is transformed into a Swiss patent application, the Office shall allow the applicant a period of two months in which to:

- (a) pay the application fee (Section 49(3) of the Law);
- (b) produce the translation (Section 123 of the Law);
- (c) appoint an agent (Section 13 of the Law).

(2) If more than two years have elapsed since the filing date of the Swiss patent application resulting from transformation, the annual fee due shall be paid within six months following the invitation to do so by the Office; if payment is effected during the last three months, a surcharge shall be collected.

Part VIII: International Patent Applications

Chapter 1: Scope of the Ordinance

119.—

(1) This Part shall apply to international applications in respect of which the Office acts as receiving Office or designated Office.

(2) The other provisions of this Ordinance shall also be applicable, except where Section 131 of the Law or this Part provides otherwise.

Chapter 2: The Office as Receiving Office

(Filing of the International Application)

120. The international application filed with the Office shall be made out in the Swiss official language that is a working language of the International Searching Authority competent for Switzerland. The Office shall indicate these languages in the Swiss Journal of Patents, Designs and Marks.

(Transmittal Fee and Search Fee)

121.—

(1) The transmittal fee (Section 133(2) of the Law) shall be paid to the Office during the month following receipt of the international application.

(2) Subsection (1) shall apply *mutatis mutandis* to the search fee, the amount of which shall be fixed on the basis of the agreement concluded with the International Searching Authority competent for Switzerland. The Office shall indicate the amount of the search fee fixed by the International Searching Authority in the Swiss Journal of Patents, Designs and Marks.

(International Fee; Other Designation Fees and Confirmation Fee)

122.—

(1) The international fee, comprising a basic fee and designation fees according to Rule 15.1(ii) of the Regulations under the Patent Cooperation Treaty of June 19, 1970 (hereinafter “the Cooperation Treaty Regulations”), shall be paid to the Office.

(2) Section 121(1) shall apply *mutatis mutandis* to payment of the basic fee.

(3) The designation fees according to Rule 15.1(ii) of the Cooperation Treaty Regulations shall be paid within 12 months following the filing date or priority date. Where the international application contains a priority claim, these fees may be paid within the month following filing where this term expires later.

(4) The designation fees and the confirmation fee according to Rule 15.5(a) of the Cooperation Treaty Regulations shall be paid to the Office within 15 months following the filing date or priority date.

(5) The amounts of these fees shall be those that appear in the Schedule of Fees of the Cooperation Treaty Regulations.

(Invitation to Pay)

122a.—

(1) Where the transmittal fee, the basic fee, the search fee and the designation fee according to Rule 15.1(ii) of the Cooperation Treaty Regulations have not been paid in time, the Office shall accord the applicant one month to pay the amount due as well as a late payment fee according to Rule 16bis.2 of the Cooperation Treaty Regulations.

(2) In case of nonpayment or partial payment within this time, the international application or the designations for the countries for which the fees have not been paid shall be considered withdrawn.

Chapter 3: The Office as Designated Office

(Translation of Claims)

123. Section 116(1), (3) and (4) shall apply *mutatis mutandis* to the translation of the claims of the published international application in respect of which the Office is the designated Office (Section 137 of the Law).

(Conditions of Form)

124.—

(1) When, for the international application, the translation or the mention of the inventor is not produced in time, or when the national application fee has not been paid within the prescribed time limits (Section 138 of the Law), the international application shall be regarded as having been withdrawn with respect to Switzerland.

(2) When the applicant who is not domiciled in Switzerland has not appointed an agent within 20 months of the filing date or priority date, the Office shall invite him to communicate to it within a month the name, domicile or headquarters and address of his agent.

(3) When the priority document has not been submitted to the receiving Office or to the International Bureau within 16 months of the priority date, the right of priority shall lapse; the right shall be revived when the conditions set out in Section 40(4) have been satisfied.

(4) Section 52(4) shall apply *mutatis mutandis* when the priority document is not drafted in a Swiss official language or in English.

(Search Report)

125.—

(1) If the international application is subject to prior examination and if the international search report issues from the International Searching Authority competent for Switzerland, the search of the state of the art shall not be completed.

(2) A complementary report on the state of the art (Section 139(2) of the Law) shall be established:

(a) when the international search has not been effected for all the claims;

(b) when the international search report has not been established by the Authority competent for Switzerland, and if it is apparent from the report that the search was less extensive;

(c) when, as a result of the postponement of a date, an additional search has become necessary (Section 60(3)).

(3) The search fee for the complementary report shall be paid within two months of the invitation to do so by the examiner.

(4) In all other respects, Sections 55 to 60 shall apply *mutatis mutandis*.

Part IX: International-Type Searches

(Conditions)

126.—

(1) An international-type search within the meaning of Article 15(5) of the Patent Cooperation Treaty may be requested in respect of a Swiss patent application.

(2) The request shall be filed with the Office within six months following the filing date. The international search fee, the amount of which is fixed by the International Searching Authority competent for Switzerland, shall be paid at the same time.

(3) If the language in which the patent application is drafted is not a working language of the International Searching Authority competent for Switzerland, a translation in a working language shall be filed at the same time.

(4) The Office shall not examine whether the patent application and the translation meet the other conditions specified in the Patent Cooperation Treaty, in particular the requirements of form valid for international applications.

(Procedure)

127.—

(1) If the conditions specified in Section 126(1) to (3) are met, the Office shall send the required documents to the International Searching Authority that is competent.

(2) The Office shall send the search report to the applicant together with copies of the documents that are mentioned therein; a copy shall be included in the file of the patent application.

Final Part: Final and Transitional Provisions

Chapter 1: Repeal of the Law in Force

128. Ordinance (1) of December 14, 1959, and Ordinance (2) of September 8, 1959, on the Federal Patent Act are repealed.

Chapter 2: Transitional Provisions

(Terms)

129. Terms that began prior to January 1, 1978, shall remain unchanged.

(Fees)

130.—

(1) The amount of annual fees payable as from January 1, 1978, shall be governed by the new Law, even if the said annual fees have been paid prior to that date.

(2) For patent applications the filing date of which dates back more than two years before January 1, 1978, the annual fees shall be paid, in accordance with the new Law, within six months following a request to do so by the Office.

(3) Subsection (2) shall apply *mutatis mutandis* to applications for patents of addition to a main patent the transformation of which is required as of January 1, 1978.

(Applications for Patents of Addition)

131. Applications for patents of addition that are pending on January 1, 1978, and are subordinate to patent applications that are also pending shall be regarded, as from that date, as independent applications.

(Mention of the Inventor)

132. If, for a patent application that is pending on January 1, 1978, the inventor has not yet been mentioned, he shall be mentioned within a period of three months from a request to do so by the Office or, if the period provided for in Section 35(1) expires later, within that period.

(Priority)

133.—

(1) Declarations of priority relating to patent applications that are pending on January 1, 1978, may be filed up to March 31, 1978.

(2) For patent applications that are pending on January 1, 1978, the priority documents and the missing information concerning the number of the first filing shall, upon request to do so by the Office, be produced within three months or, if the period provided for in Section 40(4) expires later, within that period.

(3) Subsections (1) and (2) shall not apply when, under the earlier Law, the period for the sending of the priority declaration or for the production of the priority document has expired on or has begun prior to January 1, 1978.

(Consultation of Files)

134. The files of patents granted prior to January 1, 1978, may not be consulted in accordance with Section 90(3) until after publication of the patent specifications.

Chapter 3: Entry into Force

135.—

(1) This Ordinance shall enter into force on January 1, 1978, with the exception of Parts VII, VIII and IX.

(2) Part VII shall enter into force on June 1, 1978.

(3) Parts VIII and IX shall enter into force at the same time as Part VI of the Law (International Patent Applications).

Transitional Provisions of the Ordinance of August 12, 1986

(1) Patent applications pending on the day of entry into force of the new Law shall be governed by that Law.

(2) However, requests filed prior to the day of entry into force may not be the subject of notifications by the Office where they satisfy the requirements of the previous Law; the Office may nevertheless request information within the meaning of Sections 64(1) and 65(1).

(3) Communications by the Office under the previous Law, dispatched prior to the day of entry into force, shall remain valid and shall have the consequences stated therein.

(4) Time limits set by the Office which have begun to run prior to the day of entry into force shall not be amended.

(5) Where examination of an application is completed before the day of entry into force, the procedure shall continue in accordance with the previous Law up to publication of the patent application or grant of the patent.