

**Act on Amendments to the Patents Act (Ratification
of the European Patent Convention) (Act No. 368 of
June 7, 1989**

We Margrethe the Second, by the Grace of God, Queen of Denmark, make known that:
Folketinget has passed and We have granted Our Royal Assent to the following Act:

Section 1

To the Patents Act, cf. Consolidate Act No. 110 of 11th March 1986, as amended by
Act No. 854 of 23rd December 1987, shall be added after section 74:

*“Part X A
European Patent*

Section 75

(1) A “European patent” is a patent that has been granted by the European Patent Office pursuant to the European Patent Convention done at Munich on 5th October 1973. A European patent application is an application filed in accordance with that Convention.

(2) European patents can be granted for Denmark.

(3) An application for a European patent shall be filed with the European Patent Office cf., however, the provisions laid down in section 70 for secret patents. An application for a European patent may also be filed with the patent authority of this country, which shall forward the application to the European Patent Office. The applications referred to in Article 76 of the Convention shall only be filed with the European Patent Office.

(4) The provisions of sections 76 to 90 shall apply to European patents for Denmark and to European patent applications designating Denmark.

Section 76

(1) A European patent shall be considered granted when the European Patent Office has published its decision to that effect. A European patent shall have the same effect as a patent granted by the patent authority of this country and shall be subject to the same provisions as such a patent unless otherwise provided for in sections 77 to 90.

Section 77

(1) A European patent shall only have effect in this country provided that the applicant within the prescribed time limit has filed with the patent authority of this country a Danish translation of the text in which the patent according to the communication by the European Patent Office to the applicant is intended to be granted, and the applicant within the same time

limit pays the prescribed printing fee. If the European Patent Office decides to maintain a European patent in an amended form, this shall also apply to the amended form.

(2) The translation shall be available to the public. The translation shall not be available to the public until the European patent application has been published by the European Patent Office.

(3) When the translation has been filed and the fee has been paid and the European Patent office has published its decision to let the patent application proceed to grant or to maintain the European patent in an amended form, the patent authority of this country shall publish a notice to that effect. Printed copies of the translation shall be obtainable from the patent authority without delay.

Section 78

(1) The provisions of section 72 (1) shall also apply to the filing of a translation and the payment of the fee pursuant to section 77 (1).

(2) If it is decided, pursuant to section 72 that the filing of the translation and the payment of the fee in compliance with section 77 (1) are to be considered duly made, the patent authority of this country shall publish a notice to that effect.

(3) Any person who, after the expiry of the time limit prescribed in section 77 (1), but prior to the publication of the notice OB prescribed in subsection (2), in good faith has commenced a commercial exploitation of the invention in this country or made substantial preparations for such exploitation, shall have the right provided for in section 74 (2) and (3).

Section 79

The provision of section 52 (1) (iv) shall apply to European patents provided that extension has taken place after the patent has been granted.

Section 80

If the European Patent Office revokes a European patent entirely or partially, this shall take effect as had the patent to a corresponding extent been revoked in this country. The patent authority of this country shall publish a notice to that effect.

Section 81

(1) For a European patent a renewal fee shall be paid to the patent authority of this country for each fee year following the year in which the European Patent Office has published its decision to let the patent application proceed to grant.

(2) If the renewal fee for the European patent is not paid pursuant to subsection (1), cf. section 41, section 51 shall apply *mutatis mutandis*. With regard to the first renewal fee, it shall not fall due until 2 months after the date the patent is granted.

Section 82

(1) A European patent application for which the European Patent office has fixed a filing date shall from that date have the same effect in this country as an application filed in this country. If the application claims priority pursuant to the European Patent Convention from an earlier date than the filing date, that priority shall also apply in this country.

(2) For the purposes of section 2 (2) second sentence the publication of a European patent application under Article 93 of the European Patent Convention shall be equivalent to the making available of the application to the public under the rules laid down in section 22. The same shall apply to publication under Article 158, paragraph 1 of the Convention provided that such publication by the European Patent office is considered equivalent to a publication under Article 93.

Section 83

(1) When a European patent application has been published in accordance with the European Patent Convention and the applicant has filed a translation of the patent claims in the published application in Danish to the patent authority of this country, the patent authority of this country shall let the translation be available to the public and publish a notice to that effect.

(2) If any person without permission commercially exploits an invention which is the subject-matter of a European patent application after the publication of a notice pursuant to subsection (1) and the application results in a patent for Denmark, the provisions concerning patent infringement shall apply. In such cases the patent protection shall, however, only extend to subject-matter disclosed both in the published claims and in the claims of the patent. Section 57 does, however, not apply and likewise the person shall only be liable for damages to the extent referred to in section 58 (2).

(3) Claims for damages under subsection (2) shall not be barred by prescription earlier than 1 year after the time limit for oppositions against the European patent has expired or after the European Patent Office has decided to maintain the patent.

Section 84

(1) If a European application or the designation of Denmark is withdrawn or the application or designation is deemed to be withdrawn in accordance with the European Patent Convention and the processing of the application is not resumed pursuant to Article 121 of the Convention, this shall have the same effect as the withdrawal of an application before the patent authority of this country.

(2) If a European patent application is refused, this shall have the same effect as were the application refused by the patent authority of this country.

Section 85

(1) If the translations referred to in sections 77 and 83 do not comply with the text in the language of the proceedings before the European Patent Office, the patent protection shall only extend to subject-matter disclosed in both texts.

(2) In revocation proceedings only the text in the language of the proceedings shall apply.

Section 86

(1) If the applicant or the proprietor of the patent files with the patent authority of this country a correction to the translation referred to in section 77 and if he pays the prescribed printing fee, the corrected translation shall be available to the public provided that the original translation is available to the public. When such correction has been filed, and the fee has been duly paid, the patent authority of this country shall publish a notice concerning the correction provided that the original translation is available to the public. Printed copies of the translation shall be obtainable from the patent authority of this country without delay.

(2) If the applicant files a correction to the translation referred to in section 83, the patent authority of this country shall publish a notice to that effect and shall make the corrected translation available to the public. When the notice has been published, the corrected translation shall replace the original translation.

(3) Any person, who at the time the corrected translation entered into force, in good faith commercially exploited the invention in this country in such a manner that according to the previous translation it did not infringe the rights of the applicant or the proprietor of the patent or had made substantial preparations for such exploitation shall have the rights provided for in section 74 (2) and (3).

Section 87

(1) If the European Patent Office re-establishes the rights for a patent applicant or a proprietor of a patent who has not observed a time limit, this decision shall also apply in this country.

(2) Any person, who after loss of rights has occurred, but prior to the re-establishment of the rights and publication of a notice to that effect by the European Patent Office, in good faith commenced commercial exploitation of the invention or has made substantial preparations for such exploitation shall have the rights provided for in section 74 (2) and (3).

Section 88

(1) If an application for a European patent filed with a national patent authority is deemed to be withdrawn due to the fact that the European Patent Office did not receive the application within the prescribed time limit, the patent authority shall on request of the

applicant regard the application as converted to an application for a patent in this country, provided that

(i) the request is filed with the national authority which received the application within 3 months after the applicant has been notified that the application is deemed to be withdrawn,

(ii) the request is filed with the patent authority in this country within 20 months after the filing date of the application or if priority has been claimed after the priority date and

(iii) the applicant within a time limit to be fixed by the Minister of Industry pays the prescribed application fee and files a translation of the application in Danish.

(2) Provided that the patent application complies with the requirements of the European Patent Convention with regard to form the application shall be accepted in that respect.

Section 89

The provisions of Articles 9, 60, 126 and 131 of the European Patent Convention and the protocol annexed to the Convention on Jurisdiction and the Recognition of Decisions in respect of the Right to the Grant of a European patent (Protocol on Recognition) shall apply in this country.

Section 90

“The Minister of Industry shall lay down further rules for the implementation of the European Patent Convention and the implementation of the provisions in this Part.”

Section 2

This Act shall enter into force on 1st January 1990.

Section 3

The powers which according to Grundloven (the Danish Constitution) are vested in the authorities of this country shall, to the extent it is laid down in the European Patent Convention, be executed by the institutions mentioned in that Convention.

Section 4

This Act does not apply to the Faroe Islands and Greenland.

Given at Christiansborg Castle on 7th June 1989

Under Our Royal Hand and Seal MARGRETHE R. /Henning Dyremose