

The Consolidate Patents Act

Publication of the Patents Act, cf. Consolidate Act. No. 110, 11th March 1986, as amended by Act No. 854, 23rd December 1987, and Act No. 368, 7th June 1989. The published Act shall not apply in full until 1st January 1990 (cf. section 2 of Act No. 368, 7th June 1989, reproduced at the end of this Act).

Part I *General provisions*

Section 1

(1) Any person who has made an invention which is susceptible of industrial application, or his successor in title, shall, in accordance with this Act, have the right on application to be granted a patent for the invention and thereby obtain an exclusive right to exploit the invention commercially.

(2) In particular the following subject-matter or activities as such shall not be regarded as inventions:

- (i) discoveries, scientific theories and mathematical methods;
- (ii) aesthetic creations;
- (iii) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
- (iv) presentations of information.

(3) Methods for the treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions either. This provision shall not prevent the grant of patents for products, including substances and compositions, for use in any of these methods.

(4) Patents shall not be granted in respect of:

- (i) inventions the exploitation of which would be contrary to 'ordre public' or morality;
- (ii) plant or animal varieties or essentially biological processes for the production of plants or animals. Patents may, however, be granted for microbiological processes and the products thereof.

Section 2

(1) Patents shall be granted only for inventions which are new in relation to the state of the art and which, moreover, differ essentially therefrom.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use or in any other way before the date of filing of the patent application. Additionally, the contents of patent applications filed in this country before the said date of filing shall be regarded as comprised in the state of the art if such applications are made available to the public in accordance with the provisions of section 22. The requirement in subsection (1) that the invention shall differ essentially from the state of the art shall, however, not apply in relation to the contents of such applications.

(3) Provisions to the effect that for the purposes of subsection (2) applications provided for in Part III of this Act shall in certain cases have the same effect as patent applications filed in this country are laid down in sections 29 and 38.

(4) The requirement under subsection (1) that inventions shall be new shall not prevent the grant of patents for known substances or compositions for use in the methods referred to in section 1(3), provided that the use of the substance or composition is not known for any of those methods.

(5) Patents may, however, be granted for inventions made available to the public if the disclosure of the invention occurred within the 6 months preceding the filing of the application and if it was in consequence of:

- (i) an evident abuse in relation to the applicant or his legal predecessor, or
- (ii) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognized, international exhibition falling within the terms of the Convention on International Exhibitions, signed at Paris on 22nd November 1928.

Section 3

(1) The exclusive right conferred by a patent shall imply that no one except the proprietor of the patent may without permission exploit the invention:

- (i) by making, offering, putting on the market or using a product which is the subject-matter of the patent, or by importing or stocking the product for these purposes;
- (ii) by using a process which is the subject-matter of the patent or by offering the process for use in this country if the person offering the process knows, or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent;
- (iii) by offering, putting on the market or using a product obtained by a process which is the subject-matter of the patent or by importing or stocking the product for these purposes.

(2) The exclusive right shall also imply that no one except the proprietor of the patent may without permission exploit the invention by supplying or offering to supply any person who is not entitled to exploit the invention with means for working it in this country, if these means relate to an essential element of the invention and the person supplying or offering to supply the means knows, or it is obvious in the circumstances, that these means are suitable and intended for such use. This provision shall not apply when the means are staple commercial products, except when the person supplying or offering to supply the means induces the person supplied to commit acts referred to in subsection (1). For the purposes of the first and second sentences persons performing acts referred to in subsection (3)(i), (iii) or (iv) shall not be considered entitled to exploit the invention.

(3) The exclusive right shall not extend to:

- (i) acts done for non-commercial purposes;
- (ii) acts concerning products put on the market in this country by the proprietor of the patent or with his consent;
- (iii) acts done for experimental purposes relating to the subject-matter of the patented invention;
- (iv) the preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

Section 4

(1) Any person who, at the time when the patent application was filed, was exploiting the invention commercially in this country may, notwithstanding the grant of a patent, continue such exploitation retaining its general character, provided that the exploitation did not constitute an evident abuse in relation to the applicant or his legal predecessor. Such a right of exploitation shall also, under similar conditions, be enjoyed by any person who had made substantial preparations for commercial exploitation of the invention in this country.

(2) The right provided for in subsection (1) shall only be transferred to others together with the business in which it has arisen or in which the exploitation was intended.

Section 5

(1) Notwithstanding a patent having been granted for an invention, persons other than the proprietor of the patent may exploit the invention by the use of a foreign vessel, aircraft or land vehicle when it temporarily or accidentally enters this country.

(2) The Minister of Industry may direct that, notwithstanding a granted patent, spare parts and accessories for aircraft may be imported into and used in this country for the repair of aircraft belonging to a foreign state which grants similar rights in respect of Danish aircraft.

Section 6

(1) On request an application for a patent for an invention which has been disclosed not earlier than 12 months before the date of filing in an application for a patent in this country or for a patent, an inventor's certificate or a utility certificate or for the registration of a utility model in another country party to the Paris Convention for the Protection of Industrial Property of 20th March 1883, shall, for the purposes of section 2(1), (2) and (4) and section 4, be regarded as filed at the same time as the previous application. The same right of priority shall be enjoyed where the application for protection is filed in a country which is not a party to the Convention, provided that an equivalent right of priority is granted on the basis of a Danish patent application by the country in which the previous application was filed and that the legislation of that country is in principle in conformity with the Convention.

(2) The Minister of Industry shall lay down the particulars of the right to claim priority.

Part II

Patent applications and examination and other processing thereof, etc.

Section 7

(1) The Patent Authority of this country shall be the Patent Office, headed by a Director General, and the Patent Board of Appeal (Board of Appeal for Industrial Property). For the purposes of this Act, the 'Patent Authority' means the Patent Authority of this country unless otherwise stated.

(2) The Patent Board of Appeal shall be established by the Minister of Industry for the examination of appeals from decisions of the Patent Office, cf. sections 25 and 67, and appeals from decisions pursuant to the Industrial Designs Act, the Trade Marks Act, etc. The Patent Board of Appeal shall consist of not more than eighteen members, who shall be appointed for a term of 5 years. Two of the members, one of whom shall be the chairman, shall possess the general qualifications for appointment to the office of a High Court judge, while the other members combined shall have the best possible expert knowledge of patents, industrial designs, trade marks and matters placed under the authority of the Patent Board of Appeal by other legislation. They shall have graduated from the Technical University of Denmark (Danmarks Tekniske Højskole), from another institute of higher education or have acquired the necessary expert knowledge in another way.

(3) Having regard to the circumstances of each particular case, the chairman shall decide which and how many of the members of the Board are to participate in the examination of the case.

(4) The Minister of Industry shall lay down further rules for the activities of the Patent Board of Appeal including rules relating to proceedings and rules to the effect that the appellant shall pay a fee for the examination of an appeal.

Section 8

(1) An application for a patent shall be filed in writing with the Patent Authority or, in the cases referred to in Part III of this Act, with the patent authority of a foreign state or with an international organization.

(2) The application shall contain a description of the invention, including drawings where necessary, and a precise statement of the matter for which protection by the patent is sought (one or more claims). The fact that the invention relates to a chemical compound shall not imply that a specific use must be indicated in the claim. The description shall be sufficiently clear to enable a person skilled in the art to carry out the invention. An invention which relates to a microbiological process or to a product obtained by such a process shall, in the cases specified in section 8a, only be regarded as disclosed in a sufficiently clear manner if also the requirements of section 8a are fulfilled.

(3) The application shall also contain an abstract of the description and claims. The abstract shall merely serve for use as technical information and may not be taken into account for any other purpose.

(4) The name of the inventor shall be indicated in the application. If the applicant is not the inventor, he shall prove his right to the invention.

(5) The applicant shall pay the prescribed application fee. For the patent application the prescribed renewal fee in respect of each fee year beginning before the application is finally decided upon shall also be paid. The fee year shall comprise one year and shall the first time be reckoned from the date of filing of the application and thereafter from the corresponding day of the calendar year.

Section 8a

(1) If the carrying out of the invention involves the use of a micro-organism which is neither available to the public nor describable in the documents of the application in such a manner as to enable a person skilled in the art to carry out the invention, a culture of the micro-organism shall be deposited not later than on the date of filing of the application. The culture shall thereafter be continuously deposited so that any person entitled under this Act to a sample of the culture may have the sample furnished in Denmark. The Minister of Industry shall lay down rules as to where deposits may be made.

(2) If a deposited culture ceases to be viable, or if for any other reason a sample of the culture cannot be furnished, the culture may be replaced by a new culture of the same micro-organism within the prescribed period and otherwise in accordance with rules laid down by the Minister of Industry. If so, the new deposit shall be deemed to have been made already on the date of the previous deposit.

Section 9

If the applicant so requests and pays the prescribed fee, the Patent Authority shall, in accordance with rules laid down by the Minister of Industry, cause the application to be searched by an International Searching Authority under the provisions of Article 15(5) of the Patent Cooperation Treaty, done at Washington on 19th June 1970.

Section 10

In the same application a patent may not be applied for in respect of two or more mutually independent inventions.

Section 11

If a patent is applied for in respect of an invention which is disclosed by the applicant in an earlier patent application in which no final decision has been given, the later application shall, at the request of the applicant and on the conditions laid down by the Minister of Industry, be deemed to have been filed at the time when the documents disclosing the invention were received by the Patent Authority.

Section 12

If the applicant is not a resident of this country, he shall have an agent residing in this country to represent him in all matters concerning the application.

Section 13

An application for a patent may not be amended in such a way that protection is claimed for subject-matter which was not disclosed in the application at the time when it was filed or at the time when it shall be deemed to have been filed under section 14.

Section 14

(1) If the applicant amends the application within 6 months from its date of filing, the application shall, if the applicant so requests, be deemed to have been filed at the time when the amendment was received by the Patent Authority.

(2) Any request under subsection (1) shall be submitted within 2 years from the date of filing of the application. A request may not be submitted more than once and may not be withdrawn.

Section 15

(1) If the applicant has not complied with the requirements of the application, or if the Patent Authority has other objections to the acceptance of the application, the applicant shall be notified accordingly and be invited to file his observations or to correct the application within a time limit to be specified. The Patent Authority may, however, make such amendments in the abstract as it finds necessary without consulting the applicant.

(2) If the applicant fails to file the required observations or to take steps to correct the application within the expiry of the time limit, the application shall be shelved. The notification referred to in subsection (1) shall contain information to that effect.

(3) The proceedings for grant shall, however, be resumed if the applicant submits his observations or takes steps to correct the application within 4 months after the expiry of the specified time limit and pays the prescribed resumption fee.

(4) If any renewal fee is not paid according to sections 8, 41 and 42, the application shall be shelved without previous notification. In the case of an application shelved for that reason the proceedings for grant may not be resumed.

Section 16

If, after having received the applicant's reply, the Patent Authority still has objections to the acceptance of the application, and the applicant has had the opportunity to comment on the objections, the application shall be refused unless the Patent Authority considers it necessary once more to invite the applicant under section 15(1).

Section 17

(1) If any person claims before the Patent Authority that he, and not the applicant, is entitled to the invention, the Patent Authority may, if it finds the question doubtful, invite him to bring it before the courts within a time limit to be specified. If the invitation is not complied with, the Patent Authority may disregard the claim in deciding on the patent application. Information to that effect shall be given in the invitation.

(2) If legal proceedings have been brought concerning the right to an invention for which a patent has been applied for, the proceedings for grant may be suspended until a final decision has been given in the legal proceedings.

Section 18

(1) If any person proves to the Patent Authority that he, and not the applicant, is entitled to the invention, the Patent Authority shall transfer the application to the said person if he so requests. The transferee shall pay a new application fee.

(2) If a request has been made for the transfer of a patent application, the application shall not be shelved, refused or accepted until a final decision has been made on the request.

Section 19

- (1) If the application complies with the requirements, and no objections have been found to the grant of a patent, the application shall be accepted for being laid open to public inspection under section 21.
- (2) After the application has been accepted for being laid open to public inspection, no request may be filed under section 14, and the claims may not be amended in such a way as to extend the protection conferred.

Section 20

- (1) The applicant shall pay the prescribed publication fee within 2 months after the Patent Authority has notified him of the acceptance of the application for publication. Failure to pay shall result in the shelving of the application. The proceedings for grant shall, however, be resumed if the applicant pays the publication fee and the prescribed resumption fee within 4 months after the expiry of the time limit.
- (2) If the applicant is the inventor, and if, within the time limit prescribed in subsection (1), first sentence, he requests to be exempted from payment of the publication fee, the Patent Authority may grant such exemption when it is deemed to involve great difficulties for him to pay the fee. If the request is rejected, payment within 2 months thereafter shall be regarded as payment in due time.

Section 21

- (1) When the publication fee under section 20 has been paid or exemption from payment of the said fee has been granted, the Patent Authority shall publish the application by laying it open to public inspection in order to give the public an opportunity to file an opposition against it. The publication shall be advertised.
- (2) An opposition shall be filed in writing with the Patent Authority within 3 months from the date of the advertisement.
- (3) From the date on which the application is laid open to public inspection, printed copies of the description, the claims and the abstract shall be obtainable from the Patent Authority. The copies shall contain information about the applicant and about the inventor.

Section 22

- (1) As from the date on which the application is laid open to public inspection, the files of the application shall be available to the public.
- (2) When 18 months have elapsed from the date of filing or, if priority has been claimed under section 6, from the date of priority, the files shall be available to the public even if the application has not been laid open to public inspection. If a decision has been made to shelve or to refuse the application, the files shall, however, not be available unless the applicant requests resumption of the proceedings, appeals against the refusal or requests re-establishment of rights under section 72 or 73.
- (3) At the request of the applicant the files of the application shall be made available earlier than prescribed in subsections (1) and (2).
- (4) When the files are made available under subsection (2) or (3), a notice to that effect shall be published.
- (5) If a document contains business secrets which do not concern an invention for which a patent is applied for, the Patent Authority may, on request, when circumstances make it desirable, decide that the document shall not be available or only available in part. If such a request has been filed, the document shall not be made available until a decision has been made or during the period within which the decision may be appealed against. An appeal shall have suspensive effect.

(6) If a culture of a micro-organism has been deposited under section 8a, any person shall have the right to obtain a sample of the culture when the files become available under subsection (1), (2) or (3). That does not imply that any sample shall be furnished to any person who, according to rules laid down in or pursuant to law, is not allowed to handle the deposited micro-organism. Nor shall any sample be furnished to any person if, due to the dangerous properties of the organism, his handling of the sample is supposed to involve obvious danger.

(7) Notwithstanding subsection (6) the applicant may request that until the application has been laid open to public inspection or has been finally decided upon without having been laid open to public inspection the furnishing of a sample shall only be effected to an expert in the art. The Minister of Industry shall lay down provisions governing the time limit for the submission of such a request and prescribing who may be used as an expert.

(8) The request for the furnishing of the sample shall be filed in writing with the Patent Authority and shall contain a declaration to observe the restrictions on the use of the sample which appear from rules laid down by the Minister of Industry. If the sample is to be furnished to an expert in the art, the declaration shall instead be given by the latter.

Section 23

(1) After the expiry of the time limit prescribed in section 21 (2), the proceedings for grant shall be resumed. In those proceedings the provisions of sections 15, 16, 17 and 18 shall apply *mutatis mutandis*.

(2) If an opposition has been filed, the applicant shall be notified accordingly and be given an opportunity to file his observations on the opposition.

Section 24

(1) An appeal from the final decision of the Patent Office concerning a patent application may be filed by the applicant or, if the application has been accepted despite a duly filed opposition, by the opponent. If the latter withdraws his appeal, such appeal may nevertheless be examined when circumstances make it desirable.

(2) Decisions rejecting a request for resumption under section 15 (3) or section 20 (1) or complying with a request for transfer under section 18 may be appealed against by the applicant. Decisions rejecting a request for the transfer of the application may be appealed against by the person making the request.

(3) Decisions rejecting a request under section 22 (5) may be appealed against by the person making the request.

Section 25

(1) Appeals from decisions concerning patent applications shall be filed with the Patent Board of Appeal not later than 2 months after the date on which the party concerned was notified of the decision by the Patent Office. The prescribed fee shall be paid within the same time limit. Failure to pay shall result in rejection of the appeal as inadmissible.

(2) The decisions of the Patent Board of Appeal may not be brought before any higher administrative authority.

(3) Proceedings for the trial of decisions of the Patent Office which may be appealed against to the Patent Board of Appeal may not be brought before the courts until the decision of the Patent Board of Appeal has been given, cf., however, sections 52 and 53. Proceedings for the trial of decisions by which the Patent Board of Appeal refuses an application for a patent shall be brought within 2 months after the date on which the party concerned was notified of the decision.

(4) The provision of section 22 (5) shall apply *mutatis mutandis* with respect to documents received by the Patent Board of Appeal.

Section 26

(1) A patent has been granted when the corresponding patent application has been finally accepted. When a patent has been granted, the grant shall be advertised, and a patent certificate shall be issued. If the

description or the claims have been amended as compared with the copies referred to in section 21 (3), printed copies in their final form shall be obtainable from the Patent Authority. The proprietor of the patent and the inventor shall be indicated in these copies.

(2) If an application which is available to the public is finally refused or shelved, the refusal or shelving shall be advertised.

Section 27

Granted patents shall be entered in a Register of Patents which shall be kept by the Patent Authority.

Part III *International patent application*

Section 28

(1) An 'international patent application' means an application under the Patent Cooperation Treaty, done at Washington on 19th June 1970.

(2) An international patent application shall be filed with a patent authority or an international organization which is competent under the Treaty and the Regulations to receive such application (receiving Office). An international patent application may be filed with the Patent Authority of this country in accordance with rules laid down by the Minister of Industry. The applicant shall pay the fee prescribed for the application to the Patent Authority.

(3) The provisions of sections 29 to 38 shall apply to international patent applications designating Denmark.

Section 29

An international patent application which has been accorded an international filing date by the receiving Office shall have the same effect as a patent application filed in this country on that date. The provision of section 2 (2), second sentence, shall, however, not apply unless the application has been proceeded with under section 31.

Section 30

An international patent application shall be considered withdrawn as far as Denmark is concerned in the cases referred to in Article 24 (1)(i) and (ii) of the Treaty.

Section 31

(1) If the applicant wishes to proceed with an international application with respect to Denmark, he shall within 20 months from the international date of filing or, if priority is claimed, from the priority date pay the prescribed fee to the Patent Authority and file a translation into Danish of the international application to the extent prescribed by the Minister of Industry or, if the application is written in Danish, a copy of the application.

(2) If the applicant demands that an international application shall be the subject of an international preliminary examination, and if within 19 months from the date referred to in subsection (1) he declares in accordance with the Treaty that he intends to use the results of that examination in Denmark (election of Denmark), he shall comply with the requirements of subsection (1) within 30 months from the said date.

(3) If the applicant has paid the prescribed fee within the time limits fixed in subsections (1) and (2), the prescribed translation or copy may be filed within a further period of 2 months provided that a prescribed additional fee is paid prior to the expiry of the further period.

(4) If the applicant fails to fulfil the requirements of this section, the application shall be considered withdrawn as far as Denmark is concerned.

Section 32

If the applicant withdraws a demand for international preliminary examination or an election of Denmark, the international patent application shall be considered withdrawn as far as Denmark is concerned unless the withdrawal has been effected prior to the expiry of the time limit applicable under section 31 (1) and the applicant proceeds with the application prior to the expiry of the time limits prescribed in section 31(1), cf. section 31(3).

Section 33

(1) When an international patent application has been proceeded with under section 31, the provisions of Part II of this Act shall apply to the application and to the examination and further processing thereof with the deviations provided for in this section and in sections 34 to 37. The examination and further processing of the application shall only be commenced prior to the expiry of the time limits applicable under section 31(1) or (2) if the applicant so requests.

(2) The provision of section 12 shall only be applicable as from the time when the Patent Authority may commence the examination and other processing of the application.

(3) The provisions of section 22(2) and (3) shall apply even before the application has been proceeded with when the applicant has complied with his obligation under section 31 to file a translation of the application or, if the application is written in Danish, when the applicant has filed a copy thereof with the Patent Authority.

(4) For the purposes of sections 48, 56 and 60 an international patent application shall be deemed to have been made available to the public when it has been made available under subsection (3).

(5) If the application complies with the requirements relating to form and contents provided for in the Treaty, it shall be accepted in that respect.

Section 34

An international patent application shall only be accepted for being laid open to public inspection or refused after the expiry of a time limit prescribed by the Minister of Industry unless the applicant has consented to the application being decided upon prior thereto.

Section 35

Without the consent of the applicant an international patent application shall not be laid open to public inspection or published in printed form by the Patent Authority prior to its publication by the International Bureau of the World Intellectual Property Organization (WIPO) or prior to the expiry of 20 months from the international filing date or, if priority is claimed, from the priority date.

Section 36

(1) If any part of an international patent application has not been the subject of an international search or an international preliminary examination because the application has been deemed to relate to two or more mutually independent inventions, and the applicant has not paid the additional fee under the Treaty within the prescribed time limit, the Patent Authority shall review the finding to determine whether it was justified. If this is found to be the case, the said part of the application shall be considered withdrawn before the Patent Authority unless the applicant pays the prescribed fee within 2 months after the date on which the Patent Authority notified him of the result of the review. If the Patent Authority considers that the finding was not justified, it shall proceed with the examination and other processing of the application in its entirety.

(2) The applicant may appeal against a decision under subsection (1) by which an application is found to relate to two or more mutually independent inventions. The provisions of section 25(1) to (3) shall apply *mutatis mutandis*.

(3) If the appeal is dismissed, the time limit for payment of the fee under subsection (1), second sentence, shall be calculated from the date on which the final decision is given.

Section 37

If any part of an international patent application has not been the subject of an international preliminary examination because the applicant has restricted the claims at the invitation of the International Preliminary Examination Authority, that part of the application shall be considered withdrawn before the Patent Authority unless the applicant pays the prescribed fee within 2 months after the date on which the Patent Authority invited him to pay with reference to the restriction of the examination carried out.

Section 38

(1) If a receiving Office has refused to accord an international filing date to an international patent application, or if it has decided that the application or the designation of Denmark shall be considered withdrawn, the Patent Authority shall, at the request of the applicant, review the decision to determine whether it was justified. The same shall apply to any decision from the International Bureau according to which an application shall be considered withdrawn.

(2) A request for a review under subsection (1) shall be presented to the International Bureau prior to the expiry of a time limit prescribed by the Minister of Industry. The applicant shall, prior to the expiry of the same time limit and to the extent prescribed by the Minister of Industry, file a translation of the application with the Patent Authority and pay the prescribed application fee.

(3) If the Patent Authority finds that the decision of the receiving Office or the International Bureau was not justified, the Patent Authority shall examine and process the application under Part II of this Act. If no international filing date has been accorded by the receiving Office, the application shall be deemed to have been filed on the date which in the opinion of the Patent Authority should have been accorded as the international filing date. If the application complies with the requirements relating to form and contents provided for in the Treaty, it shall be accepted in that respect.

(4) The provision of section 2(2), second sentence, shall apply to applications to be examined and processed pursuant to subsection (3), provided that the application is made available to the public under section 22.

Part IV

Extent of the protection and term of the patent

Section 39

The extent of the protection conferred by a patent shall be determined by the claims. For the interpretation of the claims the description may serve as a guide.

Section 40

A granted patent may be maintained until 20 years have elapsed from the date of filing of the patent application. For the patent a renewal fee shall be paid in respect of each fee year beginning after the grant of the patent.

Part V

Payment of renewal fees

Section 41

(1) The renewal fee shall fall due on the last day of the month in which the fee year begins. The renewal fees in respect of the first two fee years shall, however, only fall due at the same time as the fee in respect of the third fee year. Renewal fees may not be paid earlier than 3 months before the due date.

(2) For a later application as provided for in section 11 the renewal fees in respect of fee years having begun before the date of filing of the later application or beginning within 2 months after that date shall in no case fall due before 2 months have elapsed after the said date. For an international patent

application renewal fees in respect of fee years having begun before the date on which the application was proceeded with under section 31 or taken up for examination and other processing under section 38 or beginning within 2 months after that date shall in no case fall due before 2 months have elapsed after the date on which the application was proceeded with or taken up for examination and other processing.

(3) Any renewal fee may, together with the prescribed additional fee, be paid within 6 months after its due date.

Section 42

(1) If the inventor is the applicant or the proprietor of the patent, and if it is deemed to involve great difficulties for him to pay the renewal fees, the Patent Authority may grant him a respite for the payment thereof, provided that a request to that effect is submitted not later than on the date on which the renewal fees fall due for the first time. Respites may be granted of up to 3 years at a time, but no longer than until 3 years have elapsed from the grant of the patent. Any request for a prolongation of a respite shall be submitted not later than on the date on which the granted respite expires.

(2) If a request for a respite or a prolongation of a respite is rejected, payment within 2 months thereafter shall be regarded as payment in due time.

(3) Any renewal fee for the payment of which a respite has been granted according to subsection (1) may, together with the same additional fee as referred to in section 41(3), be paid within 6 months after the date until which the respite has been granted.

Part VI

Licensing, transfer, etc.

Section 43

If the proprietor of the patent has granted another person a right to exploit the invention commercially (licence), the licensee may not transfer that right to others in the absence of an agreement to the contrary.

Section 44

(1) The transfer of a patent or the grant of a licence shall on request be recorded in the Register of Patents.

(2) If it is proved that a registered licence has terminated, the licence shall be deleted from the Register.

(3) The provisions of subsections (1) and (2) shall also apply to compulsory licences and rights under section 53(2).

(4) Legal proceedings in respect of a patent may always be brought against the person who is entered in the Register as proprietor of the patent, and any notification from the Patent Authority may be sent to him.

Section 45

(1) If a patented invention is not worked to a reasonable extent in this country when 3 years have elapsed from the grant of the patent and 4 years have elapsed from the filing of the patent application, any person wishing to work the invention in this country may obtain a compulsory licence to do so unless there are shown legitimate reasons for the failure to work the invention.

(2) Subject to reciprocity the Minister of Industry may direct that for the purposes of subsection (1) working of the invention in another country shall be equivalent to working in this country.

Section 46

(1) The proprietor of a patent for an invention the exploitation of which is dependent on a patent held by another person may obtain a compulsory licence to exploit the invention protected by the latter

patent if it is deemed to be reasonable in view of the importance of the former invention or for other special reasons.

(2) The proprietor of the patent in respect of which a compulsory licence has been granted pursuant to the provision of subsection (1) may obtain a compulsory licence to exploit the other invention unless special circumstances make it undesirable.

Section 47

When required by important public interests, any person who wishes to exploit an invention commercially for which another person holds a patent may obtain a compulsory licence to do so.

Section 48

(1) Any person who, in this country, at the time when a patent application was made available to the public, was commercially exploiting the invention for which a patent is applied for, may, if the application results in a patent, obtain a compulsory licence to exploit the invention if very special circumstances make it desirable and he had no knowledge and could not reasonably have obtained any knowledge of the application. Such a right shall also, under similar conditions, be enjoyed by any person who had made substantial preparations for commercial exploitation of the invention in this country.

(2) Such a compulsory licence may include the time preceding the grant of the patent.

Section 49

(1) A compulsory licence may only be granted to a person who may be presumed to be able to exploit the invention in a reasonable and acceptable way and in accordance with the terms of the licence.

(2) A compulsory licence shall not prevent the proprietor of the patent from exploiting the invention himself or from granting licences to others. The compulsory licence may only be transferred to others together with the business in which it is exploited or in which the exploitation was intended.

Section 50

The Maritime and Commercial Court of Copenhagen shall decide as the court of first instance whether a compulsory licence shall be granted and shall also determine the extent to which the invention may be exploited, fix the compensation and lay down the other terms of the compulsory licence. If circumstances should change considerably, the Court may, at the request of either party, cancel the licence or lay down new terms of the licence.

Part VII

Termination of the patent, etc.

Section 51

If any renewal fee is not paid in accordance with the rules laid down in sections 40, 41 and 42, the patent shall lapse as from the beginning of the fee year in respect of which the fee has not been paid.

Section 52

(1) A patent may be revoked by a court decision if:

- (i) it has been granted notwithstanding that the requirements under sections 1 and 2 are not complied with;
- (ii) it relates to an invention which is not disclosed in a manner sufficiently clear to enable a person skilled in the art to carry out the invention;
- (iii) its subject-matter extends beyond the content of the application as filed; or
- (iv) it has been granted notwithstanding that the protection conferred by the patent has been extended after the acceptance of the application for being laid open to public inspection.

(2) A patent may, however, not be revoked in its entirety on the ground that the proprietor of the patent was only partially entitled to the patent.

(3) With the exceptions provided for in subsection (4) proceedings may be instituted by any person.

(4) Proceedings on the ground that the patent has been granted to another person than the one entitled thereto under section 1, may only be instituted by the person claiming to be entitled to the patent. Such proceedings shall be brought within 1 year after the entitled person obtained knowledge of the grant of the patent and of the other circumstances on which the proceedings are based. If the proprietor of the patent was in good faith when the patent was granted or when he acquired the patent, the proceedings may not be brought later than 3 years after the grant of the patent.

Section 53

(1) If a patent has been granted to another person than the one entitled thereto under section 1, the court shall transfer the patent to the entitled person if he so claims. The provisions of section 52(4) concerning the time of instituting the proceedings shall apply *mutatis mutandis*.

(2) The person who is deprived of the patent shall, if he in good faith is exploiting the invention commercially in this country or has made substantial preparations for such exploitation, be entitled, for a reasonable compensation and on reasonable conditions in other respects, to continue the exploitation already commenced or to commence the planned exploitation retaining its general character. Such a right shall also, under the same conditions, be enjoyed by holders of registered licences.

(3) Rights under subsection (2) may only be transferred to others together with the business in which they are exploited or in which the exploitation was intended.

Section 54

(1) If the proprietor of a patent surrenders the patent in writing to the Patent Authority, the Patent Authority shall declare the patent to have ceased to have effect.

(2) If proceedings have been instituted for the transfer of a patent, the patent shall not be declared to have ceased to have effect until a final decision has been given in the proceedings.

Section 55

When a patent has lapsed or has been declared to have ceased to have effect or has been revoked or transferred to another person by a final court decision, the Patent Authority shall publish a notice to that effect.

Part VIII

Obligation to give information about patents

Section 56

(1) An applicant for a patent who invokes his patent application against another person before the files of the application have become available to the public shall be under an obligation on request to consent to letting the said person obtain inspection of the files of the application. If the application comprises a deposited culture of a micro-organism as referred to in section 8a, the said person shall also have a right to obtain a sample of the culture. The provisions of section 22(6), second and third sentences, (7) and (8) shall apply in those cases.

(2) Any person who, by direct communication with another person or in advertisements or by inscription on goods or their packaging or in any other way, indicates that a patent has been applied for or granted, without indicating at the same time the number of the application or the patent, shall be under an obligation to give such information to any person requesting it without undue delay. If it is not explicitly indicated that a patent has been applied for or granted, but circumstances are such as to create that

impression, information as to whether a patent has been applied for or granted shall be given on request without undue delay.

Part IX

Liability to punishment, liability for damages, etc.

Section 57

(1) If any person infringes the exclusive right conferred by a patent (patent infringement), and the infringement is committed intentionally, he shall be punished by a fine or, under aggravating circumstances, by ordinary imprisonment of not more than 3 months.

(2) If the infringement has been committed by a limited liability company, a cooperative society or the like, the enterprise as such may be liable to a fine.

(3) Proceedings shall be brought by the injured party.

Section 58

(1) Any person who intentionally or negligently commits patent infringement shall be liable to pay a reasonable compensation for the exploitation of the invention as well as damages for the further injury which the infringement may have caused.

(2) If any person commits patent infringement which is not intentional or due to negligence, he shall be liable to pay compensation and damages under the provisions of subsection (1) if and to the extent it is found reasonable.

Section 59

(1) In the case of patent infringement the court may, to the extent it is found reasonable and when so claimed, make decisions to prevent the abuse of products manufactured in accordance with the patented invention or of any apparatus, tool or other article the use of which would involve patent infringement. It may thus be decided that the article shall be altered in a specified manner or destroyed or, in the case of a patented article, that it shall be surrendered to the injured party in return for compensation. This, however, shall not apply to any person who in good faith has acquired the said article or has acquired rights in respect of the article and who has not himself committed patent infringement.

(2) Under very special circumstances the court may, notwithstanding the provisions of subsection (1) and when so claimed, grant permission to dispose freely of the products, apparatuses, tools and other articles referred to in subsection (1) during the term of the patent or part of that term in return for a reasonable compensation and on reasonable conditions in other respects.

Section 60

(1) If any person exploits an invention without permission after the files of the application have been made available to the public, and the application results in a patent, the provisions concerning patent infringement, with the exception of section 57, shall apply *mutatis mutandis*. The protection conferred prior to the advertisement of publication under section 21 shall, however, only extend to subject-matter disclosed both in the claims as worded at the time when the application was made available to the public and in the claims of the patent.

(2) The person concerned shall only be liable to the extent referred to in section 58(2) to pay damages for injury caused by infringement committed prior to the advertisement of the publication of the application under section 21.

(3) Claims for damages under subsection (1) shall not be barred by prescription earlier than 1 year after the grant of the patent.

Section 61

In proceedings for patent infringement the invalidity of the patent may only be put in issue if a claim for revocation is set up against the proprietor of the patent, possibly after the latter has been summoned under the rules laid down in section 63(4). If the patent is revoked, the provisions of sections 57 to 60 shall not apply.

Section 62

(1) Any person who, in the cases referred to in section 56, fails to comply with his obligations or gives false information shall be punished by a fine, provided that a severer punishment is not provided for by other legislation, and shall be liable to make up for the injury caused thereby to the extent it is found reasonable.

(2) The provisions of section 57(2) and (3) shall apply *mutatis mutandis*.

Section 63

(1) Any person who institutes proceedings for the revocation of a patent, for the transfer of a patent or for the grant of a compulsory licence shall at the same time notify the Patent Authority accordingly and by registered mail notify any licensee who is entered in the Register of Patents and whose address is recorded in that Register of the proceedings. Any licensee who wishes to institute proceedings for patent infringement shall in a similar way notify the proprietor of the patent of the proceedings, provided that the latter's address is recorded in the Register.

(2) If the plaintiff does not prove on the day on which the case comes up for trial that notification under subsection (1) has been effected, the court may fix a time limit for the compliance with the requirements of subsection (1). If the said time limit is not observed, the case shall be dismissed.

(3) In proceedings for patent infringement brought by the proprietor of the patent the defendant shall notify the Patent Authority and registered licensees in accordance with the rules laid down in subsection (1) if he intends to claim revocation of the patent. The provisions of subsection (2) shall apply *mutatis mutandis* so that the claim for revocation shall be dismissed if the time limit which has been fixed is not observed.

(4) In proceedings for patent infringement brought by a licensee the defendant may summon the proprietor of the patent to attend without regard to his venue in order to claim against him that the patent be revoked. The provisions of Part 34 of the Administration of Justice Act shall apply *mutatis mutandis*.

Section 64

(1) The legal proceedings listed below shall be brought in the High Court as the court of first instance:

- (i) proceedings concerning the right to an invention which is the subject-matter of an application for a patent;
- (ii) proceedings concerning the grant of a patent, cf. section 25(3);
- (iii) proceedings for the revocation of a patent or for the transfer of a patent, cf. sections 52 and 53 and proceedings concerning rights under section 53(2);
- (iv) proceedings concerning rights under section 4 and section 74(2);
- (v) proceedings concerning patent infringement;
- (vi) proceedings for the assignment of a patent and proceedings concerning voluntary licences.

(2) Applicants and proprietors of patents who are not residents of this country shall, in proceedings brought under this Act, be deemed to have their venue in Copenhagen.

Section 65

Office copies of court decisions in the cases referred to in sections 50 and 64(1) shall be communicated to the Patent Authority on the initiative of the court.

Part X *Miscellaneous provisions*

Section 66

(1) A proprietor of a patent who is not a resident of this country shall have an agent residing in this country and recorded in the Register of Patents to receive services and other notifications concerning the patent on his behalf.

(2) If the proprietor of the patent has not such an agent, services, etc. may be effected in the way prescribed in section 159(2) of the Administration of Justice Act.

(3) Subject to reciprocity the Minister of Industry may direct that the rules laid down in subsection (1) shall not apply to proprietors of patents who are residents of other countries or who have agents residing in those countries and recorded in the Register of Patents in this country to receive services and other notifications, etc. on their behalf.

Section 67

(1) Appeals from the decisions of the Patent Office under section 44 or section 72(1) and (2) as well as section 73 may be filed by the applicant or the proprietor of the patent with the Patent Board of Appeal not later than 2 months after the date on which he was notified of the decision. Other parties interested in the said decision may file a similar appeal not later than 2 months after the advertisement of the decision.

(2) The fee prescribed for the appeal shall be paid within the time limit referred to in subsection (1). If payment is not made, the appeal shall be rejected as inadmissible.

Section 68

(1) The Minister of Industry shall fix the amounts, etc. of the fees provided for in this Act and of handling fees, etc.

(2) As far as renewal fees are concerned, the Minister of Industry may direct that one or more of the first fee years shall be fee-free.

Section 69

(1) The Minister of Industry shall lay down further provisions concerning patent applications and their examination and other processing, concerning the arrangement and keeping of the Register of Patents, concerning the publication and contents of the Patent Gazette and concerning the procedures of the Patent Office. It may thus be prescribed that the records of the Patent Authority relating to applications filed shall be available to the public. The Minister of Industry may lay down specific rules concerning the days on which the Patent Office shall be closed.

(2) The Minister of Industry may direct that, at the request of the authority of another country, the Patent Authority may inform the said authority of the examination and other processing of patent applications filed in this country and that in deciding whether the conditions of patentability are complied with the Patent Authority may accept novelty searches which have been carried out for that purpose by a corresponding authority in another country or by an international institution.

(3) The Minister of Industry may, furthermore, direct that at the request of the Patent Authority and within a time limit fixed by that Authority any applicant who in any country has filed a corresponding application for a patent shall furnish information about the result of the examination as to the patentability of the invention which has been communicated to him by the patent authority of that country and transmit a copy of the correspondence with the said authority. However, no obligation to furnish information may be prescribed in respect of any application referred to in Part III of this Act which has been the subject of an international preliminary examination on which a report has been filed with the Patent Authority.

Section 70

For inventions relating to war materiel or processes for the manufacture of war materiel secret patents may be granted in accordance with special provisions.

Section 71

- (1) The Patent Office may on request undertake the solution of special tasks in the nature of technological service.
- (2) The Minister of Industry shall lay down rules governing that service and the payment therefor.

Section 72

(1) If, apart from the cases referred to in subsection (2), the non-observance of a time limit vis-à-vis the Patent Authority prescribed by or provided for in this Act causes a loss of rights to an applicant who has taken all due care reasonably required, the Patent Authority shall on request re-establish his rights. The request shall be filed in writing with the Patent Authority within 2 months from the removal of the cause of the non-observance of the time limit though not later than 1 year after the expiry of the time limit. Within the same time limits the omitted act shall be completed and the fee prescribed for the re-establishment of rights be paid.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* if an applicant or a proprietor of a patent has not paid a renewal fee within the time limit prescribed in section 41(3) or section 42(3) provided that the request for re-establishment of rights is filed and the renewal fee is paid not later than 6 months after the expiry of the time limit.

(3) The provisions of subsection (1) shall not apply to the time limit referred to in section 6(1).

Section 73

(1) If, in the cases referred to in section 31, the applicant has availed himself of mailing, and the mail is not received in due time, but the act is completed within 2 months after the date on which the applicant noticed or should have noticed that the time limit was exceeded and not later than 1 year after the expiry of the time limit, the Patent Authority shall re-establish the rights, provided that

- (i) within the 10 days preceding the expiry of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity or other like reason in the locality where the sender is staying or has his place of business, and the mailing to the Patent Authority is effected within 5 days after the resumption of the postal service; or
- (ii) the mailing was effected by registered mail to the Patent Authority not later than 5 days prior to the expiry of the time limit, though only if the mailing was effected by airmail, where possible, or if the sender had every reason to believe that surface mail would not arrive later than 2 days after the date of mailing.

(2) If the applicant wishes to have his rights re-established under subsection (1), he shall file a written request to that effect with the Patent Authority within the expiry of the time limit referred to.

Section 74

(1) When a request under section 72 or 73 has been accepted, and, in consequence, a patent application which has been shelved or refused after having been made available to the public shall be processed further, or a lapsed patent shall be regarded as maintained, a notice to that effect shall be published.

(2) Any person who, after the expiry of the time limit prescribed for the resumption of proceedings in respect of a shelved application or after the refusal of the application or after the advertisement of the lapse of the patent, but prior to the publication of the notice under subsection (1), in good faith has commenced a commercial exploitation of the invention in this country or made substantial preparations for such exploitation, may continue the exploitation retaining its general character.

(3) The right provided for in subsection (2) shall only be transferred to others together with the business in which it has arisen or in which the exploitation was intended.

Section 74a

If the Minister of Industry transfers his authority under this Act to the Patent Office, the Minister may lay down rules concerning the right of appeal including rules to the effect that appeals may not be brought before any higher administrative authority.

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 may 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

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 files 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, however, 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 the 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 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 rights 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, it shall have the 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 on which 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 of the published application in Danish to the Patent Authority of this country, the Patent Authority of this country shall make the translation 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 shall, 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 patent 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, it 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, it 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 replace the previous translation. 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 took effect, 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, that 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 at the request of the applicant regard the application as converted into 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 on Jurisdiction and the Recognition of Decisions in respect of the Right to the Grant of a European Patent (Protocol on Recognition) annexed to the Convention 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 of this Part of the Act.

Part XI

Provisions as to entry into force and transitional provisions

1. –

(1) Act No. 479, 20th December 1967, shall enter into force on 1st January 1968. At the same time the Consolidate Patents Act No. 361, 19th December 1958, shall be repealed. Furthermore, section 4 of the Employees' Inventions Act No. 142, 29th April 1955, shall be repealed.

(2) Patents for inventions of food products¹ and pharmaceutical products² and patents for processes for the manufacture of food products superscript shall, however, not be granted until after a date to be fixed by the Minister of Industry.

2. –

(1) With the exceptions indicated below the 1967 Act shall also apply to patents which have been granted or will be granted under the previous legislation.

(2) If prior to the entry into force of the 1967 Act a right to exploit an invention has been acquired under section 6 of the previous Act, the right shall be preserved notwithstanding the compliance with section 4 of the 1967 Act.

3. A patent which has been granted or will be granted under the previous legislation shall only be revoked in accordance with the provisions of section 24 of the previous Patents Act.

4. –

(1) Any person who, in this country, at the entry into force of the 1967 Act, was commercially exploiting an invention which was not patentable under section 1 of the previous Patents Act or who had made substantial preparations for such exploitation shall have the right to continue the exploitation in accordance with the rules laid down in section 4 of the 1967 Act notwithstanding the exploitation having been commenced or preparations for the exploitation having been made after the filing of a patent application and notwithstanding a subsequent grant of a patent for the invention.

(2) Any person who, in this country, at the entry into force of the 1967 Act, was commercially exploiting an invention for which another person holds a patent, without thereby acting contrary to the provisions of section 5 of the previous Patents Act, shall have the right to continue the exploitation retaining its general character. Such a right shall also, under similar conditions, be enjoyed by any person who, prior to the said date, had made substantial preparations for such exploitation of the invention in this country. The right may only be transferred to others together with the business in which it has arisen or in which the exploitation was intended.

5. If an invention has been made available to the public prior to the entry into force of the 1967 Act in consequence of actions taken by the applicant or his predecessor in title, and the patent application has been filed not later than on 1st July 1968, only section 1 (2) (iii) of the previous Patents Act shall be applicable

¹ Food products and processes for the manufacture of food products have been patentable on the basis of applications filed on and after 1st January 1989 or which pursuant to section 14 of the Patents Act are considered to have been filed after that date, cf. the Ministry of Industry Order No. 511, 23rd August 1988.

² Pharmaceutical products have been patentable on the basis of applications filed on and after 1st December 1983, cf. the Ministry of Industry Order No. 450, 16th December 1983.

for the purpose of deciding whether a patent may be granted notwithstanding the said actions or whether a patent is to be regarded as invalid.

6. Applications which, at the entry into force of the 1967 Act, were pending before the Patent Authority shall be examined, processed and decided upon under the provisions of the previous legislation, provided that the applicant has been notified that publication under section 16 of the previous Patents Act may be effected.

7. Notwithstanding the provisions of section 22, applications filed prior to the entry into force of the 1967 Act shall not be available to the public until 6 months after the said entry into force unless the application is laid open to public inspection before that date, or the applicant requests that the application be made available.

8. Renewal fees in respect of patent years beginning before 1st July 1968, shall be payable in accordance with the provisions of the previous Patents Act.

9. In the case of patents of addition granted before the entry into force of the 1967 Act the provisions of the previous Act relating to patents of addition shall apply instead of section 7 (2), second sentence, section 7 (3) and section 41 (2) of the 1967 Act.

Act No. 264, 8th June 1978, contains the following provisions as to entry into force and transitional provisions:

Section 2

Section 5 shall enter into force at the publication of this Act in the Law Gazette. Otherwise, the date on which this Act shall enter into force shall be fixed by the Minister of Industry, who may furthermore direct that parts of this Act shall enter into force on a later date.^{3 4}

Section 3

This Act shall also apply to patent applications which, on the date of its entry into force, are pending before the Patent Authority. To this provision the following exceptions shall apply:

- (i) If, prior to the entry into force of this Act, the applicant has been notified of the acceptance of the application for publication, the provisions of the Patents Act, 20th December 1967, shall apply.
- (ii) The provisions of the previous legislation relating to patents of addition shall apply to applications filed before the entry into force of this Act.
- (iii) The provisions relating to cultures of micro-organisms shall only apply to applications filed after the entry into force of those provisions.
- (iv) The provisions relating to abstracts and to the publication fee, cf. section 1 (vi), (xi) and (xii)⁵, shall only apply to applications filed after the entry into force of this Act.
- (v) The provisions of section 8(2), second sentence, of the Patents Act, cf. section 1 (vi) of this Act, shall only apply to applications filed after the entry into force of this Act.

³ By Order No. 544, 25th October 1978, sections 1 to 4 of Act No. 264, 8th June 1978 were put into force on 1st December 1978. Excepted therefrom was section 1 (vi) of the said Act, as far as concerns section 8 (2), last sentence, of the Patents Act then in force, section 1 (xiv) (section 22 (6) of the Patents Act then in force) and section 1 (xxviii), as far as concerns section 69 (3), last sentence, of the Patents Act then in force. Furthermore, the provisions of section 1 (xv) (Part III of the Patents Act then in force) concerning international preliminary examination were excepted.

⁴ By the Patent Office Order No. 602, 26th August 1988, the provisions concerning international preliminary examination were put into force on 1st November 1988 (Part III of this Consolidate Act).

⁵ Cf. section 8 (3) and sections 20 and 21 of this Consolidate Act.

Section 4

This Act shall also apply to patents which have been or will be granted under the Patents Act, 20th December 1967. To this provision the following exceptions shall apply:

- (i) The provisions of the Patents Act, 20th December 1967, relating to patents of addition and to the revocation of patents shall apply to patents of addition and patents granted under the said Act.
- (ii) The term of patents for which applications have been filed more than 12 years before the entry into force of this Act shall be determined by section 40 of the Patents Act, 20th December 1967.
- (iii) Section 1 (xix) and (xxii) ⁶ as well as (xxix) (section 72 (2)) ⁷ shall not apply to patents which have lapsed under section 51(1) prior to the entry into force of this Act.
- (iv) Section 1 (xxiv) ⁸ shall only apply to patents granted on the basis of applications filed after the entry into force of this Act.

Section 5

The Patent Cooperation Treaty, done at Washington on 19th June 1970, and the Convention on the Unification of Certain Points of Substantive Law on Patents for Invention, done at Strasbourg on 27th November 1963, may be ratified on behalf of Denmark.

Act No. 153, 11th April 1984, to Amend the Patents Act, contains the following provisions as to entry into force and transitional provisions:

Section 2

- (1) Section 1 (vii) to (xii), (xx) and (xxii) ⁹ shall enter into force 3 months after the publication of this Act in the Law Gazette ¹⁰.
- (2) The date on which the remaining provisions of this Act shall enter into force shall be fixed by the Minister of Industry ¹¹.

Section 3

The provisions of this Act shall apply to patent applications which on the date of entry into force of the provisions are pending before the Patent Authority. To this provision the following exceptions shall apply:

- (i) The provisions relating to the deposit of cultures of micro-organisms shall only apply to applications filed after the entry into force of those provisions.
- (ii) (Transitional provision, not reproduced).
- (iii) (Transitional provision, not reproduced).¹²

⁶ Section 51 (2) and (3) and section 55, second sentence, of the Patents Act, 20th December 1967, have been repealed by section 1 (xix) and (xxii) of Act No. 264, 8th June 1978.

⁷ Section 72 of Act No. 264, 8th June 1978, has been amended by section 1 (xxiii) of Act No. 153, 11th April 1984.

⁸ Section 60 of the Patents Act, 20th December 1967, has been amended by section 1 (xxiv) of Act No. 264, 8th June 1978.

⁹ Sections 31, 32, and 33 (1) and (3), sections 34 and 38 (2), section 66 (2) and section 69 (3) of this Consolidate Act.

¹⁰ Act No. 153 was published in the Law Gazette on 14th April 1984.

¹¹ By Order No. 498, 27th September 1984, section 1 (ii), (iv), (v), (xiii)-(xvii), (xxi) and (xxiii) of Act No. 153 was put into force on 1st February 1985. Section 1 (i), (iii), (vi), (xviii) and (xix) of the Act (section 8 (2), section 8a, section 22 (6) to (8), section 52 (1)(ii) and section 56 (1) of this Consolidate Act) was put into force on 1st July 1985 by Order No. 176, 2nd May 1985.

¹² Section 8 (5), section 14 (2), section 15 (4), sections 40, 41, 42, 51, 68 and 72 of this Consolidate Act.

Section 4

The provisions of this Act shall also apply to patents which have been granted at the entry into force of the provisions. To this provision the following exceptions shall apply:

- (i) (Transitional provision, not reproduced).
- (ii) The provisions relating to the revocation of patents of Act No. 479, 20th December 1967, and Act No. 264, 8th June 1978, shall apply to patents granted under the said Acts.
- (iii) The provisions relating to the deposit of cultures of micro-organisms shall only apply to patents granted on the basis of applications filed after the entry into force of those provisions¹³.

Act No. 854, 23rd December 1987, to Amend the Patents Act, the Industrial Designs Act, the Trade Marks Act and the Collective Marks Act contains the following provision as to entry into force:

Section 5

This Act shall enter into force on 1st January 1988¹⁴.

Act No. 368, 7th June 1989, to Amend the Patents Act (Ratification of the European Patent Convention) contains the following provisions as to entry into force:

Section 2

This Act shall enter into force on 1st January 1990¹⁵.

Section 3

Powers which according to the Constitution are vested in the authorities of this Kingdom may, to the extent laid down in the European Patent Convention, be executed by the institutions referred to in that Convention.

Section 4

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

The Ministry of Industry, 27th November 1989

Nils Wilhjelm

¹³ I.e. on and after 1st July 1985, cf. Order No. 176, 2nd May 1985

¹⁴ Section 7, section 69 (1) and section 74a of this Consolidate Act.

¹⁵ Part X A of this Consolidate Act