

## Secret Patents Act (Consolidated Act No. 547 of October 25, 1978, as amended by Act No. 369 of June 7, 1989)\*

### 1.–

(1) For inventions relating to war materials or processes for the manufacture of war materials, secret patents may be granted in accordance with the provisions below.

(2) For the purposes of this Act the meaning of "war materials" shall be defined by Royal decree.

2. If required for the sake of the defense of the country, the Minister of Industry may, at the request of the Minister of Defense, decide that a patent for an invention falling within the scope of Section 1 shall be granted as a secret patent, provided that the application for a patent for the said invention has been filed by a person or an enterprise residing in this country or by a Danish institution.

### 2a.–

(1) For an invention falling within the scope of Section 1 and owned by a person or an enterprise residing in this country or by a Danish institution, patent protection may not be sought on the basis of an international or European application designating Denmark or which was changed after the filing to designate Denmark, unless the application is filed through the Patent Authority of this country.

(2) If it is decided that a patent for the invention in this country may be granted only as a secret patent, the application may not be proceeded with as an international or European application without the authorization of the Minister of Defense. If such authorization is not given, the applicant may convert the application into an application for a patent in Denmark only; in that case, the provisions of Parts III and XA of the Patents Act<sup>1</sup> concerning conversion shall apply *mutatis mutandis*.

### 3.–

(1) An invention falling within the scope of Section 1 and being the subject of an application for a patent filed by a person or an enterprise residing in this country or by a Danish institution may not be published, disclosed to others or made the subject of an application for a patent, for the registration of a utility model or for any other protection in a foreign State without the authorization of the Minister of Defense. Neither may rights attached to such application be transferred to others by agreement or by legal proceedings without the consent of the Minister of Defense.

(2) The provisions of subsection (1) shall not apply after the expiry of three months from the filing of the application, unless it has been decided that a patent, if granted, shall be granted as a secret patent or the applicant has been notified that the matter has not been finally decided upon and that, consequently, the provisions of subsection (1) will be applicable for a further three months.

4. The provisions of Sections 2, 2a and 3 shall not apply to any invention which, prior to the filing of an application for a patent, has been published or made the subject of an application for an ordinary patent abroad. Nor shall they apply to any invention which has previously been made the subject of an application for a patent in Denmark if, after the expiry of the time limits prescribed in Section 3, such application has been proceeded with as an application for an ordinary patent.

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\* Danish title: Bekendtgørelse af Lov om hemmelige patenter (Lov nr. 18 af 27. januar 1960 om hemmelige patenter, som ændret ved lov nr. 215 af 31. maj 1968 og lov nr. 265 af 8. juni 1978).

Entry into force (of the Law of 1989): January 1, 1990.

Source: Communication from the Danish authorities.

Note: English translation furnished by the Danish authorities.

<sup>1</sup> See *Industrial Property Laws and Treaties*, DENMARK – Text 2-001.

5. Applications for patents which are to be granted as secret patents shall be examined and processed according to the provisions of the Patents Act, with the proviso that the provisions of Sections 19 to 23 shall not apply. If the application complies with the requirements, and if there is no basis for refusal under Section 16, a secret patent shall be granted and a patent certificate issued.

6. If it has been decided to grant a patent as a secret patent, the advertisement of the grant provided for in Section 26 of the Patents Act and the entry in the Register referred to in Section 27 shall be effected with an indication of the words "secret patent" and without any indication of the subject matter of the patent and the names of the proprietor of the patent and his agent. In addition, any further advertisements concerning the patent shall be effected with an indication of the said words and without any indication of the information referred to. Until further notice, printing and publication of the patent specification shall not be effected, and the files of the patent application and the patent shall not be open to inspection. The publication fee shall, however, be payable in the usual way.

7. Inventions which are the subject of secret patents may not be sought to be protected by patents abroad or disclosed to third parties without the consent of the Minister of Defense. Neither may rights attached to such patents be transferred to others by agreement or by legal proceedings without the consent of the Minister of Defense.

8.—

(1) Where a decision under Section 2 is rescinded prior to the grant of the patent, the application shall be proceeded with according to the normal provisions of the Patents Act.

(2) Where a decision under Section 2 is rescinded after the grant of a secret patent, that patent shall be converted into an ordinary patent. In that case the Register of Patents shall be supplemented with the information to be entered therein according to the provisions applicable to ordinary patents and a complete advertisement concerning the patent shall be effected. Furthermore, the patent specification shall be published.

(3) When a secret patent ceases to have effect, the corresponding patent specification shall be published without undue delay, unless the Minister of Defense decides that the invention shall continue to be kept secret.

9. The provisions of Section 8(1) and 8(2) shall apply *mutatis mutandis* if it is established to the satisfaction of the Patent Authority that the invention has been disclosed in such a manner as to enable a person skilled in the art to carry it out.

10. The Minister of Industry may direct that applications for patents for inventions falling within the scope of Section 1 and filed in this country by institutions, persons or enterprises residing in a foreign State shall be examined and processed according to the provisions of this Act and that the patents, if granted, shall be granted as secret patents.

11.—

(1) Any violation of the provisions of Sections 2a, 3 and 7 shall be punished by fines or by imprisonment of not more than one year, provided that a more severe punishment is not provided for by other legislation.

(2) The same punishment shall be imposed upon any person who discloses an invention to third parties after the Minister of Defense has decided under Section 8(3) that it shall continue to be kept secret.

(3) In legal proceedings concerning the inventions provided for in this Act, the court may decide that the case shall be heard *in camera*.

12. After negotiation with the Minister of Defense, the Minister of Industry may lay down the provisions necessary for the implementation of this Act, including provisions governing the right of the Ministry of Commerce and the Ministry of Defense to consult the patent applications filed with the Patent Office.