

IV. Officers of the Meeting

Chairman: Mr. E. Armitage (United Kingdom)
 Vice-Chairman: Mr. M. Sasaki (Japan)
 Secretary: Dr. Arpad Bogsch (BIRPI)

LEGISLATION

The Nordic Patent Laws*)

Issued

in Denmark on December 20, 1967 (No. 479),
 in Finland on December 15, 1967 (No. 550),
 in Norway on December 15, 1967, and
 in Sweden on December 1, 1967 (No. 837)

Introductory Note

The new Danish, Finnish, Norwegian and Swedish Patent Laws, which came into force on January 1, 1968, are the result of close collaboration between the Nordic countries which consulted together constantly throughout the whole legislative procedure, from the initial research right up to and including the parliamentary committee stage. To a very large extent, therefore, harmonization of these new Laws has been achieved. Differences in the Laws mainly concern the organization of the various judicial and administrative authorities, since it is inevitable that the various national laws on court proceedings should be reflected by greater variances in the provisions dealing with these matters.

To emphasize the harmonized nature of the Laws, it seems appropriate to present them to the international reader as a unity, in so far as this is possible. The following text is therefore presented under the title "The Nordic Patent Laws" as a common text. Where separate translations of certain Sections were necessary due to differences in substance, the Sections concerned are set out in full for each country. Minor differences are given in footnotes. Due to the differences in the national laws on court proceedings etc., from Chapter IX onwards the Laws are presented separately as continuous texts for each country, except in those cases where it has been possible to substitute references to the Swedish text. The latter text is given first as the translator originally worked from that text. It should, however, be noted that the differences referred to do not in any way detract from the harmonization achieved by the common general principles of patent law contained in the Laws.

Chapter I. General Provisions

Section 1

On application, any person who has made an invention which is capable of industrial application, or his successor in

title, shall have the right to obtain a patent for the invention and thereby acquire an exclusive right to exploit the invention commercially in accordance with this Law.

A patent shall not be granted for

- (1) an invention the exploitation of which would be contrary to morals or public order;
- (2) plant or animal varieties or essentially biological processes for the production of plants or animals; however, a patent may be granted for a microbiological process and the products thereof.

Section 2

A patent shall be granted only for an invention which essentially differs from what was known prior to the date of the application for a patent.

Everything made available to the public in writing, during lectures, by exploitation, or otherwise, shall be considered known. Further, the contents of a patent application filed in this country before the said date shall be considered known if the application becomes available to the public in accordance with the provisions of Section 22.

Nevertheless, a patent may be granted for an invention despite the fact that the invention was made available to the public if this was done within six months prior to the filing of the patent application

- (1) in consequence of an evident abuse in relation to the applicant or his predecessor in title, or
- (2) because the applicant or his predecessor in title displayed the invention at an official or officially recognized international exhibition.

Section 3

The exclusive right conferred by a patent shall consist, subject to the exceptions stated below, in the fact of others being prohibited, except with the permission of the proprietor, from commercially exploiting the invention by using a patented process, by manufacturing, importing, using or selling a patented product, or by offering it for sale, lease or hire, or in any other way.

If the invention concerns a process for the manufacture of products, the exclusive right shall also include the products manufactured by such process.

The exclusive right shall not extend to the exploitation of articles which, in violation of this right, have been sold in this country in retail stores or in a similar manner, provided that the purchaser at the time of purchase did not know or ought not to have known that the exclusive right was infringed.

Section 4

A person who, at the time when the application was filed, was commercially exploiting the invention in this country may continue to do so without regard to the patent so long as he retains the general character of the previous exploitation, provided that the exploitation did not constitute evident abuse in relation to the applicant or his predecessors in title. Such right of exploitation shall, subject to the same conditions, also be accorded to a person who has undertaken sub-

*) Translation kindly supplied by the Swedish Patent Office, in agreement with the Patent Offices of Denmark, Finland and Norway.

stantial preparations to exploit the invention commercially in this country.

The right according to the preceding paragraph may pass to another party only together with the enterprise where it originated or where it was intended that exploitation should take place.

Section 5

A patent shall not prevent the exploitation of the invention on foreign vessels, aircraft or other foreign means of transport for their needs when they enter this country in regular traffic or otherwise.

The Government¹⁾ may decree that, without being hindered by a patent, spare parts and accessories to aircraft may be imported into this country and may be employed here for the repair of the aircraft of a foreign country in which corresponding privileges are granted in relation to the aircraft of this country.

Section 6

The Government may decree that an application for a patent for an invention previously described in an application for protection abroad, when applying Section 2, first and second paragraphs, and Section 4, shall be considered to have been filed simultaneously with the application abroad if the applicant so claims.

The decree shall state the further conditions necessary for obtaining convention priority.

Section 7

The proprietor of a patent may be granted a patent of addition for a development of the invention if an application therefor is made before the application for the main patent has been made available to the public pursuant to Section 22.

A patent of addition may be granted for an invention although it does not satisfy the requirement of Section 2, first paragraph, in relation to the contents of the application for the main patent. A patent of addition shall, except as stated in the third paragraph of this Section, expire as the same time as the main patent and may be transferred to another party only together with the main patent.

If the main patent expires because the patentee surrenders the patent or because the patent is declared invalid, the patent of addition shall become an independent patent for the remainder of its term. If there are a number of patents of addition to the parent patent, the patent of addition first granted shall be a main patent, and the remainder shall be patents of addition to that patent.

Chapter II. Applications for Patents. Examination of Applications

Section 8 (SWEDEN)²⁾

The patent authority for Sweden shall be the Patent Office (*Patent- och registreringsverket*).

¹⁾ The term "Government" used in this translation should be understood to mean: in the case of Denmark, the "Minister of Commerce"; in the case of Norway and Sweden, the "King in Council"; and in the case of Finland, "by (governmental) decree."

²⁾ Where, in this consolidated version, the texts of the Laws of the four countries differ, the Swedish text is presented first for the reason that the translator originally worked from the Swedish text.

Section 8 (DENMARK)

The patent authority shall be the Patent Office (*Direktoratet for patent- og varemaerkevæsenet*), headed by a Director, and the Patent Board of Appeal.

The Patent Board of Appeal shall be appointed by the Government to handle appeals from Patent Office decisions, cf. Sections 25 and 67. The Patent Board of Appeal shall consist of up to 18 members appointed for a period of five years. Two of the members, including the Chairman, shall fulfill the current conditions of getting an appointment as a High Court judge, while the other members must have the best possible skill in patent matters and have graduated from the Danish Institute of Technology ("*Danmarks Tekniske Højskole*") or another university. The Chairman shall decide which of the members and how many of them are to participate in the examination of each case, while having regard to the nature of the case.

Section 8 (FINLAND)

The patent authority for Finland shall be the Patent Office (*Patentti- ja rekisterihallitus*) in accordance with special provisions relating thereto.

Section 8 (NORWAY)

The patent authority for Norway shall be the Patent Office (*Styret for det industrielle rettsvern*).

Section 9

An application for a patent shall be filed in writing with the Patent Office.

The application shall contain a description of the invention, including drawings when such are needed, and an explicit statement of what is sought to be protected by the patent (patent claims). The description must be sufficiently clear to enable the invention to be worked by a person skilled in the art.

The name of the inventor shall be given in the application. If the patent is applied for by somebody other than the inventor, the applicant must prove his title to the invention.

The applicant shall pay an application fee prescribed by decree³⁾.

Section 10

Two or more inventions which do not form unity of invention must not be applied for in the same application.

Section 11

If a patent is sought for an invention which is disclosed in an application which the applicant had filed previously and which has not been disposed of by a final decision, the

³⁾ The Finnish text of Section 9 contains the following additional paragraph:

"The description and the claims shall be in Finnish or Swedish according to the provisions of the law on languages in force. If the claims are in only one of the native languages, the Patent Office shall provide for the translation of the claims into the other language before the application becomes available to the public pursuant to Section 22, second paragraph. The applicant shall pay the translation fee prescribed. In the case of a foreign applicant, the description shall be in Finnish and the claims in both Finnish and Swedish. However, anyone shall be entitled to write the description and the claims in both Finnish and Swedish."

later application shall, in the conditions prescribed by the Government, be deemed to have been filed at the time when the documents disclosing the invention were lodged with the Patent Office, if the applicant so requests.

Section 12

An applicant who is not domiciled here have an agent resident here who is empowered to represent him in everything that concerns the application.

Section 13

An application for a patent must not be amended so as to claim protection for elements that were not disclosed in the application documents at the time of the filing of the application or at the time when the application is deemed to have been filed according to Section 14.

Section 14

If the applicant amends his application within six months from the date of filing, the application shall, if he so requests, be deemed to have been filed at the time when the amendment was filed.

A request under the first paragraph may only be made once and cannot be withdrawn.

Section 15

If the applicant has not complied with the requirements for the application, or if the Patent Office finds other objections to the acceptance of the application, the applicant shall be notified thereof by an official action, and be given a fixed period to answer the objections or to make the necessary corrections.

If the applicant fails, within the given period, to answer the action or to take steps to meet the objections raised, the application shall be dismissed as abandoned. The action shall include a notice to that effect.

Nevertheless, the application shall be reinstated if, within four months from the expiration of the fixed period, applicant answers the action or takes steps to meet the objections raised and at the same time pays the prescribed reinstatement fee.

Section 16

If the applicant has answered the action, but there is still an objection to the acceptance of the application which the applicant had been given an opportunity to answer, the application shall be rejected unless there is reason to deliver another official action to the applicant.

Section 17

If any person other than the applicant claims before the Patent Office to have a title to the invention, and if the case is deemed uncertain, the Patent Office may direct him to bring an action before a court of law within a fixed period at the risk of the claim's being disregarded in the further processing of the patent application.

If a suit regarding a title to an invention in respect of which a patent is applied for is pending before the courts, the

patent application may be declared in abeyance until the suit is finally decided by the courts.

Section 18

If any person proves to the Patent Office that he and not the applicant has a title to the invention, the Patent Office shall, if he so requests, transfer the application to him. The transferee shall pay a renewed application fee.

If a request is made for transfer of a patent application, the application shall not be dismissed, rejected, or granted, until a final decision has been made on the request.

Section 19

When the application satisfies the formal requirements and no objections are found to the grant of a patent, the application shall be accepted for public inspection pursuant to Section 21.

When the decision to accept the application for public inspection is made, the patent claims may not be enlarged in scope, and a request according to Section 14 shall no longer be permitted.

Section 20

Within two months from the time the application has been accepted for public inspection, the applicant shall pay the prescribed printing fee. In default of this, the application shall be dismissed. However, the examination shall be resumed if, within four months from the expiry of the stated period, the applicant pays the printing fee together with the prescribed reinstatement fee.

If an application for a patent is filed by the inventor and, within two months from the acceptance of the application for public inspection, he makes a petition for exemption from the printing fee, the Patent Office may grant such exemption if the applicant has great difficulty in paying the fee. If the petition is rejected, a fee paid within two months thereafter shall be deemed to have been paid on time.

Section 21

When the printing fee has been paid in accordance with Section 20, or an exemption from the printing fee has been granted, the Patent Office shall lay the application open for public inspection to afford the general public an opportunity to enter opposition against the application. The laying open of the application for public inspection shall be advertised.

An opposition must be filed with the Patent Office in writing within three months from the date of the advertisement.

From the date on which the application is laid open for public inspection, printed copies of the description of the invention and the patent claims, giving also the name of the applicant and the inventor, shall be obtainable from the Patent Office.

Section 22

Starting from the date on which the application is laid open for public inspection, the documents of the application shall be available to the public.

Eighteen months from the date of the filing of the application or, if priority is claimed, from the date of the priority requested, the documents shall be made available to the public, regardless of whether the application has been laid open for public inspection or not. Nevertheless, if a decision has been made to dismiss or to reject the application, the documents shall only be made available if the applicant requests the reinstatement of the application or appeals from the decision.

On the request of the applicant, the documents shall be made available earlier than as provided for in the first and second paragraphs.

When the documents are made available in accordance with the second and third paragraphs of this Section, the Patent Office shall advertise the fact.

If special reasons are shown, the Patent Office may, upon request, order that a document containing business secrets which do not concern an invention in respect of which a patent is applied for be withheld from the public wholly or in part. If such request has been made, the document shall not be made available until the request has been denied by a decision which has won legal effect⁴⁾ ⁵⁾.

Section 23

Following the expiry of the period specified in Section 21, second paragraph, the examination of the application shall be continued in order to decide whether a patent will be granted. For this examination, Sections 15 to 18 inclusive shall apply.

If an opposition to the grant of the patent has been entered, the applicant shall be notified thereof and given an opportunity to answer the opposition.

Section 24

The applicant may appeal from a final decision by an Examining Division of the Patent Office in cases regarding patent applications if the decision went against him. From a decision whereby a patent has been granted in spite of duly filed opposition, an appeal may be brought by the person who lodged the opposition. If he withdraws his appeal, it may nevertheless be considered if there are special reasons to do so.

From a decision whereby a request for reinstatement in accordance with Section 15, third paragraph, or Section 20, first paragraph, has been rejected, or a request for the transfer of an application according to Section 18 has been granted, an appeal may be brought by the applicant. From a decision whereby a request for the transfer of an application has been rejected according to Section 18, an appeal may be brought by the party who made the request.

⁴⁾ In the Danish text, the last sentence of Section 22 is replaced by the following:

"If such request has been made, the document shall not be made available until a decision has been made or before the end of the period within which an appeal against the decision is possible. An appeal shall have a postponing effect."

⁵⁾ The Norwegian text of Section 22 contains the following additional paragraph:

"Proposals, drafts, reports, and similar working documents, prepared by the Patent Office for its own use in the prosecution of an application shall not be accessible unless the Patent Office so decides."

From a decision whereby a request for an order in accordance with Section 22, fifth paragraph, has been rejected, an appeal may be brought by the applicant or any other party who made the request.

Section 25 (SWEDEN and FINLAND)

An appeal in accordance with Section 24 shall be taken up by the Board of Appeal of the Patent Office and shall be lodged within two months from the date of the decision. Within the same period, the appellant shall pay the prescribed appeal fee, on default of which the appeal shall not be considered.

The applicant may appeal from a decision of the Board of Appeal if the decision went against him. An appeal shall be taken to the Supreme Administrative Court, and shall be lodged within two months from the day of the decision.

The provisions of Section 22, fifth paragraph, shall apply correspondingly to documents which are submitted to the Supreme Administrative Court.

Section 25 (DENMARK)⁶⁾

Appeals from decisions concerning applications for patents shall be filed with the Patent Board of Appeal not later than two months after the Patent Office has informed the party concerned of the decision. Within the same term, the prescribed fee shall be paid. Otherwise, the appeal shall be dismissed.

Decisions of the Patent Board of Appeal cannot be brought before a higher administrative authority.

Legal actions for the trial of decisions of the Patent Office from which appeal can be made to the Patent Board of Appeal cannot be brought before the court until the decision of the Patent Board of Appeal is available, cf. however Sections 52 and 53. Legal actions for the trial of decisions in which the Patent Board of Appeal rejects a patent application shall be brought within two months after the party concerned has been informed of the decision.

The provisions of Section 22, subsection (5), are similarly applicable with regard to documents filed with the Patent Board of Appeal.

Section 25 (NORWAY)

An appeal must be lodged with the Patent Office within two months from the date on which notification of the decision was sent to the party concerned. Within the same period, the prescribed appeal fee shall be paid. In default of this, the appeal shall not be taken up for consideration.

A decision by the Board of Appeal of the Patent Office to reject an application for a patent may be brought to a court of law not later than two months after the applicant has been notified of the rejection. The time limit for appeal shall be included in the notification.

There is no remedy for failure to comply with the terms provided in the first and second paragraphs.

⁶⁾ In the Danish text, the paragraphs of each Section are preceded by a number (subsections). References to subsections in the text of the this Section, and of subsequent Sections of the Danish text set out in full (cf. Sections 44, 45, and Chapter IX onwards), are thus references to paragraphs so far as the preceding text is concerned.

The provisions of Section 22, fifth and sixth paragraphs, shall also apply to documents filed with the Board of Appeal of the Patent Office.

Section 26

A patent shall be granted when the application is approved and the approval has taken legal effect. When the patent is granted, it shall be advertised and letters patent issued. If the description or the patent claims have been amended after being printed in accordance with Section 21, third paragraph, printed copies of the documents, also stating the names of the applicant and the inventor, shall be available at the Patent Office in their final form.

If an application which has been made available to the public is dismissed or rejected, the decision shall be advertised when it has taken legal effect.

Section 27

A granted patent shall be entered in the Register of Patents which is kept by the Patent Office⁷⁾.

Chapter III. Nordic Patent Application⁸⁾

Section 28

Following an agreement with Denmark, Finland and Norway whereby patents for one invention may be obtained in Sweden, Denmark, Finland and Norway, or in any three of these countries, on the basis of one application for the patents in one of the countries to which the application (Nordic patent application) is directed, the Government is hereby empowered to decree that Sections 29 to 38 shall be complied with.

Section 29

A Nordic patent application filed in this country shall pertain, in addition to a patent effective in Sweden, to a patent effective in either Denmark, Finland and Norway or in two of these countries.

Such application shall be processed and examined, in observance of the provisions in this Chapter, according to the procedure governing patent applications in general. A patent granted on such application has the same validity in this country as other patents granted here.

If a patent has been granted in respect of Sweden on a Nordic patent application filed in Denmark, Finland or Norway, the patent shall have the same validity in Sweden as if it had been granted here.

If, in regard to a patent granted in Finland, the description and the patent claims are presented in both the Swedish and the Finnish languages and the two texts disagree, the patent protection in this country shall embrace only what is evident from both texts. However, the patent protection shall be

determined by the Swedish text alone, if this is decisive in Finland⁹⁾.

Section 30

In respect of a Nordic patent application filed in this country, the provision of Section 2, second paragraph, last sentence, shall be correspondingly applied with regard to an earlier patent application in another country covered by the application. In respect of a patent application effective in Sweden only, the said provision shall be correspondingly applied with regard to a Nordic patent application filed in another country and covering Sweden.

Section 31 (SWEDEN, DENMARK, NORWAY)

If a Nordic patent application filed in this country also covers Finland, the application can only be accepted for public inspection if the description and the patent claims are also presented in the Finnish language.

Section 31 (FINLAND)

If the description and claims of a Nordic patent application are only presented in Finnish or Swedish, the Patent Office shall provide for their translation into the other language. The applicant shall pay the prescribed translation fee. In the case of a foreign applicant, he shall present the description and the claims in both Finnish and Swedish.

Section 32

In respect of a Nordic patent application filed in this country, the printed copies of the description and the claims referred to in Section 21, third paragraph, shall specify the countries covered by the application. When the application is laid open for public inspection, such copies shall be forwarded to the patent offices of the other countries covered by the application and shall there be made available to the public according to the provisions pertaining thereto.

Section 33

When a Nordic patent application filed in another country and covering Sweden is laid open for public inspection in that country, it shall simultaneously be laid open for public inspection in this country. The laying open for public inspection shall be advertised.

Printed copies of the description and claims shall be obtainable at the Patent Office of this country.

Section 34

An opposition to a Nordic patent application filed in this country may, within the period stipulated in Section 21, be lodged at the patent office of another country covered by the application as well as at the Patent Office of this country.

If an opposition to a Nordic patent application filed in another country and covering Sweden is lodged with the

7) The Norwegian text contains the following additional paragraph:
"Any person shall be entitled to examine the Register of Patents, to obtain certified extracts therefrom, and to obtain copies of the documents of the patent applications which are available to the public pursuant to the provisions of Section 22."

8) The text of this Chapter is that of the Swedish Patents Act, that is, where Sweden is the country of filing. The other texts should be read *mutatis mutandis*.

9) In the Finnish text of Section 29, the last paragraph is replaced by the following:

"If a patent covering Finland has been granted in Denmark, Norway or Sweden with the description and claims in Finnish as well as in Danish, Norwegian or Swedish, and the two texts disagree, the patent protection in Finland shall embrace only what is evident from both texts."

Patent Office of this country, the Patent Office shall without delay forward the document to the patent office of the other country stating the date on which the document was received.

Section 35

A Nordic patent application filed in this country and covering Sweden, Denmark, Finland and Norway may be converted into a Nordic application covering Sweden and two of the other countries.

A Nordic patent application filed in this country may be converted into an application covering Sweden only.

If a conversion provided for under the second paragraph is made, or if the application is withdrawn at the Patent Office of this country, the applicant may, in accordance with the provisions pertaining thereto, continue the application as a separate application in another country covered by the application. In such cases, the applicant shall, at the time of the conversion or withdrawal, give a declaration to that effect to the Patent Office of this country.

If the application documents have been made available under the provisions of Section 22, a conversion, withdrawal and declaration made under the first to third paragraphs shall be advertised. The declaration shall also be entered in an advertisement pursuant to Section 21, first paragraph.

Section 36

If a Nordic patent application that covers Sweden has been filed in another country, and the applicant converts the application to an application covering that country only, or withdraws the application and further makes in accordance with Section 35 that he intends to continue the application as an application covering Sweden only, the Patent Office of this country shall take up the application and continue the examination, provided the applicant files a notice to that effect with that Office within two months from the date of the conversion or withdrawal. If the application documents are available to the public pursuant to Section 22, the notice shall be advertised.

An application that has been taken up in accordance with the first paragraph of this Section shall be processed and examined as if it had been originally filed in this country as an application covering Sweden only. The applicant shall pay the prescribed application fee in this country even if he has paid the application fee in the country where the application was filed.

Section 37

Where a Nordic patent application is approved, the letters patent shall name the countries in respect of which a patent has been granted.

Section 38

Upon agreement with any country concerned, the Government may decree that Nordic patent applications filed in this country shall be transferred to the patent office of another country covered by the applications, under such further provisions as may be prescribed in the decree. However, such decree must not pertain to applications filed by applicants who are residents of this country.

Upon agreement with any country concerned, the Government may also decree that Nordic patent applications filed in another country and which cover Sweden may be transferred to the Patent Office in this country. Applications which have been transferred in accordance with such decree shall be processed and examined as if originally filed in this country.

Chapter IV. Scope and Term of Patents

Section 39

The extent of the protection conferred by a patent shall be determined by the terms of the claims. The description may serve as guidance for the interpretation of the claims.

Section 40

A granted patent may be maintained for seventeen years after the date on which the patent application was filed.

Regarding the maintenance of patents of addition, the provisions of Section 7 shall apply.

Chapter V. Annual Fees

Section 41

In respect of a patent that is not a patent of addition, an annual fee, laid down by decree, shall be paid for each year of its term calculated from the date of the filing of the patent application (patent year).

If a patent of addition has become an independent patent in accordance with the provisions of Section 7, third paragraph, the annual fees shall be paid as from the following patent year in the amount that would have been due for the main patent had it still been in force.

Section 42

The annual fee shall be due for payment no later than the first day of the patent year which is covered by the fee. However, the annual fee for a patent year which began prior to the grant of the patent or within two months thereafter shall not be due for payment until two months have passed since the grant of the patent. An annual fee can be paid neither prior to the grant of the patent nor more than six months before the start of the patent year.

If the patent is held by the inventor himself and if he has considerable difficulty in paying the annual fee, the Patent Office may grant him an extension of the period for paying the fee of not more than three years from the grant of the patent, provided that a request to this effect is made by the inventor no later than on the last day an annual fee is first due for payment. If the request is refused, a fee that is paid within two months of that decision shall be regarded as having been paid on time.

An annual fee, increased by the amount laid down by decree, may be paid within six months after the start of the corresponding patent year, or, in respect of a patent year which began prior to the grant of the patent, six months after the grant. An annual fee concerning which an extension of time for payment has been granted in accordance with the second paragraph of this Section may, with the same increase,

be paid within six months after the extended period of time has ended.

Chapter VI. Licenses, Assignments, etc.

Section 43

If the patentee has granted another party permission to exploit the invention commercially (license), the licensee shall be entitled to assign his right to a third party only if there is agreement to that effect.

Section 44 (SWEDEN)

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of the first and second paragraphs shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, second paragraph.

The person who has last been recorded in the Register as patentee shall be regarded as such in lawsuits and other cases concerning the patent.

Section 44 (DENMARK) ¹⁰⁾

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of subsections (1) and (2) shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, subsection (2).

Lawsuits concerning a patent may always be brought against the person who is recorded as the patentee in the Register and communications from the Patent Office may be sent to him.

Section 44 (FINLAND)

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of the first and second paragraphs shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, second paragraph.

The person who has last been recorded in the Register as patentee shall be regarded as such in lawsuits and other cases concerning the patent.

If any person has requested the Patent Office to record in the Register that a patent has been assigned to him, or that he has obtained a license to or a right of security in a patent, and if, when making the request, he has acted in good faith, prior assignment of the patent or of rights therein shall have no validity against him, if the other party has not previously requested registration as assignee or holder of rights in the patent.

¹⁰⁾ See footnote 6.

Section 44 (NORWAY)

The transfer of a patent and the grant of a license shall on request be recorded in the Register of Patents.

If it is shown that a license recorded in the Register is no longer in force, the entry regarding the license shall be cancelled from the Register.

The provisions of the first and second paragraphs shall apply correspondingly to compulsory licenses and rights in accordance with Section 53, second paragraph.

The person who has last been recorded in the Register as patentee shall be regarded as such in lawsuits and other cases concerning the patent.

Voluntary assignment of a patent or grant of a license the registration of which has been requested shall take priority over an assignment or a license the registration of which had not been requested, or had been requested at a later date, provided that the holder of the right in question acted in good faith when making the request for registration in the Register of Patents.

Section 45

If three years have expired from the grant of the patent as well as four years from the filing of the application, and if the invention has not been worked in this country to a reasonable extent, a party who desires to work the invention in this country may be granted a compulsory license for that purpose, provided there is no acceptable excuse for the failure to work the invention.

Subject to reciprocity, the Government may decree that, in applying the first paragraph of this Section, the working of the invention in a specified foreign country shall be considered equivalent to working in this country ¹¹⁾.

Section 46

The proprietor of a patent for an invention the exploitation of which is prevented by a patent held by another party may obtain a compulsory license to exploit the invention protected thereby, if this is deemed reasonable in view of the importance of the invention first mentioned or if there are other special reasons therefor.

The proprietor of a patent in respect of which a compulsory license is granted in accordance with the first paragraph of this Section, may, if there are no special reasons to the contrary, obtain a compulsory license to exploit the other invention.

Section 47

When required by superior public interests, a party who wants to exploit an invention commercially for which another party holds a patent may obtain a compulsory license for that purpose.

Section 48

Any person who in this country was commercially exploiting an invention which is the subject of a patent application, when the application documents were made available in ac-

¹¹⁾ In the Danish text of Section 45, the last paragraph is replaced by the following:

"If an agreement with the other Nordic countries is made pursuant to Chapter III, the Minister of Commerce may decide, in application of the provisions of subsection (1), that working in one of these countries shall be regarded as working in this country."

accordance with Section 22 shall, if the application results in a patent, be granted a compulsory license for such exploitation, provided there are very strong reasons for this and, further, that he had no knowledge of the application and such knowledge could not reasonably have been obtained by him. The same right shall, under the corresponding conditions, apply to a person who has undertaken substantial preparations to exploit the invention commercially in this country. Compulsory licenses may also be applied in respect of the time before the patent was granted.

Section 49

A compulsory license may only be granted to a person who is deemed to possess the necessary prerequisites to exploit the invention in an acceptable manner and in accordance with the terms of the license.

A compulsory license shall not prevent the patentee himself from exploiting the invention, or from granting licenses under the patent. A compulsory license may be transferred to a third party only together with the enterprise in which it is exploited or is intended to be exploited.

Section 50 (SWEDEN, FINLAND, NORWAY)

Compulsory licenses shall be granted by a court of law, which shall also decide the extent to which the invention may be exploited and establish the remuneration to be paid and other conditions for the license. When it is called for by substantially changed circumstances, the court may, on request, revoke the license or lay down new conditions therefor.

Section 50 (DENMARK)

Compulsory licenses shall be granted by the Maritime and Commercial Court of Copenhagen, as the court of first instance, which shall also decide the extent to which the invention may be exploited and establish the remuneration and other conditions for the license. When this is called for by substantially changed circumstances, the Court may on request revoke the license or lay down new conditions therefor.

Chapter VII. Termination of a Patent, etc.

Section 51

If an annual fee is not paid in accordance with the provisions of Sections 41 and 42, the patent shall lapse as from the start of the patent year for which the fee has not been paid.

A patent which has lapsed in accordance with the first paragraph of this Section may be restored by the Patent Office if the patentee shows satisfactory excuse for his failure to pay the annual fee. A request for the restoration of a patent shall be made in writing to the Patent Office without delay and not later than six months from the last day when the fee should have been paid. Within the same period of time, the annual fee, including the prescribed increase in fee and the prescribed restoration fee, shall be paid. A request duly made shall be advertised.

Any person who, after the lapse of the patent but before the request for the restoration of the patent has been advertised, has started to exploit the invention commercially in

this country, or who has made substantial preparations therefor, has, if the patent is restored, the same right as that provided for under Section 4.

Section 52

If a patent has been granted contrary to the provisions of Sections 1 or 2, the court shall, in an action brought to this effect, declare the patent invalid. However, a patent may not be declared invalid on the ground that the person to whom the patent was granted was entitled only to a certain share therein.

The court action may, with the exception provided for in the third paragraph of this Section, be brought by any person [who suffers harm from the patent and also, when this is called for in the public interest, by a public authority appointed by the Government]¹²⁾.

An action in which it is claimed that the patent has been granted to a person other than the person entitled to the patent in accordance with the provisions of Section 1 may be brought only by the person claiming entitlement to the patent. Such action shall be brought within one year after knowledge was gained of the grant of the patent and of such other circumstances on which the action is founded. Where the patentee acted in good faith when the patent was granted or assigned to him, action cannot be brought later than three years after the grant of the patent.

Section 53

If a patent has been granted to a person other than the person entitled to the patent in accordance with the provisions of Section 1, the court shall, when an action is brought by the party so entitled, transfer the patent to him. As regards the time within which the action shall be brought, the provisions of Section 52, third paragraph, shall apply.

If the party who is deprived of the patent has, in good faith, begun to exploit the invention commercially or has undertaken substantial preparations for that purpose, he shall, in consideration of reasonable remuneration and subject to otherwise reasonable conditions, be entitled to continue the exploitation already begun, or to begin the exploitation intended, while retaining its general character. Subject to the same conditions, a holder of a license under the patent whose license has been recorded in the Register of Patents shall have the same right.

Rights under the second paragraph of this Section can only be transferred to others together with the enterprise in which they were exploited or intended to be exploited.

Section 54

If a patentee surrenders the patent to the Patent Office in writing, the Patent Office shall declare the patent terminated.

If the patent is seized for debt or if there is a suit pending for the transfer of the patent, the patent may not be declared terminated so long as the seizure is effective or the suit has not been brought to a final decision.

¹²⁾ The phrase between brackets does not appear in the Danish and Norwegian texts.

Section 55

If a patent has lapsed, been declared terminated, been declared invalid by a court decision that has taken legal effect, or been transferred, the Patent Office shall publish an advertisement to this effect. Such advertisement shall also be published when a request for restoration has been received by a decision that has taken legal effect.

Chapter VIII. Obligation to Give Patent Information

Section 56

If an applicant invokes the application against another person before the application documents have been made available in accordance with Section 22, he shall be required to allow that person to inspect the documents upon request.

Any person who, by direct warning to another person, or by advertisement, or by marking on articles, or packaging, or otherwise, asserts that a patent has been granted or applied for, and at the same time does not give the number of the patent or patent application, shall be required to give the number on request without delay. When it is not specifically stated that a patent has been granted or applied for, but the circumstances are such that an impression to that effect is created, information as to whether or not a patent has been granted or applied for shall be given on request without delay.

SWEDEN ¹³⁾Chapter IX. Infringement and Compensation,
Court Proceedings

Section 57

If any person infringes the exclusive right pertaining to a patent (patent infringement), and if such infringement is committed deliberately, he shall be punished by a fine or by imprisonment for a period not exceeding six months.

An indictment for this offense may be brought by the public prosecutor only if the injured party refers it to him for prosecution and if the indictment is required for special reasons in the public interest.

Section 58

Any person who, deliberately or through negligence, infringes a patent shall pay a reasonable compensation for the exploitation of the invention and damages for other injury caused by the infringement. If there is only minor negligence, the compensation may be adjusted accordingly.

If any person is guilty of patent infringement that is not deliberate or due to negligence, he shall pay compensation for the exploitation of the invention if and to the extent that this is found reasonable.

An action for compensation for patent infringement can only cover damages for the last five years before the action was brought. For damage suffered prior to this period, the right to compensation shall be lost.

Section 59

On a motion by the party injured by patent infringement, the court may, to the extent deemed reasonable for the prevention of continued patent infringement, order that articles which have been produced without the permission of the patentee, or products the use of which would constitute patent infringement, be altered in a prescribed manner, or be impounded for the remainder of the patent term, or be destroyed, or, in the case of patented articles, be surrendered to the injured party in consideration of payment of their value. The foregoing shall not apply to a person who, in good faith, has obtained the property or special rights thereto, provided he has not himself been guilty of infringement.

Property mentioned in the first paragraph of this Section may be seized if it can be reasonably assumed that the offense mentioned in Section 57 has been committed. In that case, the provisions regarding seizure in criminal cases in general shall apply.

Notwithstanding the first paragraph of this Section the court may, on request, when there are very special reasons for it, order that the possessors of property mentioned in the first paragraph shall, in consideration of a reasonable compensation and subject to otherwise reasonable conditions, be able to dispose of the property during the remainder of the patent term or a part thereof.

Section 60

If any person commercially exploits an invention which is the subject of a patent application after the application documents have been made available in accordance with Section 22, the provisions relating to patent infringement shall correspondingly apply in so far as the application results in a patent. However, he shall not be liable to punishment, and compensation for damage due to exploitation prior to the advertisement of the laying open of the application for public inspection in accordance with Section 21 can only be decided in accordance with Section 58, second paragraph.

The provisions of Section 58, third paragraph, shall not apply if an action for compensation is brought no later than one year from the grant of the patent.

Section 61

If a patent has been declared invalid by a decision that has taken legal effect, punishment, payment of compensation, or preventive measures under Section 57 to 60 cannot be ordered.

If, in infringement proceedings, the person against whom the action is brought claims that the patent is invalid, the court shall at his request stay proceedings until the question has been finally resolved. If an action for this purpose has not yet been brought, the court shall, in connection with the staying of proceedings, order him to bring such action within a prescribed period.

Section 62

Any person who, deliberately or through negligence which is not of a minor nature, fails to do what is required of him under Section 56 shall be sentenced to a fine.

¹³⁾ The text from Chapter IX onwards is different in each of the four national Laws. The provisions of Chapter IX et seq. are therefore set out separately in full. Where the texts are identical, the texts of the Danish, Finnish and Norwegian Laws are supplanted by a reference to the Swedish text.

Any person who, in the situations described in that Section, deliberately or through negligence which is not of a minor nature, gives false information shall also be sentenced to the same penalty if the offense is not punishable according to the Penal Code.

Any person who, deliberately or through negligence, fails to do what is required of him under Section 56, or in the situations therein described gives false information, shall pay compensation for the resulting damage. If the negligence is of a minor nature the compensation may be adjusted accordingly.

An indictment for an offense mentioned in the second and third paragraphs of this Section can be brought by the public prosecutor only if the injured party refers it to him for prosecution and an indictment is required for special reasons in the public interest.

Section 63

The patentee or any person who is authorized to exploit the invention under license may bring an action before the court for a declaratory judgment as to whether the patent gives him protection against another party, if there is uncertainty in this respect which is harmful to him.

Any person who conducts or intends to conduct commercial activities can, subject to the same conditions, bring an action against the patentee for a declaratory judgment as to whether the patent is a hindrance to this activity.

If, in the prosecution of an action in accordance with the first paragraph of this Section, it is claimed that the patent is invalid, the provisions of Section 61, second paragraph, shall correspondingly apply.

Section 64

Any person who wishes to bring an action for the invalidation of a patent, the transfer of a patent, or the grant of a compulsory license, shall report this to the Patent Office and shall notify all those who are recorded in the Register of Patents as licensees under the patent. If a licensee wants to bring an action for the invalidation of a patent or for a declaratory judgment in accordance with Section 63, first paragraph, he shall give the patentee notification thereof.

The obligation to notify in accordance with the first paragraph of this Section shall be regarded as fulfilled when the notification by paid registered letter has been sent to the address recorded in the Register of Patents.

If it is not shown when the action is brought that a report or notification has been made in accordance with the provisions of the first paragraph of this Section, the plaintiff shall be given time to do so. If the time limit is exceeded, the action shall not be tried.

Section 65

The City Court of Stockholm shall be the competent court in proceedings regarding

1. the proper title to an invention in respect of which a patent is applied for,
2. the invalidation or transfer of a patent,
3. the granting of a compulsory license, establishing new conditions for, or the revocation of, such license, or

rights which are referred to in Section 53, second paragraph.

4. patent infringement,
5. declaratory judgments in accordance with Section 63 or
6. the taxation of compensation under Section 75.

Section 66

In the proceedings mentioned in Section 65, the City Court, except in the case referred to in the second paragraph of this Section, shall consist of six members, three of which shall be legally qualified and three shall be technically qualified. Nevertheless, in the event that one of the members is excused after the main session has started, the Court shall be competent to try the case with the remaining five members. One of the legally qualified members shall be the President of the Court.

Where a case is decided without a main session, and in proceedings that do not take place at a main session or by an inspection on the site, the City Court shall consist of a legally qualified member, or, if this is appropriate, of one legally and one technically qualified member, in which case the legally qualified member shall be the President of the Court.

Section 67

In cases which have been decided in the City Court with the participation of one or more technically qualified members, the Court of Appeal shall be competent with four legally and two technically qualified members. More than five legally and three technically qualified members may not take part in the proceedings.

Section 68

The Government, or such authority as the Government may determine, shall appoint at least twenty-five persons who shall serve as technically qualified members in the City Court and the Court of Appeal for three years at a time. During a three-year period, the Government may, when required, appoint additional persons for such duty during the remaining part of the period.

The President of the Court shall select from among the persons thus appointed those who shall sit in the Court for each case separately, having regard to the technical qualification desired and other relevant circumstances. A technically qualified member who has retired shall be required to serve in the later proceedings in a case in the processing of which he has previously taken part.

Section 69

In proceedings under Section 65, the Court shall request the views of the Board of Appeal of the Patent Office, if the circumstances so require.

Section 70

Copies of judgments or final decisions in proceedings mentioned in Section 65 shall be dispatched to the Patent Office.

SWEDEN

Chapter X. Special Provisions

Section 71

A patentee who is not domiciled in this country shall have an agent resident here who has the authority to receive services of writs of indictments or summonses and other documents in proceedings and matters concerning the patent, with the exception of writs of indictments in penal cases and summonses for a party to appear personally before a court. The agent appointed shall be reported for recording in the Register of Patents.

If the patentee has not appointed an agent as stated in the first paragraph of this Section, documents to be served may be sent to him by paid mail to his address as recorded in the Register of Patents. If there is no full address recorded in the Register, a document may be served by posting it in the premises of the Patent Office. Such service shall be advertised in the public newspapers. The service shall be considered effected when the procedure described herein has been completed.

Subject to reciprocity, the Government may decree that the stipulations of the first and second paragraphs of this Section shall not apply to a patentee domiciled in a specified foreign country, or who has an agent residing in that country, provided the agent is reported for recording in the Register of Patents of this country and is authorized in the manner prescribed in the first paragraph of this Section.

Section 72

Appeals from final decisions of the Patent Office other than those covered by Section 24 shall be lodged with the Board of Appeal of the Patent Office within two months from the date of the decision. A person who wishes to appeal shall, within the same period, pay the prescribed appeal fee; if this is not done the appeal shall not be taken up for consideration.

Appeals from decisions by the Board of Appeal shall be made to the Supreme Administrative Court and shall be lodged within two months from the date of the decision.

Section 73

The amount of fees to be paid according to this Law shall be prescribed by the Government. With respect to annual fees, the Government may, in this connection, decree that one or more of the first patent years shall be exempt from fees.

Section 74

Further regulations regarding applications for patents, advertisements in patent cases, publications of the application documents, the Register of Patents, and the Patent Office, shall be issued by the Government, or, to the extent determined by the Government, by the Patent Office. To the extent decreed by the Government the records kept by the Patent Office shall be available to the public.

The Government may decree that documents relating to applications for patents may be delivered to the authorities of another country.

The Government may also decree that the examination of patent applications, upon request by the Patent Office, may be undertaken by the appropriate authority of another country, or by an international institution, and, further, that an applicant for a patent in respect of an invention for which a patent was filed earlier in another country shall be required to divulge anything communicated to him in relation to an examination of the patentability of the invention by the patent office of that country.

Section 75

If the country is in a state of war or war emergency the Government, when this is in the public interest, may decree that rights in a particular invention shall be surrendered to the State or to another party designated by the Government. A reasonable compensation shall be paid for the rights in an invention subject to such a decree. If agreement regarding the compensation cannot be reached with the person entitled thereto, the compensation shall be determined by a court of law.

If, pursuant to the first paragraph of this Section, rights in an invention have been surrendered to any person other than the State, and if such person does not fulfill his obligations with regard to payment, the State shall be obliged to pay the compensation immediately, at the request of the person entitled thereto.

Section 76

Special provisions shall apply to inventions of importance to the defense of the country.

SWEDEN

Entry into Force and Transitional Provisions

(1) The present Law shall enter into force on January 1, 1968, when the Patent Law of May 16, 1884 (No. 25) (the old Law) shall be repealed. Nevertheless, if an invention concerns foods or medicines a patent may not be granted for the product itself until otherwise decreed by the Government.

(2) The new Law shall also be applicable to patents granted prior to the time of its entry into force or which will be granted on applications filed prior to that time unless the following provisions provide to the contrary.

The provisions of Section 16, first paragraph (right of prior use), of the old Law shall still apply in respect of patents which have been granted or which will be granted on applications filed before this Law enters into force or which are regarded as filed before that date pursuant to the provisions of Section 6 of the new Law.

(3) The question of invalidation of a patent granted in accordance with the old Law, and the right to bring an action for invalidation shall be governed by the old Law. With regard to compensation for patent infringement which occurred before the new Law entered into force, and the right to bring an action therefor, the old Law shall still apply.

(4) Anyone, who, at the time the new Law entered into force, was commercially exploiting, in this country, an invention in respect of which a patent could not be granted ac-

according to the old Law, or who has undertaken substantial preparations for such exploitation, shall, without prejudice to a patent being subsequently granted for the invention, have such right to exploit the invention as is stipulated in Section 4 of the new Law, regardless of the fact that the exploitation of the invention or the preparations therefor were made after the filing of the application.

(5) If, prior to the entry into force of the new Law, an invention has become available to the public in consequence of measures taken by the applicant or his predecessor in title, Section 3 of the old Law shall be applicable in deciding whether, for this reason, there is a hindrance to the grant of a patent, or whether a patent shall be declared invalid, provided that the application for a patent was filed before July 1, 1968.

(6) A patent application which is pending at the Patent Office at the time the new Law enters into force shall be processed and decided upon in accordance with the old Law, provided that the Patent Office gives the applicant notice pursuant to Section 7, first paragraph (notice of the laying open of the application for public inspection), of the old Law before the new Law enters into force.

(7) An application for a patent which has been filed before the entry into force of the new Law shall not be made available in accordance with Section 22 of the new Law before July 1, 1968, unless prior to that date the application is laid open for public inspection or the applicant requests that the application be made available to the public.

(8) With regard to an annual fee for a patent year starting prior to July 1, 1968, the provisions of Section 11 of the old Law shall apply.

(9) The special provisions for patents of addition in the old Law shall, instead of Section 7, second paragraph, second sentence, and third paragraph, and Section 41, second paragraph, of the new Law, apply to patents of addition granted before the new Law enters into force.

(10) The provisions of Section 61, second paragraph, and Section 63, third paragraph, of the new Law shall not apply to court proceedings for which an action is brought before the new Law enters into force. For such proceedings the old Law shall apply instead. The provisions of Section 67 of the new Law shall not apply to patent proceedings on which the City Court reaches a decision before the new Law enters into force.

DENMARK

Chapter IX. Infringement and Compensation; Court Proceedings

Section 57¹⁴⁾

If any person infringes the exclusive right pertaining to a patent, and the infringement is committed deliberately, he shall be punished by a fine or, if there are aggravating circumstances, by ordinary imprisonment of up to three months.

If the offense has been committed by a limited liability

company, a cooperative society or the like, the enterprise as such may be liable to a fine.

Indictment shall be by the injured party.

Section 58

Any person who deliberately or negligently is guilty of patent infringement shall pay a reasonable compensation for the exploitation of the invention and damages for any other injury caused by the infringement.

If any person is guilty of patent infringement that is not deliberate or due to negligence and if he has made a profit therefrom, he shall be liable to pay compensation and damages according to the provisions of subsection (1) if and to the extent this found reasonable, but not in excess of the profit he is presumed to have made as a result of the patent infringement.

Section 59

In a case of patent infringement, the court may, to the extent found reasonable and when claimed, make decisions to prevent abuse of products manufactured in accordance with the patented invention, or of an apparatus, tool or other article the use of which would involve patent infringement. Thus, it may be decided that the article shall be altered in a specified manner or destroyed or, if it is a patented article, surrendered to the injured party in consideration of remuneration. However, this does not apply to the party who, in good faith, has acquired the article in question or acquired rights with respect to it and who himself is not guilty of patent infringement.

Where there are very special reasons, the court may, irrespective of the provisions of subsection (1) and when claimed, grant permission to dispose freely of the products, apparatus, tools or other articles mentioned in subsection (1) during the term of the patent or a part thereof in consideration of reasonable remuneration and on otherwise reasonable conditions.

Section 60

If any person makes an unauthorized commercial use of an invention after the files of the application have been made available to the public and if the application results in a patent, the provision on patent infringement shall similarly be applicable. However, this does not apply to the provision of Section 57. Damages for injury as a consequence of infringement which took place before the advertisement about the laying open of the application for public inspection under Section 21, shall be paid by the infringer only to the extent stipulated in Section 58, subsection (2).

Limitation of claims for damages under subsection (1) shall commence at the earliest one year after the grant of the patent.

Section 61

In lawsuits for patent infringement, it can only be claimed that the patent is invalid if an action for the patent to be declared invalid is brought against the patentee, subject to the latter's having been summoned according to the provisions of Section 63, subsection (4). If the patent is declared invalid, the provisions of Sections 57 to 60 shall not apply.

¹⁴⁾ See footnote 6.

Section 62

Any person who, in the instances mentioned in Section 56, fails to meet his obligations or gives false information shall be liable to a fine, if a more severe punishment is not provided for by other legislation, and shall be liable to make good the damage thereby caused to the extent that is found reasonable.

The provisions of Section 57, subsections (2) and (3) shall be similarly applicable.

Section 63

Any person who brings an action for the invalidation of a patent, for the transfer of a patent, or for a compulsory license, shall at the same time notify the patent authority and, by registered mail, give notification about the action to any registered licensee whose address is recorded in the patent register. A licensee who wants to bring an action for patent infringement shall in a similar way give notification to the patentee if the latter's address is stated in the Register.

If on the day on which the case comes up for trial, the plaintiff does not prove that notification as prescribed in subsection (1) has taken place, the court may fix a term for fulfilling the conditions of subsection (1). If the said term is disregarded, the action shall be dismissed.

In actions for patent infringement brought by the patentee, the defendant shall give notification according to the provisions of subsection (1) to the patent authority and registered licensees if he intends to claim that the patent should be declared invalid. The provision of subsection (2) shall be similarly applicable so that the claim that the patent be declared invalid shall be dismissed if the term fixed is disregarded.

In actions for patent infringement brought by a licensee, the defendant may summon the patentee, irrespective of the latter's venue, in order to claim against him that the patent be declared invalid. The provisions of Chapter 34 of the Administration of Justice Act shall be similarly applicable.

Section 64

The actions listed below shall be brought before the High Court as the court of first instance:

- I. actions concerning the right to an invention which is the subject of a patent application;
- II. actions for the grant of a patent, cf. Section 25, subsection (3);
- III. actions for the invalidity of a patent or for the transfer of a patent, cf. Sections 52 and 53, and for rights under Section 53, subsection (2);
- IV. actions for rights under Section 4 and Section 51, subsection (3);
- V. actions concerning patent infringement, and
- VI. actions for the assignment of a patent and cases concerning voluntary licenses.

In actions brought under this Law, applicants and patentees who are not domiciled in this country shall be regarded as having their venue in Copenhagen.

Section 65

Copies of judgments in the cases mentioned in Section 64, subsection (1), shall be sent to the Patent Office on the initiative of the court.

DENMARK

Chapter X. Special Provisions

Section 66

A patentee who is not domiciled in this country shall have an agent who is resident here and entered in the Register of Patents and who, on his behalf, can receive announcements and other notifications concerning the patent.

If the patentee does not have such an agent, announcements etc. may be served in the way prescribed in Section 160, subsection (2), of the Administration of Justice Act.

Subject to reciprocity, the Minister of Commerce may decide that the provisions of subsection (1) shall not apply to patentees who are domiciled in other countries or who have an agent residing in these countries and entered in the Register of Patents in this country and who can receive announcements and other notifications etc. on their behalf.

Section 67

Appeals from decisions of the Patent Office under Section 44 or Section 51, subsection (2), may be made by the patentee to the Patent Board of Appeal not later than two months after he has been informed of the decision. Others who are interested in the decision concerned, may file a similar appeal not later than two months after the announcement of the decision.

The fee fixed for the appeal shall be paid within the term mentioned in subsection (1). If payment is not made, the appeal shall be dismissed.

Section 68

The Minister of Commerce shall determine the amount, etc., of the fees under this Law and of the fees for services, etc.

As far as annual fees are concerned, cf. Section 41, the Minister of Commerce may decide that no fee shall be payable for one or more of the first patent years.

Section 69

The Minister of Commerce shall issue specific rules and regulations on patent applications and their examination, on the arrangement and keeping of the Register of Patents, on the publication and contents of the Patent Gazette, and on the procedure of the Patent Office and the Patent Board of Appeal. It may be decided that the Patent Office records of applications filed shall be available to the public. The Minister of Commerce may issue specific rules regarding the days when the Patent Office is closed.

The Minister of Commerce may decide that, at the request of the authorities of another country, the Patent Office may give such other authorities information about the examination of patent applications filed in this country and that, when deciding whether or not the conditions of patentabi-

lity are met, the Patent Office may accept novelty searches which have been carried out in this respect by a corresponding authority in another country or by an international institution.

Moreover, the Minister of Commerce may decide that applicants in another country may be requested by the Patent Office to give information within a certain period of time about the result of the examination on the patentability of the invention communicated to them by the patent authority of the country in question.

Section 70

For inventions which concern war materials or processes or methods for the production of war materials, secret patents may be granted in accordance with special provisions.

DENMARK

Chapter XI. Entry into Force and Transitional Provisions

(1) This Law shall come into force on January 1, 1968. At the same time the Patent Law, as published in law notification No. 361 of December 19, 1958, shall be repealed. Furthermore, Section 4 of Act No. 142 of April 29, 1955, concerning inventions by employees, shall be repealed.

Patents for inventions of food and pharmaceutical products as well as patents for processes concerning the production of food may, however, be granted only at a later date fixed by the Minister of Commerce.

(2) Subject to the following exceptions, this Law shall also be applicable to patents which have been granted in accordance with the previous legislation and to patents which will be granted in accordance with the previous legislation.

If a right to exploit an invention according to Section 6 of the former Law has been acquired before the coming into force of this Law, this right is maintained irrespective of whether the conditions of Section 4 of this Law have been fulfilled.

(3) A patent which has been granted or will be granted under the previous legislation can only be declared invalid in accordance with the provisions of Section 24 of the former Patent Law.

(4) Any person who, at the entry into force of this Law, commercially exploits in this country an invention for which a patent could not be granted in accordance with Section 1 of the former Patent Law, or who has taken substantial measures for such an exploitation, shall be entitled to continue the exploitation in accordance with the provisions of Section 4 of this Law, regardless of whether he began the exploitation or took measures therefor after the filing of the patent application and whether or not a patent for the invention is later granted.

Any person who, at the entry into force of this Law, commercially exploits in this country an invention for which someone else has a patent without thereby acting contrary to the provisions of Section 5 of the former Patent Law, shall be entitled to continue the exploitation so long as it retains its general character. The same right shall be due in similar conditions to any party who, before the said date, took substantial measures for such exploitation of the invention in

this country. The right may only be transferred to other parties together with the enterprise where it originated or in which it was intended to exploit it.

(5) If, before the entry into force of this Law, an invention became available to the public as a result of measures taken by the applicant or any person from whom he derives his right, and if the patent application is filed not later than July 1, 1968, only Section 1, subsection (2) No. (3), of the former Patent Law shall be applicable in deciding whether a patent can be granted irrespective of the said measures or whether a patent is to be regarded as invalid.

(6) Applications pending with the patent authority when the new Law enters into force shall be examined and decided upon according to the provisions of the former legislation if the applicant has been informed that publication according to Section 16 of the former Patent Law may take place.

(7) Applications which are filed before the entry into force of this Act shall not, irrespective of the provisions of Section 22, be made available to the public until six months after the coming into force of this Law, unless the application is laid open for public inspection at an earlier date or the applicant requests that the application be made available.

(8) The annual fees in respect of the patent years beginning before July 1, 1968, shall be payable in accordance with the provisions of the former Patent Law.

(9) For a patent of addition granted before this Law enters into force, the provisions concerning a patent of addition in the former Law shall apply, in place of Section 7, subsection (2), second sentence, and subsection (3), as well as Section 41, subsection (2), of the present Law.

FINLAND

Chapter IX. Infringement and Compensation: Court Proceedings

Section 57

If any person infringes the exclusive right pertaining to a patent, the court may forbid him to continue or repeat the activity. If any person is deliberately guilty of patent infringement, he shall be punished by a fine or by imprisonment of no more than six months.

An indictment for this offense may not be brought by the public prosecutor unless the injured party reports it to him for prosecution.

Section 58

(See the Swedish text)

Section 59

(See the Swedish text)

Section 60

(See the Swedish text)

Section 61

(See the Swedish text; however, in the second paragraph, second sentence, replace "the court shall ..." by "the court may ...".)

Section 62

(See the Swedish text; however, delete the third paragraph.)

Section 63

(See the Swedish text)

Section 64

(See the Swedish text; however, in the first paragraph, first sentence, add the words "or old security in the patent.")

Section 65

(See the Swedish text; however, instead of "The City Court of Stockholm ..." read "The City Court of Helsinki ...")

Section 66

In the proceedings mentioned in Section 65, the City Court shall be assisted by two technical experts appointed by the Court. Such experts shall give their views on the questions presented to them by the Court. The views shall be entered in the records. Such experts shall have the right to put questions to parties and witnesses.

Section 67

The City Court shall, for each calendar year, appoint the necessary number of experts referred to in Section 66. Prior to making the appointment, the Court shall request the opinion of the National Institute for Technical Research and the Central Chamber of Commerce. No one, without a legal excuse, may refuse such assignment.

Before the expert commences his assignment he shall give the prescribed oath.

Section 68

At the request of the plaintiff, the Court may grant an interlocutory injunction against the use of the patent or order that property referred to in Section 59 shall be seized temporarily for the duration of the proceedings.

If the Court has ordered an injunction or seizure pursuant to the first paragraph of this Section, the plaintiff may be required to give such security as the Court will accept for any damage and inconvenience that might be inflicted on the other party by the action.

Relief from a decision regarding injunction or seizure or the lifting of the same during the course of proceedings may be sought by special appeal.

Section 69

In proceedings regarding the invalidation of a patent, the Court shall request the views of the Patent Office.

In other patent cases, the Court may request the views of the Patent Office when this is called for by the circumstances of the case.

Section 70

Copies of decisions in cases referred to in Section 65 shall be sent by the Court to the Patent Office with an indication as to whether the decision has obtained legal effect.

FINLAND

Chapter X. Special Provisions

Section 71

(See the Swedish text; however, second paragraph, second sentence, reads: "If an address is not entered in the Register, summonses and notices may be served by advertisement in the official journal.")

Section 72

(See the Swedish text)

Section 73

(See the Swedish text)

Section 74

(See the Swedish text)

Section 75

(See the Swedish text)

Section 76

(See the Swedish text)

FINLAND

Entry into Force and Transitional Provisions

(1) This Law shall enter into force on January 1, 1968. The Patent Law of May 7, 1943 (387/43) (the old Law), shall thereby be repealed. However, if an invention concerns foods or medicines a patent may not be granted for the product as such but only for a process of manufacture thereof until otherwise prescribed by decree.

Prior to the entry into force of this Law, such regulations may be given by decree as are necessary to put the new Law into operation.

(2) First paragraph: (See the Swedish text)

Second paragraph: the provisions of this Law shall be of no consequence in respect of rights arising from Section 2 of the old Law.

(3) (See the Swedish text)

(4) (See the Swedish text)

(5) (See the Swedish text; however, instead of "Section 3 of the old Law" read "Sections 14, 15 and 18 of the old Law, the last Section in the reading of October 20, 1950")

(6) A patent application which is pending at the time of the entry into force of this Law shall be examined and resolved in accordance with the old Law, provided that the Patent Office has made a decision to lay the application open for public inspection in accordance with Section 47 of the old Law before the new Law came into operation.

(7) (See the Swedish text)

(8) In regard to the payment of the annual fee for a patent year starting prior to July 1, 1968, the provisions of the old Law shall apply.

(9) (See the Swedish text)

(10) In patent proceedings, where a court summons has been requested before the entry into force of this Law the

competent court and procedure shall be determined according to the provisions of the old Law.

NORWAY

Chapter IX. Infringement and Compensation; Court Proceedings

Section 57

Any person who deliberately infringes the exclusive right pertaining to a patent, or contributes thereto, shall be punished by a fine or by imprisonment of up to three months.

The public prosecutor shall only prosecute when requested to do so by the injured party.

Section 58

First paragraph: (See the Swedish text)

Second paragraph: If the infringement is committed in non-negligent good faith, the court may, to the extent deemed reasonable, order the infringing party to pay damages; however, such damages shall not exceed the profits that the said party may be assumed to have acquired as a result of the infringement.

Section 59

First and second paragraphs: See first paragraph of the Swedish text; however, in the first sentence, instead of "imposed for the remainder of the patent term" read "*confiscated*."

Third paragraph: Notwithstanding the first paragraph of this Section, the court may on request, when there are very special reasons for it, grant permission to dispose of the patented property, in consideration of a reasonable compensation and subject to reasonable conditions, during the remainder of the patent term or a part thereof.

Section 60

First paragraph: (See the Swedish text)

Second paragraph: The statutory period of limitation for claims in accordance with the previous paragraph shall not begin until the patent is granted.

Section 61

In a civil action regarding patent infringement, an acquittal may not be based on the fact that the patent was invalid or that a transfer of the patent could be claimed, cf. Sections 52 and 53, until a decision has been made regarding the validity or the transfer of a patent.

Section 62

Any person who deliberately or through negligence fails to supply information, or to allow another party to inspect the documents specified in the provisions of Section 56, or gives wrong information in the circumstances referred to in Section 56, shall be liable to a fine and shall pay compensation for the resulting damage, to the extent this is found reasonable.

The public prosecutor shall only prosecute when requested to do so by the injured party.

NORWAY

Chapter X. Court Proceedings

Section 63

The City Court of Oslo shall be the competent court in proceedings regarding:

1. the proper title to an invention in respect of which a patent is applied for;
2. reconsideration of a decision of the Appeal Board of the Patent Office whereby the grant of a patent has been refused; cf. Section 25, second paragraph;
3. the invalidation or transfer of a patent; cf. Sections 52 and 53.

The City Court of Oslo shall be the venue for applicants and patentees who are not residents of this country.

Section 64

Any person who brings an action for the invalidation of a patent, the transfer of the patent to himself, or the grant of a compulsory license, shall at the same time notify the Patent Office thereof, and shall give notice by registered mail to any licensee whose address is recorded in the Register of Patents. A licensee wishing to bring an action for patent infringement shall, in the same way, notify the patentee thereof, if the address of the patentee is recorded in the register.

If the plaintiff is unable to prove that he has given notice as specified in the first paragraph, the Court may allow a time limit for such notification. If the time limit is exceeded, the action shall be dismissed.

Section 65

In proceedings concerning patent rights, the court may, in consideration of industrial or commercial secrets of any of the parties or witnesses concerned, rule that the public shall be barred from the proceedings or a part thereof.

Section 66

Copies of the decisions made by the court in the cases specified in Section 63 shall be sent to the Patent Office.

NORWAY

Chapter XI. Special Provisions

Section 67

A patentee who is not domiciled in this country shall have an agent resident here whose name shall be recorded in the Register of Patents and who shall have the authority to receive service of writs or summonses and other documents in proceedings and matters concerning the patent, on behalf of the patentee.

If the patentee has not appointed an agent, documents to be served may be sent by registered mail to his address as recorded in the Register of Patents. In such cases, the provisions of Section 178 of the Law Relating to the Courts of Justice shall be applicable. If there is no complete address recorded in the Register, or otherwise when the court finds it necessary, a writ may be served by publication of the documents concerned, or extracts of same, in "*Norsk Ly-*

singsblad” and in the publication issued by the Patent Office, with notification that the documents may be collected at the office of the court. In such cases, the provisions of Section 181, fourth paragraph, of the Law Relating to the Courts of Justice shall be applicable. The time of notification in the publication of the Patent Office shall then replace the time when the notice was posted by the court.

Subject to reciprocity, the Government may decree that the stipulations of the first and second paragraphs shall not apply to a patentee domiciled in a specified foreign country, or who has an agent residing in that country, provided the agent is recorded in the patent register of that country and is authorized pursuant to the first paragraph of this Section. The writ or the notification shall then be served in accordance with the general provisions of Chapter IX of the Law Relating to the Courts of Justice.

Section 68

The fees to be paid according to this Law shall be prescribed by the Government. The Government shall also make the specific rules for the payment of the fees. With regard to annual fees, the Government may decree that one or more of the first patent years shall be exempt from fees. When the annual fees are revised, the Government may also, within the limitations of the provisions of Section 72, subsection (8), decree that the revised fees shall also apply to patents granted previously.

The Government shall also prescribe the fees payable for records made in the Register of Patents and for copies and certificates issued by the Patent Office.

Section 69

Further regulations regarding applications for patents, the examination of applications, the Register of Patents, the publication issued by the Patent Office, and regarding the practice of this Law in general, shall be issued by the Government. In this connection, it may be decided that the records in which the applications are entered, shall be available to the public.

The Government may decree that the Patent Office, on request by the patent authority of another country, may give the said authority information regarding the examination of an application filed in this country, and that the examination of the patent application as to novelty may take place at the appropriate authority of another country, or at an international institution.

The Government may also decree that an applicant for a patent in respect of an invention for which a patent application was previously filed in another country shall be required to show what the patent office in that country has communicated to him in regard to an examination of the patentability of the invention.

Section 70

If the country is in a state of war or war emergency, or in an ensuing crisis, the Government may decree that the right to an invention shall be surrendered to the State or to another party designated by the Government. Compensa-

tion shall be paid for the rights thus surrendered. If an agreement regarding the compensation cannot be reached, the compensation shall be determined by a court of law.

If the rights in an invention pursuant to the first paragraph have been taken over by a person other than the State, and if he does not fulfill his obligations with regard to payment, the Government shall be obliged to pay the compensation immediately at the request of the person entitled thereto.

Section 71

A special law shall apply to inventions of importance to the defense of the country.

NORWAY

Entry into Force and Transitional Provisions

Section 72

(1) This Law shall enter into force on January 1, 1968.

Simultaneously, the Patent Law of July 2, 1910, with subsequent amendments, shall, within the limitations stated hereinafter under paragraphs (2) to (8), be repealed. Nevertheless, if an invention concerns food or medicines, a patent may not be granted for the product itself, but only for the process of manufacture, until otherwise decreed by the Government.

(2) The new Law shall also be applicable to patents which have been granted prior to the time of its entry into force or which will be granted on applications filed prior to that time unless the following provisions provide to the contrary.

The right relating to prior use pursuant to the provisions of Section 7 of the previous Law shall remain in force irrespective of whether the conditions pursuant to the provisions of Section 4 of the present Law have been met.

(3) A patent which has been granted or is being granted in accordance with the provisions of previous legislation, can only be invalidated in accordance with the provisions of that legislation.

(4) Any person who, at the time the new Law entered into force in this country, commercially exploited an invention in respect of which a patent could not be granted according to the provisions of Section 1 of the previous Patent Law, or who has undertaken substantial preparations for such exploitation, shall be entitled to continue the exploitation in accordance with the provisions of Section 4 of this Law, regardless of the fact that the exploitation of the invention or the preparations therefor were made after the filing of the application.

(5) If, prior to the entry into force of this Law, an invention has become available to the public in consequence of measures taken by the applicant or his predecessor in title, Section 2 of the previous Patent Law shall be applicable in deciding whether, for that reason, there is a hindrance to the grant of a patent, or whether a patent shall be declared invalid, provided that the application for a patent was filed before July 1, 1968.

(6) A patent application which is pending at the Patent Office at the time the new Law comes into force shall be

examined and resolved in accordance with the provisions of the previous legislation, provided it has been decided to lay the application open for public inspection in accordance with the provisions of Section 26 of the previous Patent Law.

(7) An application for a patent which was filed before the entry into force of the Law, shall not, irrespective of the provisions of Section 22, be made available to the public before six months after the entry into force of the Law, unless prior to that time the application was laid open for public inspection or the applicant requests that the application be made available to the public.

(8) In regard to the annual fee for a patent year starting prior to July 1, 1968, the provisions of the previous Patent Law shall apply. Annual fees for patents granted prior to September 1, 1953, shall also be stipulated in accordance with the provisions of the previous Patent Law.

ALGERIA

Order

**Completing Order No. 66-57, of March 19, 1966,
on Trademarks**

(No. 67-223, of October 19, 1967)

Article 1

New applications filed at the record offices of Algerian courts between July 3, 1962, and March 24, 1966, shall be put in order on the basis of the provisions prescribed in the above-mentioned Order No. 66-57, of March 19, 1966, and shall be registered at the National Office of Industrial Property with effect from the date of filing at the record office.

Article 2

French trademarks which were in force in Algeria on July 3, 1962, and which were kept in force in pursuance of Article 40 of the above-mentioned Order No. 66-57, of March 19, 1966, shall be protected throughout the national territory from July 3, 1962, until the date of expiry of the term of protection in their country of origin.

Article 3

International trademarks which were in force in Algeria on July 3, 1962, and which, between March 24 and December 24, 1966, underwent formalities for keeping them in force and for renewal shall be protected for a period of 10 years calculated from the date of filing of the application for renewal.

The formalities for keeping a trademark in force are intended to protect them during the period running from July 3, 1962, to the date of filing of the application for renewal.

Article 4

Foreign trademarks in respect of which protection in the country of origin expired between July 3, 1962, and March 24, 1966, and which have been renewed in pursuance of Article 43

of the above-mentioned Order No. 66-57, of March 19, 1966, shall be protected for a period of 10 years reckoned from July 3, 1962.

Article 5

This Order shall be published in the *Journal officiel* of the Democratic and Popular Republic of Algeria.

GENERAL STUDIES

The New Nordic Patent Legislation

By G. BORGGARD, Director General, Patent Office, Stockholm

History

The idea of Nordic collaboration in the patent field can be traced back to the eighties when a Nordic meeting of jurists suggested the possibility of harmonized patent laws. At various times thereafter contacts were made for this purpose, but it was not until 1938 that actual negotiations were started. These negotiations were interrupted by the Second World War, but the results were anyway put to use by the introduction of a new Patent Law for Finland in 1943 and a revision of the Swedish Patent Law in 1944.

It should already be said in this connection that, from the end of the last century, it has been a tradition in the Nordic countries to try to reach harmonization whenever new legislation of more general importance is contemplated. Thus many major law reforms have been preceded by common preparatory deliberations. This has been especially true in the field of intellectual property, and recent laws in Denmark, Finland, Norway and Sweden on copyright, trademarks and family names are all the result of common preparatory work.

It is therefore only natural that this legislative cooperation should extend also to the patent field. However, patent legislation is special inasmuch as the constitution of patent rights is dependent on an administrative procedure that, as the patent system has developed, has become complicated and lengthy. All four countries have long been examining countries and have had the same difficulties as other examining countries in keeping up with the increasing number of applications. It was therefore realized that harmonization of patent legislation should lay the groundwork for common efforts in expediting the procedure necessary for obtaining patent rights. Legislation to that end needed to be harmonized not only with regard to general principles but also as to details.

The initiative for devising a scheme of practical collaboration between the Nordic Patent Offices was taken by the Nordic Council, an interparliamentary body created for the furtherance of Nordic cooperation. A common Nordic Com-